

TAURANGA MOANA

1886 – 2006

TAURANGA MOANA

1886-2006

REPORT ON THE
POST-RAUPATU CLAIMS

VOLUME I

WAI 215

WAITANGI TRIBUNAL REPORT 2010



The cover design by Cliff Whiting invokes the signing of the Treaty of Waitangi and the consequent interwoven development of Māori and Pākehā history in New Zealand as it continuously unfolds in a pattern not yet completely known

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The Waitangi Tribunal
141 The Terrace
WELLINGTON

16 August 2010

Tēnā koe e te Minita

Tēnā koe e te rangatira e noho mai nā i tēnā taumata whakahirahira, e whakatutuki mai nā i ngā kaupapa maha me ngā wawata ā tō iwi Māori huri noa i te motu. Tēnā rā hoki koe e whai ake ana i ngā tapuwae o ngā pou mātua rongonui o te ao Māori i mua atu i a koe. Arā hoki ko Tā Te Rangihīroa tērā, ko Tā Maui Pōmare, ko te matua i a Tā Timi Kara me Tā Āpirana Ngata – te hunga i eke ake ki ngā taumata tiketike o te ao Māori me te ao Pākehā. Ā tae atu hoki ki ngā mea i whai ake i muri atu i a rātou.

Kei te whai wāhi anō hoki ki ngā mate huhua i roto i ngā tau kua mahue ake nei. Timata ake ki ētahi o ngā kaitono me ngā kaiāwhina o ngā iwi o Tauranga Moana tae atu hoki ki te Kaiwhakawā i a Judge Kearney me te kaumātua i a Tā Hoani Tūrei rātou kua ngaro atu i te tirohanga kanohi i roto i ngā tau kua hipa atu nei. Nō reira e ngā mate, takoto mai rā koutou i te urunga e kore e nekehia, i te moenga e kore e hikitia.

Ka hoki mai ki a tātou e kawe nei i ngā kawenga i mahue mai rātou.

Kei te rangatira koiane te wāhanga tuarua otirā wāhanga whakamutunga o ngā pūrongo e pā ana ki ngā kokoraho o ngā iwi o Tauranga Moana me ētahi atu iwi e noho tata tonu ana ki te rohe whānui. Ko ēnei kōrero e whai ake ana i ngā take raupatu o tērā rau tau i kōrerotia i roto i te wāhanga tuatahi. Ko ngā tino take e kōrerotia nei me kī he take o muri nei arā pērā i ngā kaupapa mō te reiti whenua, ngā whenua o ngā iwi i tangohia mō te katoa i raro i ngā ture o te kāwana, ngā kaupapa āwhina o te Karauna mō te whakatupu i ngā whenua o ngā iwi, ā me ētahi atu take. Ka kitea i roto i te katoa o ngā kōrero nei ngā tino take i riro ai te rahinga o ngā whenua o ngā iwi o Tauranga Moana tae atu hoki ki te raupatu.

E tautoko ana ā mātou whakataunga i ngā tono ā ēnei iwi me te tūmanako hoki ā te wā ka whakataungia ngā take i waenganui i ngā iwi o Tauranga Moana me te Karauna i runga anō i te wairua me ngā whanonga pono o te Tiriti o Waitangi

In its report on stage 1 of the Tauranga inquiry, *Te Raupatu o Tauranga Moana*, published in 2004, the Tribunal reported on the confiscation of land and its effects on the iwi and hapū of Tauranga Moana up until 1886. We now present to you our report on stage 2 of the inquiry,

which looks at issues that arose between 1886 and 2006. This report sets out how Tauranga iwi and hapū continued to lose significant amounts of land throughout that period, to the point where land still in Māori tenure now amounts to only a little over 13,000 hectares, less than a quarter of the land they held in 1886. Tauranga iwi and hapū could ill afford to lose any land at all, and the scale of loss has compounded the prejudice they suffered from the raupatu. The reasons for these losses include further Crown purchases (see ch 2), public works takings (ch 4), and pressures caused by actual and potential rates debts, and from the development and subdivision encouraged by local and central government (ch 5).

Māori landowners faced considerable difficulties in trying to develop their remaining lands. To a large extent the blame for these difficulties lies in the land tenure and administration system imposed by the Crown on Māori owners (as discussed in chapter 3). While we note that the Crown made efforts at times to assist Māori to overcome the disadvantages created by the loss of land and the land tenure system, we are in no doubt that overall the Crown failed to provide the level of protection and support promised under the Treaty. Particularly disappointing was the lack of adequate protection or assistance for those groups who were left landless or nearly so. Thus, we have recommended that substantial redress needs to be made to Tauranga Māori for post-1886 breaches, separately and in addition to redress for the raupatu.

Chapters 5 and 6 of the report also look at the planning legislation that has served to support urbanisation and economic development. We find that such legislation has often failed to incorporate Māori needs, perspectives, and aspirations. In particular, a number of legislative and regulatory provisions have, over the years, worked against those Tauranga Māori who have wished to maintain a community lifestyle. These chapters also discuss the lack of representation Māori have had in local government. Legislation to encourage Māori participation in local government has only been put in place in recent years and we are of the firm view that the Crown and local authorities must follow through much more vigorously on such legislation if development sensitive to Māori perspectives is to flourish.

Along with their loss of land, Tauranga Māori suffered loss of access to and use of traditional resources from the sea and forests of Tauranga Moana. We detail how the accelerating pace of urban development led to degradation and pollution of these places, which the tangata whenua considered their food-basket (ch 7). Alongside that, development has endangered the cultural heritage of Tauranga Māori, and this report shows that, despite some protections, many sites of cultural, spiritual, and historical importance have been modified or destroyed (ch 8). Where their environment and cultural heritage are concerned, Tauranga Māori have had to fight hard to maintain even a faint shadow of the tino rangatiratanga and kaitiakitanga they exercised at the time of the signing of the Treaty.

The report recommends various ways by which the Crown can assist in restoring a measure of rangatiratanga to the iwi and hapū of the district.

The report concludes that the cumulative and interlinked effects of different government processes and legislative provisions have created considerable prejudice to Tauranga Moana Māori, all too often marginalising them in the area that has for centuries been their home. In our final chapter we make two general recommendations. First, claims of Tauranga iwi and hapū must be addressed as a matter of high priority. Secondly, we recommend greater collaboration and information flow between various arms of government in order to redress the prejudice suffered by Tauranga Moana Māori and to assist them in their future development. We reiterate the recommendation of the stage 1 report that the Crown make available as much land as possible to Tauranga Moana Māori by way of settlement of claims. Where the return of land is not feasible, substantial other recompense will be necessary. We urge the Crown to make generous and meaningful redress not only for the raupatu but for the prejudicial effect of Crown breaches during the period from 1886 to 2006. Such redress is necessary if Tauranga Māori are to be able to fulfil their true potential and the dreams of their tīpuna.



Judge S Te A Milroy

Presiding Officer and Deputy Chairperson of the Waitangi Tribunal

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ABBREVIATIONS

AJHR	<i>Appendix to the Journals of the House of Representatives</i>
app	appendix
ch	chapter
comp	compiler
doc	document
ed	edition, editor
fn	footnote
fol	folio
ltd	limited
no	number
NZPD	<i>New Zealand Parliamentary Debates</i>
NZLJ	<i>New Zealand Law Journal</i>
NZLR	<i>New Zealand Law Reports</i>
ots	Office of Treaty Settlements
p, pp	page, pages
para	paragraph
pt	part
s, ss	section, sections (of an Act of Parliament)
sec	section (of this report, a book, etc)
sess	session
v	and
UAGC	uniform annual general charge
vol	volume

‘Wai’ is a prefix used with Waitangi Tribunal claim numbers.

Unless otherwise stated, footnote references to claims, papers, and documents are to the Wai 215 record of inquiry, extracts of which are reproduced in appendix 1.

CHAPTER 1

INTRODUCTION

1.1 INTRODUCTION

1.1.1 The two reports

This is the Waitangi Tribunal's second report on claims brought by tangata whenua in the Tauranga Moana district of the western Bay of Plenty. The first report, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims*, issued in August 2004, examined claims arising out of war, land confiscation, and other related matters, up to 1886. The present report, the result of a second stage of inquiry, covers the period from 1886 to 2006. We advise consulting both reports to obtain a full picture of the range of issues affecting tangata whenua in the Tauranga inquiry district.

1.1.2 How the inquiry came to be divided into two stages

The two-stage approach to the Tauranga Moana inquiry has its origins in decisions made during the initial hearings held between 1998 and 2002. At first, it was intended that the Tribunal would hear all Tauranga Moana claims in a single set of hearings and, in December 1990, an inquiry plan was drawn up to that end. However, because several large inquiries were then coming under action, substantive hearings on the Tauranga claims had to be deferred until later in the decade. In August 1997, a Tribunal panel was appointed for Tauranga Moana. The late Judge Richard Kearney was appointed to preside, along with four members: the Honourable Dr Michael Bassett, John Clarke, Areta Koopu, and Professor Keith Sorrenson. Sir John Turei provided assistance to the Tribunal as a kaumatua adviser until his death in early 2003.

Hearings commenced in February 1998 but, by November of the same year, the Tribunal had become concerned about the amount of evidence to be tabled and the length of time needed to accommodate it. After discussion at a judicial conference, several decisions were made to modify the Tribunal's procedure. In particular, the parties agreed that the Tauranga claims should be heard and reported in two stages. Stage 1 would deal with war, raupatu, and related issues up until 1886, and stage 2 would investigate the remaining land issues

from the nineteenth century, as well as all twentieth-century issues. The hearing of stage 2 issues would take place once the Tribunal had reported on stage 1.¹

After this decision, the hearings continued but focused solely on raupatu and related issues. A total of 12 stage 1 hearings were held at marae around Tauranga and at Te Puke and Paeroa from 23 February 1998 to 31 January 2002. In August 2004 the Tribunal released its report *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims*. In that report the Tribunal signalled its intention to hear stage 2 of the Tauranga Moana claims if that was still the wish of the parties.² However, before a decision about a stage 2 inquiry was made, the presiding officer of the Tauranga Moana Tribunal, His Honour Judge Kearney, passed away. As a consequence a new presiding officer, Her Honour Judge Stephanie Milroy, was appointed on 27 February 2006.³

1.2 THE STAGE 2 INQUIRY

1.2.1 Decision to proceed

On 7 February 2005, the Tribunal canvassed all claimant parties to the stage 1 inquiry on whether they wished to proceed directly to a negotiated settlement with the Crown or to have their stage 2 claims heard by the Tribunal.⁴ The chairperson of the Tribunal considered that a stage 2 inquiry could only be justified if it promoted early and productive negotiations between claimants and the Crown. If such an inquiry were to proceed, it would take the form of a supplementary inquiry, rather than a standard district inquiry.⁵ Submissions from claimant counsel indicated that there were enough parties seeking to proceed to a stage 2 inquiry to warrant exploration of how that inquiry could be organised.⁶ On 3 October 2005, a judicial conference was held to consider arguments as to whether the Tribunal should proceed with stage 2 of the Tauranga Moana inquiry and, if so, what processes it should adopt. Ngāi Te Rangi claimants, particularly, stated that they had significant grievances regarding the post-1886 period, and the chairperson of the Tribunal agreed that a stage 2 inquiry was warranted.⁷

1. Waitangi Tribunal, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims* (Wellington: Legislation Direct, 2004), pp 5–7

2. Paper 2.437

3. Paper 2.463

4. Paper 2.423

5. Paper 2.446

6. Paper 2.430

7. Paper 2.446

1.2.2 Inquiry issues and research

Before hearings could proceed, a number of decisions were required about how evidence from stage 1 of the inquiry would be used in stage 2; what new research was necessary; and what key issues would form the basis of the second inquiry. It was resolved that the best method to achieve this end would involve a planned casebook of research dealing with themes or topics common to a number of claimants in the district (rather than research for individual claims). An interlocutory process would define the issues to be inquired into, while a compressed hearing timetable would encourage claimants to marshal their most telling evidence.

In keeping with this approach, a joint claimant and Crown committee was set up to establish key claim issues, identify gaps in the existing research, and propose an interlocutory process and hearing programme.⁸ At the same time, the Tribunal commissioned a review of the casebook research already on the Wai 215 record of inquiry. After discussion with claimant counsel, a limited programme of further research was agreed upon on 17 March 2006. The Tribunal asked that this research be filed by 31 August 2006.⁹ A statement of issues to be investigated in stage 2 was submitted to the Tribunal on 12 April 2006.¹⁰

1.2.3 Hearing process

In November 2005, it was envisaged that three weeks of hearing time would be required and that this limited time would largely be used for hearing tangata whenua witnesses express their own views and recollections about the issues in their claims. This economic use of hearing time would be achieved by questioning technical witnesses by written memoranda only, except for some possible cross-examination of witnesses on pure matters of historical fact. The chairperson of the Tribunal indicated that, all going well, the parties would then have an opportunity to decide whether to withdraw in order to enter settlement negotiations or to continue to closing submissions and a Tribunal report.¹¹

After a judicial conference in late February 2006, the presiding officer, Judge Milroy, agreed to a modified approach. The focus remained on using the first three weeks of hearings mainly for hearing tangata whenua evidence. Counsel were able to apply to the Tribunal for technical witnesses from stage 1 to appear. However, it was expected that most questions concerning stage 1 technical research would be addressed through written questions in writing. Appearances would be limited to witnesses who were addressing new topics not already covered in previous evidence. Three groups who joined the inquiry for stage 2 hearings, Ngāti Mahana, Ngāti Motai, and Ngāti Hinerangi, were permitted to file

8. Papers 2.434, 2.437

9. Paper 2.466

10. Papers 2.473, 2.487

11. Paper 2.446

1.2.4

one technical report each because no evidence relating specifically to their claims had previously been filed.¹²

A fourth week of hearings was added to accommodate research commissioned by the Tribunal specifically for the stage 2 inquiry, as well as Crown and local authority evidence.¹³ Claimant counsel then indicated that their clients had decided to obtain a report from the Tribunal before entering negotiations with the Crown, so a fifth week of hearings was added to allow for closing submissions to be heard.¹⁴

1.2.4 The Tribunal panel for stage 2

The Tribunal hearing evidence in the stage 2 inquiry differed from that which heard the raupatu evidence. As noted, His Honour Judge Richard Kearney, who had presided over the stage 1 inquiry, passed away on 27 March 2005, and Judge Stephanie Milroy was appointed as new presiding officer on 27 February 2006, in accordance with clauses 5AA and 5AC of the second schedule to the Treaty of Waitangi Act 1975.¹⁵ After the raupatu report was issued in August 2004, one of the members, the Honourable Dr Michael Bassett, withdrew from the Tribunal.¹⁶ The remaining members from the stage 1 Tribunal, John Clarke, Areta Koopu, and Professor Keith Sorrenson, sat to hear the stage 2 evidence, along with Judge Milroy.

1.2.5 The inquiry district

The Tauranga Moana inquiry district covers an area of some 290,000 acres (around 117,360 hectares), stretching from just beyond Bowentown on its north-western boundary line, to the mouth of the Wairākei Stream on its south-eastern side. It includes the modern-day Tauranga City, Mount Maunganui Borough, and several smaller population centres such as Katikati and Pāpāmoa. In addition to the offshore islands of Tūhua (Mayor Island), Mōtiti, and Kārewa, it also embraces a number of inshore islands, the largest of which are Matakana and Rangiwaea. The boundary of the district coincides almost exactly with what is often referred to as the ‘Tauranga confiscation district’, as described in the Tauranga District Lands Act 1868.¹⁷

12. Paper 2.535

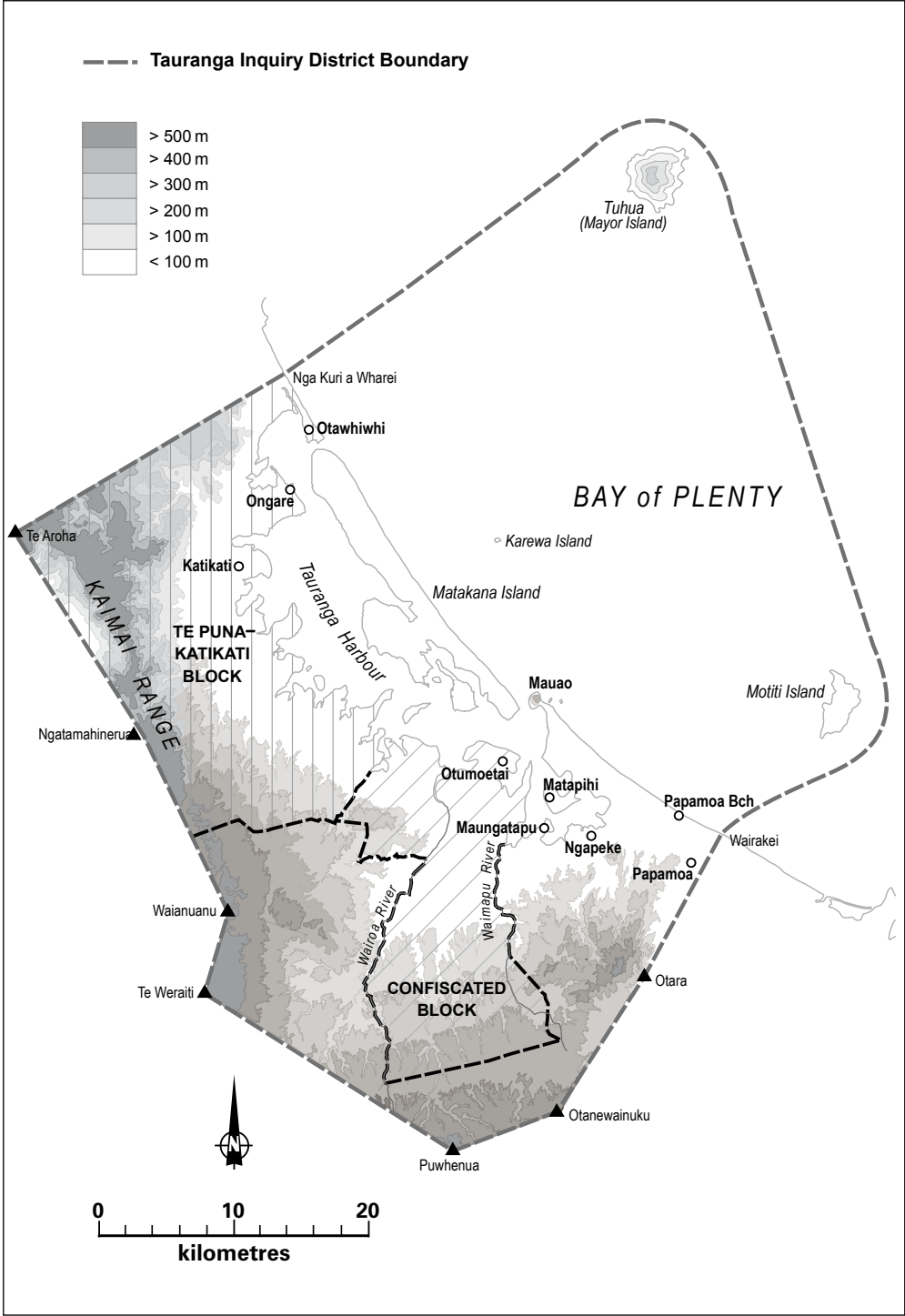
13. Papers 2.465, 2.475

14. Paper 2.475

15. Treaty of Waitangi Act 1975, sch 2, cls 5AA, 5AC; paper 2.463

16. Paper 2.446

17. Tauranga District Lands Act 1868, sch. The Tribunal’s inquiry boundary differs only in that it incorporates the whole of the island of Mōtiti – unlike the confiscation district which covered just ‘such portions of Motiti or Flat Island as shall be adjudged to belong to the Ngaterangi Tribe or to individual members thereof’. Our figure of 290,000 acres is based on the information in the schedule to the 1868 Act. A visual check, carried out by



Map 1.1: The Tauranga Moana inquiry district

1.3 TAURANGA MOANA, 1886–2006: AN OVERVIEW

The issues raised in the Tauranga inquiry tend to reflect the clash between, on the one hand, the Government's changing political and economic preoccupations in the district and, on the other, the aims and aspirations of Tauranga Māori. The period discussed in the Tribunal's stage 1 report had been dominated by war and its aftermath in the North Island, in which the Tauranga district featured largely. During the early 1870s, the Government's focus began to turn away from military concerns and towards encouraging further immigration, particularly special group settlements. As part of that policy, two shiploads of settlers from Ulster were brought out to settle at Katikati by George Vesey Stewart. Stewart was also involved in establishing a further group settlement at Te Puke, which was to generate pressure for a road from Tauranga to Te Puke. By the early 1880s, other British settlers had been encouraged to establish themselves at Tauranga itself, alongside the remnants of military settlers from the immediate post-war period. With the arrival of new settlers, the emphasis in the western Bay of Plenty shifted towards developing agriculture and industry.¹⁸

By 1886, the settler population of Tauranga County as a whole (which extends beyond the boundaries of our inquiry district) stood at around 2400.¹⁹ Māori numbered approximately 2800, including those on Mōtiti and Tūhua and 'half-castes living as members of Maori tribes'.²⁰ Within the confiscation district, however, the amount of land left to Māori was limited. As a consequence of the raupatu and its aftermath, Māori communities in the Tauranga area were confined to reserves on the coastline around Tauranga Moana; to a handful of blocks of land around the eastern end of the harbour; and to some slightly larger blocks in the hill country running into the Kaimai Range. Since Tauranga tended to expand in an easterly direction, Māori land in the path of development was placed under pressure. Alongside this, there was growing recognition of the harbour's potential as a port, which created further pressures on land and customary resources. Robert Stout and Apirana Ngata would report to the Government in 1908 that, while Māori population figures were still slightly higher than those of Europeans, the land ownership imbalance was noticeable: 'When the lands in the northern part [of the County] are dealt with it will be found that the area of land . . . possessed by Europeans per head will be at least three times as great as that left to the Maoris.'²¹

superimposing a scaled grid onto the inquiry map, suggests that the district covers at least that number of acres. We do not accept Belgrave et al's figure of only 152,667 acres: Michael Belgrave, Grant Young, Adam Heinz, and David Belgrave, 'Tauranga Maori Land Alienation: A Quantitative Overview, 1886–2006, Final Report', report commissioned for the Waitangi Tribunal (doc T16(a)), p 15.

18. Evelyn Stokes, *A History of Tauranga County* (Palmerston North: Dunmore Press, 1980), pp 135–169; Alan C Bellamy, ed, *Tauranga, 1882–1982* (Tauranga: Tauranga City Council, 1982), pp 264–267

19. Stokes, *A History of Tauranga County*, p 170

20. 'Census of the Māori Population', AJHR, 1886, G-12, p 17

21. Robert Stout and Apirana T Ngata, 'Native Lands and Native-Land Tenure: Interim Report of Native Land Commission, on Native Lands in the County of Tauranga', AJHR, 1908, G-1K, p 1



Figure 1.1: The Strand, Tauranga, during the 1880s

Photographer unknown. Reproduced courtesy of the Alexander Turnbull Library (1/2-022639-F).

Nevertheless, during the depression years of the 1880s, the growth of the Tauranga area was slow. Dairy farming gradually became established on the lowlands, but bush sickness (caused by a deficiency of cobalt in the soil) greatly hampered hill-country farming.²² Furthermore, the development of the Ōhinemuri goldfield (just outside the inquiry district) from the 1870s onwards attracted settlers away from Tauranga. By 1906 the centre of this goldfield – Waihi – had a growing population of 5595 compared to Tauranga township's mere 1074, a figure that was lower than it had been in 1881.

The goldfields did offer a market for any surplus livestock raised and produce grown, but owing to poor transport infrastructure at the time, the benefits of this commerce were largely limited to settlers farming at the western end of Tauranga Moana, around Katikati. Tourism traffic to the Rotorua thermal area dwindled too. The route by sea from Auckland to Tauranga and thence inland by road to the 'Hot Lakes', so popular during the 1870s, was largely abandoned once new routes opened via the Waikato. Lobbying from Tauranga and Katikati residents for a railway went unheeded for another 30 years or more. Instead, in the summer of 1883–84, the Auckland to Cambridge coach route was extended to Rotorua, and

22. Stokes, *A History of Tauranga County*, p155



Figure 1.2: Main road, Katikati, circa 1920

Photographer unknown. Reproduced courtesy of Tauranga City Libraries (00-176).

1894 saw the completion of a railway between Auckland and Rotorua. Thereafter, tourist traffic mostly bypassed Tauranga.²³

Economic growth began to improve in the early 1900s with the rapid expansion of the dairy industry in the coastal Bay of Plenty. Dairy factories were opened in Katikati and Te Puke in 1902 and in Tauranga in 1905.²⁴ Then, a small experimental fruit farm was launched by the Agricultural Department in 1906, with excellent results.²⁵ The following year, private interests opened a fish-curing plant in Tauranga.²⁶

Amenities, too, began to improve. In 1908, an early telephone system was installed in the town, and a waterworks was completed in 1911, with piped water being fed to a limited area. Electric street lighting was introduced in 1915, to replace the old gas lights that had been installed in 1900, and the beginnings of a public sewerage system became operational the same year.²⁷

23. Stokes, *A History of Tauranga County*, pp 144, 148, 169, 214; 'Tauranga – the Birth of a City', <http://library.tauranga.govt.nz> (accessed 28 October 2008); Rachael Willan, 'From County to Town: a Study of Public Works Encroachment in Matapihi, Whareroa and Mount Maunganui', (commissioned report, Waitangi Tribunal: Wellington 1999) (doc F29), p 65

24. Stokes, *A History of Tauranga County*, pp 261–262

25. Robert Stout and Apirana T Ngata, 'Native Lands and Native-Land Tenure: Interim Report of Native Land Commission, on Native Lands in the County of Tauranga', AJHR, 1908, G-1K, p 1

26. Alan C Bellamy, ed, *Tauranga, 1882–1982* (Tauranga: Tauranga City Council, 1982), p 269

27. *Ibid*, pp 69, 269, 270, 272

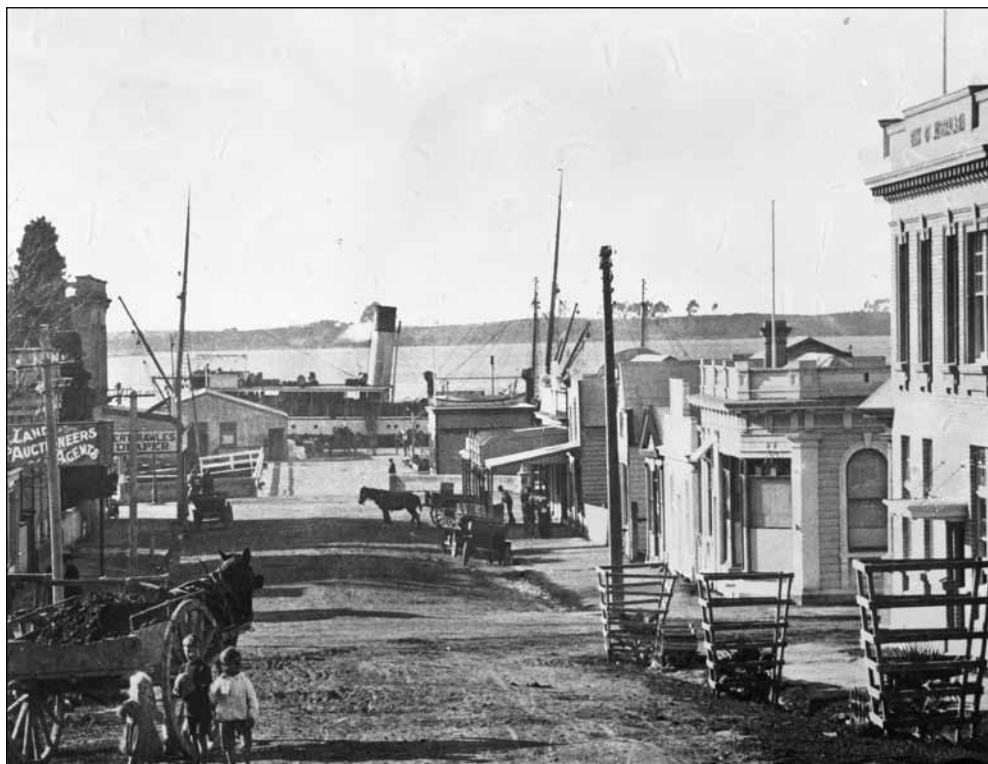


Figure 1.3: Looking along Wharf Street, Tauranga, circa 1910–14

Photographer unknown. Reproduced courtesy of the Alexander Turnbull Library, Wellington (½-071287-F).



Figure 1.4: The Strand, Tauranga, 1924, showing the first train over the railway bridge from Matapihi

Photographer unknown. Reproduced courtesy of Tauranga City Libraries (01-393).

The 1920s and 1930s saw a major effort to improve transport links with Auckland, Thames, and the eastern Bay of Plenty. Work was carried out to build roads around the district and there was a push to improve rail infrastructure. A rail link between Waihi and Matatā, surveyed in 1909 and begun in 1910, was considerably enhanced in July 1924 with the opening of the Matapihi railway bridge over Tauranga Harbour.²⁸ These rail links required considerable reclamation and wetland drainage along the harbour shores.²⁹

After the Second World War, there were renewed initiatives to bring large areas of land into production by clearing fern land, draining further wetlands, and expanding the citrus industry. Identifying cobalt deficiency as being the cause of bush sickness in livestock, and the advent of top dressing, also contributed to the expansion of pastoral farming. From the late 1950s onwards, dairy and sheep farms began to be subdivided and converted to horticultural blocks for orchards, including kiwifruit and avocado. This activity dramatically intensified after 1970.³⁰ New opportunities in agriculture in turn generated population growth. In 1945, the annual increase for Tauranga County was 5.07 per cent (compared with a national annual increase of 1.91 per cent), and by 1951 the figure had risen to 6.43 per cent (compared with 2.31 per cent nationally).³¹

The years after the Second World War saw strong economic and infrastructure growth in the urban areas, too. A particularly significant factor here was the Crown's decision to develop a deep-water port at Mount Maunganui. This had already been mooted in 1926, but 'owing to the financial state of the country' at the time, the Government was unable to take the matter forward immediately.³² However, with the burgeoning economy of the hinterland, post-war, there was a need for improved facilities to ship paper and timber from central North Island forests, as well as meat, dairy, and horticultural produce from the Bay of Plenty. Cabinet authorised the Mount Maunganui port project on 5 June 1951.³³ A motorway and causeway were constructed through the Maungatapu Peninsula, to speed access to the port and its associated industrial area and also to connect the port facilities with the business and residential parts of the city.³⁴ At the same time, the general prosperity of the 1950s and 1960s, and the sunny climate, made locations like Waihi Beach, Mount Maunganui, and Pāpāmoa increasingly popular as holiday resorts and retirement destinations.³⁵

28. Bellamy, ed, *Tauranga, 1882–1982*, pp 269–273; Stokes, *A History of Tauranga County*, p 225; doc F29, p 65

29. Robert McLean, 'Tauranga Moana: Fisheries, Reclamations and Foreshores Report', April 1999 (doc D7), p 54

30. Evelyn Stokes, *The Impact of Horticultural Expansion in the Tauranga District*, Technical Report 14 (Wellington: Town and Country Planning Division, Ministry of Works and Development, 1983), pp 33–38

31. 'Population Changes, 1926–1966', *Tauranga County District Scheme, 1969* (Tauranga: Tauranga County Council, 1969?) (doc T40), pt 2, cl 1, Table of Population Changes 1926–1966

32. Māori Trustee to Minister of Māori Affairs, 'Whareroa Compensation Case', AAMK 869/606, ArchivesNZ, Wellington, undated (doc A41(a)), p 44

33. *Minister of Works - Whareroa 2E* unreported, 20 March 1959, Morison CJMLC, Māori Land Court (doc A41(a), pp 54–55)

34. 'Tauranga – the Birth of a City', <http://library.tauranga.govt.nz> (accessed 28 October 2008)

35. Malcolm McKinnon, 'Bay of Plenty', *Te Ara – the Encyclopaedia of New Zealand*, updated 25-Sep-2007, <http://www.TeAra.govt.nz/Places/BayOfPlenty/BayofPlenty/en> (accessed 25 September 2007)

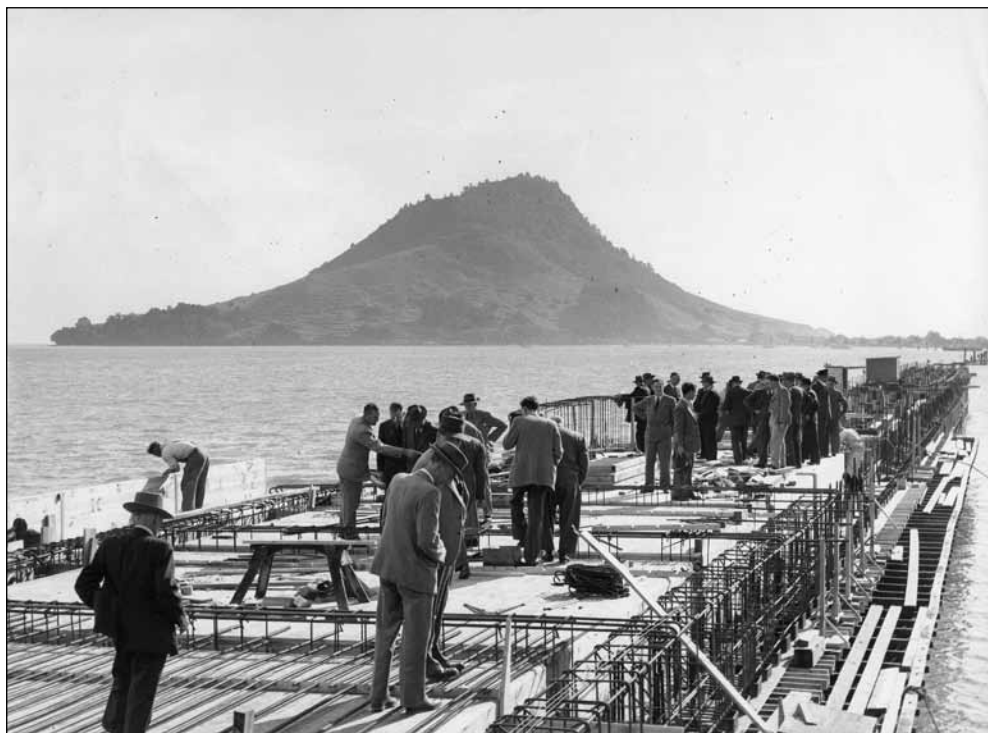


Figure 1.5: The Tauranga wharf under construction, 1954

Photographer unknown. Reproduced courtesy of the New Zealand Free Lance Collection, Alexander Turnbull Library (PAcoll-8983-65).

Not surprisingly, the urban population began to increase, causing Tauranga and Mount Maunganui to spread and encroach onto rural land. In 1945, the total population of Tauranga City was 4712. By 1966, it had soared to 24,010, and by 1981 it had increased further to 37,099. Growth was similar at Mount Maunganui, which grew from just 989 people in 1945 to 11,413 in 1981.³⁶ By 2001, the total population of the Tauranga urban area, which includes both Tauranga City and Mount Maunganui, was 95,694.³⁷ And the growth continues. The Port of Tauranga is now, according to its website, the largest port in New Zealand, and Statistics New Zealand has consistently rated Tauranga one of the fastest growing urban areas in the country for at least the last five years.³⁸

Against this backdrop of growth and development, the Māori experience has been rather different. In the 1880s, Tauranga Māori were struggling to find their feet and to re-establish

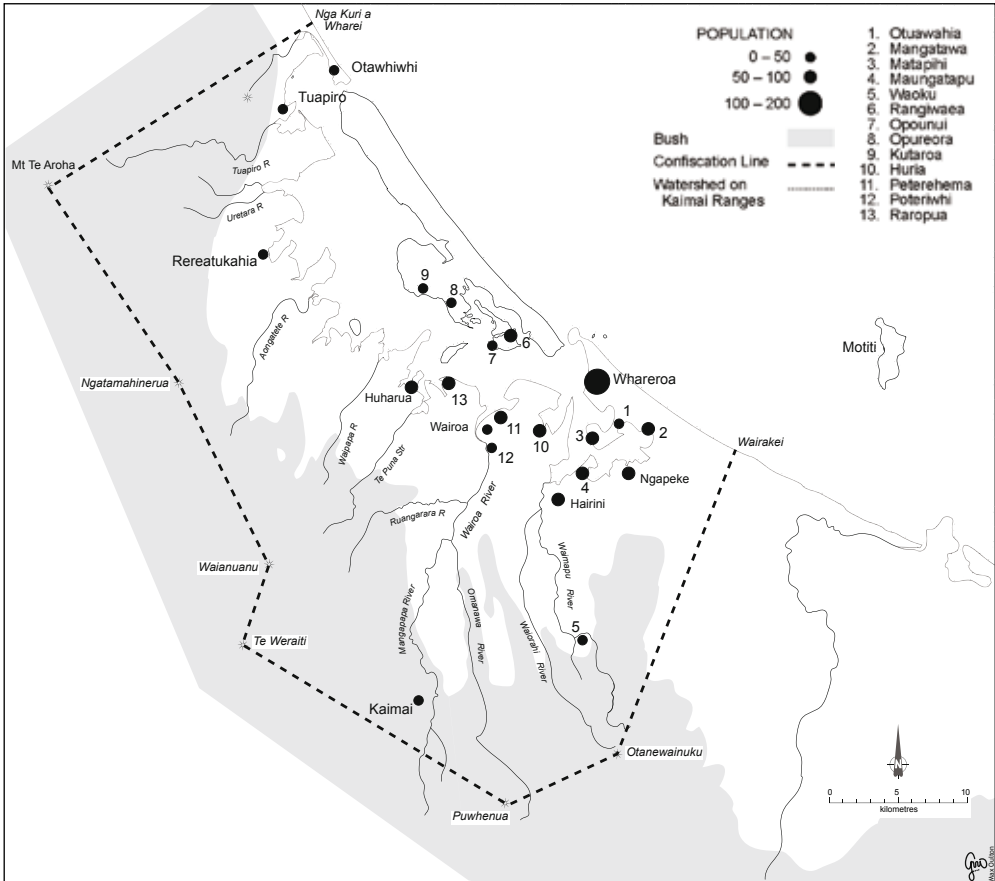
36. Leanne Boulton, 'Town and Country Planning and its Impact on Tauranga Maori Communities, c 1953–1990: A Summary and Analysis of the Existing Research' (commissioned report, Waitangi Tribunal: Wellington, 2006) (doc s6), p 11

37. Statistics New Zealand, 'Tauranga Urban Area Community Profile', 2001, <http://www2.stats.govt.nz/domino/external/web/commprofiles.nsf/afi0b470fb98e07cc256d090001b4bc/514449344298e761cc256d31007485da?OpenDocument> (accessed 15 September 2009)

38. <http://www.port-tauranga.co.nz> (accessed 1 May 2010); 'Subnational Population Estimates' as at 30 June, 2005, 2006, 2007, 2008, 2009, www.stats.govt.nz (accessed 8 April 2010)

TAURANGA MOANA, 1886-2006

1.3



Map 1.2: Māori population distribution as at 1881

themselves after the wars and the raupatu. They lived mostly in small kāinga on the lowlands around the harbour, with the largest settlement being at Whareroa (see map 1.2). When the Native Minister, John Ballance, made an extensive tour of Māori settlements throughout the North Island in 1885, a significant number of senior rangatira were among the Tauranga Māori who attended the hui with him at Whareroa. Hori Ngatai, Te Mete Raukawa, and others used the opportunity to raise a wide range of issues relating to the land and waters of Tauranga Moana. These included concerns about rating, the powers of road boards, delays in issuing Crown grants, and restrictions on sales of land. They also wanted better representation on central and local bodies. In response, Ballance promised them his support and protection, but also encouraged them to think in terms of self-reliance.

In their search to re-establish themselves, it is perhaps not surprising that many Tauranga Māori chose to ally themselves with the Kīngitanga, a movement which promoted land retention and Māori self-sufficiency. By 1894, the *Bay of Plenty Times* was reporting that ‘most of the natives about Tauranga (and that is a goodly number) have declared them-

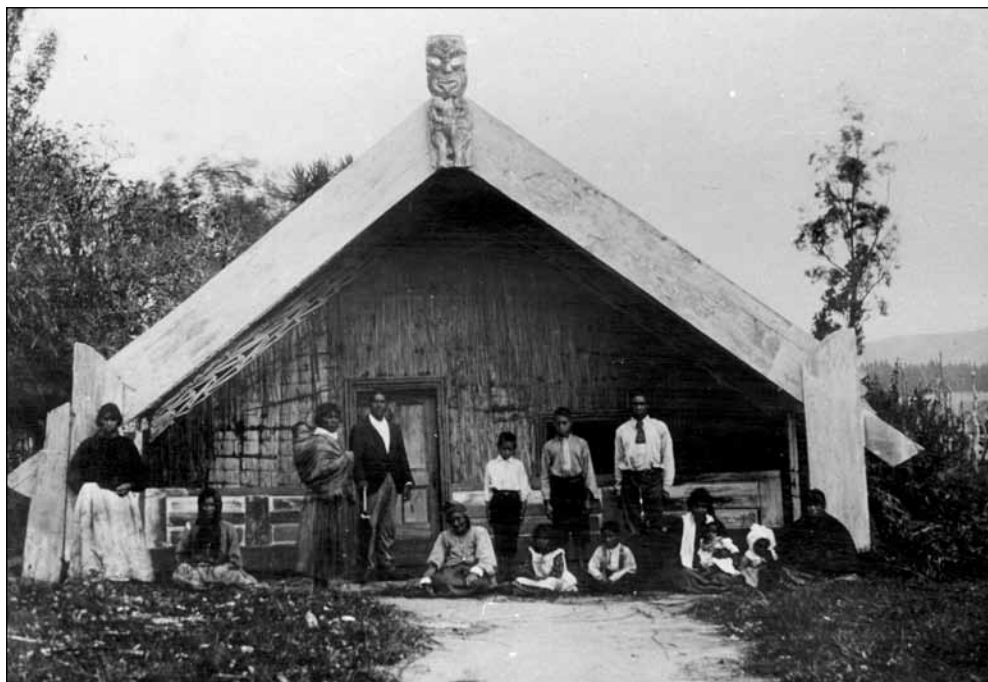


Figure 1.6: The wharenui of Wairoa Marae, 1899

Photograph by Mary Humphreys. Reproduced courtesy of Tauranga City Libraries (03-520).

selves to be King natives', adding that the King's Parliament 'holds that under the Treaty of Waitangi the Maoris have the power to deal with all matters affecting their own interest'.³⁹

In 1908, Stout and Ngata estimated that Māori landholding in Tauranga County stood at less than 45 acres a head⁴⁰ – and the problem was not only land retention, but what to do with the land they did manage to retain. One difficulty was that many Māori land owners attempting to develop their land for farming found their plans hampered because title was registered in the name of multiple owners. This also tended to affect their ability to raise finance. Sometimes, for a range of reasons, they lacked expertise in animal husbandry and raising European crops. They also faced pressures as land values rose in response to an increasing demand for horticultural land, one effect of which was to increase rates. This in turn impacted on the viability of pastoral farming. Despite this, Māori communities in Tauranga Moana mostly continued to live a predominately rural lifestyle into the 1950s, clustered around marae that were generally on their traditional lands, although with some scattered households on small family farms which were mainly dairy units.⁴¹

The development of urban infrastructure, intensification of housing, and urban expansion, especially from the 1950s, all placed increasing pressure on owners of Māori land to

39. 'The Maoris and the Dog Tax', *Bay of Plenty Times*, 11 July 1894, p 5

40. Stout and Ngata, 'Native Lands and Native-Land Tenure', p 1

41. Evelyn Stokes, 'Tauranga Moana: The Impact of Urban Growth on Rural Communities', (Hamilton: University of Waikato, 1980) Occasional Paper, no 7, p 9

1.4

sell. Māori land was also subject to compulsory acquisition for public works throughout the inquiry district. As the urban areas expanded, local authorities developed growth strategies that utilised town and country planning legislation and zoning to meet their objectives. Changes to this regime, to meet growing urban demand, again had consequences for land valuations and rates, and affected the ability of Māori to use their remaining land and to develop housing around existing marae.

Also impacting strongly on tangata whenua was the development of the port and the associated modification of the harbour. Together, these developments affected traditional food-gathering sites and put further pressure on remaining Māori land as areas were needed for approach roads, container storage, and associated industrial development.

In short, in the period since 1886, urbanisation has increasingly gathered pace in the Tauranga district and engulfed many tangata whenua, and their land and resources (the latter already severely reduced after the wars and confiscation of the earlier period). Issues associated with that urbanisation are at the heart of a great many claims investigated in our stage 2 inquiry.

1.4 THE CLAIMANTS

In the Tauranga stage 2 inquiry, the Tribunal investigated post-1886 issues raised in claims that were before it at the date of hearings. Since the close of hearings, further claims have been filed, notably in response to the Crown's September 2008 deadline for lodging historical claims. A list of such claims is to be found at appendix 2. As indicated in Judge Milroy's letter of 25 February 2010, sent to all parties, 'The appendix is intended to be purely informative in nature and will not form part of the Tribunal's substantive analysis'. We note, however, that many matters raised in the new claims appear similar to the issues investigated, and we trust that our report will therefore be of use to the parties concerned when they come to negotiate settlement of their grievances.

1.4.1 Groups represented in both stage 1 and stage 2

The Tribunal's first report relating to the Tauranga inquiry district, *Te Raupatu o Tauranga Moana*, set out the claims investigated in stage 1.⁴² It indicated that, as that first stage had focused exclusively on raupatu-related issues, claims relating to other matters would be heard during a second stage of the inquiry. The present report accordingly deals with those deferred claims, which are primarily concerned with twentieth-century issues, most notably the developmental and administrative difficulties arising from the nature of Māori land

42. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, pp 9–18

title; and the varied economic and cultural impacts of rapid urbanisation and development throughout the inquiry district after the Second World War.

The five main tribal groupings from the stage 1 inquiry have participated again in the stage 2 inquiry. The first of these groups is Ngāti Ranginui, whose hapū were traditionally located west of the Waimapu River as far as Katikati.⁴³ Secondly, we heard claims from Ngāi Te Rangi. Although, as already noted in the first report, Government officials and others in the nineteenth century often used the term ‘Ngaiterangi’ as shorthand for all Tauranga Māori, we use the term ‘Ngāi Te Rangi’ here in the more limited sense of hapū that claim descent from the ancestor Te Rangihouhiri. By 1840, Ngāi Te Rangi hapū had settled around the edge of the harbour from Mauao to the Waimapu River, also at Ōtūmoetai, at Ongare, and at Ōtāwhiwhi and several other locations in the Te Puna–Katikati area, and on all the major inshore and offshore islands in the inquiry district. Ngāti Pūkenga were also represented in stage 1 and stage 2 of the Tauranga Moana inquiry. Their Tauranga interests were principally at Ngāpeke and Rangataua Harbour (together with Ngā Pōtiki and Ngāti He), Matapihi, Pāpāmoa, and Katikati. In the second half of the nineteenth century Ngāpeke became the main Ngāti Pūkenga settlement.⁴⁴ The fourth group involved in the inquiry is Waitaha, who have customary interests in the east of the inquiry district and strong ancestral links to Ngāti Ranginui and Ngāti Pūkenga.⁴⁵ Finally, claims from Hauraki iwi, in the west of the inquiry district, were also heard at each stage.

1.4.2 Groups new to the inquiry at stage 2

Three additional claimant groups joined the Tauranga Moana inquiry in stage 2, namely Ngāti Hinerangi, and two Ngāti Raukawa groups: Ngāti Mahana and Ngāti Motai. While their main areas of interest lie outside the inquiry district, some of their claims related to places within the district. The groups were admitted to this inquiry on the basis that the Tribunal would deal with their stage 2 issues only. Thus no findings in relation to mana whenua issues relating to these groups have been made. Nor, in this report, can we address their claims relating to the land wars of the 1860s and the ensuing raupatu.

(1) *Ngāti Hinerangi (Wai 1226)*

In their evidence, Ngāti Hinerangi claimants explained that the iwi and its associated hapū are descendants of the Tainui chief, Whatihua, and they are also known as Ngā Uri-a-Whatihua. Under the command of Koperu, the uri of Whatihua established themselves at Maungatautari and then crossed the Waikato and moved east displacing the earliest known inhabitants, collectively known as Ngā Mārama, from Tīrau to the western foothills and the

43. Ibid, p10

44. Ibid, pp 36–37

45. Ibid, p13

watershed of the Kaimai Range, to occupy areas from Tāpapa to Ōkauia. The hapū of Ngāti Pango and Ngāti Tokotoko remained on the land gained by conquest. Koperu, and later his grandsons, led sallies further east of the Kaimai in a bid to conquer lands in Tauranga Moana. These events became the basis of Ngāti Hinerangi's presence in the inquiry district extending from west of the Kaimai Range across to Huharua and Ōmokoroa on the Tauranga Harbour. The Wai 1226 claim included matters relating to the full range of issues identified for stage 2 inquiry.⁴⁶

(2) Ngāti Mahana (Wai 255) and Ngāti Motai (Wai 1340)

Ngāti Mahana and Ngāti Motai are people of Te Kaokaoroa-o-Pātetere in the Waikato-Kaimai region, and acknowledge Ngāti Raukawa as their main iwi. However, they are in many respects 'buffer' or linking groups between Tauranga Moana and Waikato peoples, having connections on both sides of the Kaimai Range. While the principal marae of both hapū are located just to the west of the Kaimai Range, they also point to having had settlements on the eastern side of the hills. They claim interests in and around the Kaimai and Mamaku Ranges generally, and in the Wairoa Valley, and they have strong whakapapa connections to the Wairoa hapū. Counsel for Ngāti Mahana and Ngāti Motai also pointed to important links between Ngāti Raukawa, Pirirākau, and Ngāti Ranginui.⁴⁷

As we have already noted in the raupatu report, Ngāti Motai and Tauranga Moana groups fought together in engagements in the Waikato in the 1860s. Further, the Kaimai, Mamaku, and Te Kaokaoroa-o-Pātetere lands, including Ngāti Motai and Ngāti Mahana settlements, were a refuge for Tauranga groups during battles with Te Arawa, raids from the Crown, and after the Tauranga bush campaign.⁴⁸

Both the Ngāti Mahana and Ngāti Motai claims cover a comprehensive range of issues identified for the stage 2 inquiry.

A full list of claims included in the stage 2 inquiry is to be found at appendix 1.

1.5 OTHER PARTIES REPRESENTED

1.5.1 Local authorities

On 17 March 2006, the Tribunal asked the assistance of the Crown in leading local authority evidence relevant to the research commissioned for the stage 2 inquiry, particularly with regard to town planning and resource management, environmental planning, and management issues.⁴⁹ The Tauranga City Council, the Western Bay of Plenty District Council,

46. Claim 1.63(a); doc U24, pp 8–20

47. Claim 1.61(a) pp 3–4; claim 1.65(a) pp 3–5; www.raukawa.org.nz (accessed 10 November 2008)

48. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 74; claim 1.61(a) p 5; claim 1.65(a) pp 5–6

49. Paper 2.466

and Environment Bay of Plenty, after discussions with the Crown, sought and were granted leave to appear as interested parties.⁵⁰ They were represented by Paul Cooney and Tania Waikato as their legal counsel.

1.5.2 TrustPower

TrustPower Limited has been a party to the Tauranga Moana inquiry since stage 1. The establishment of the Kaimai hydroelectric power scheme, now owned and operated by TrustPower, has long been a contentious matter for tangata whenua in the inquiry district. In stage 2 of the Tribunal's inquiry, TrustPower's interests were represented by Crown counsel.

1.6 THE HEARINGS

Five weeks of hearings were held for stage 2 of the Tauranga Moana inquiry, beginning on 29 May and finishing on 15 December 2006. The first week of hearings took place at Maungatapu Marae, Tauranga, from 29 May to 2 June and the second week at Whareroa Marae, Tauranga, between 3 and 7 July 2006. In these two weeks, we heard tangata whenua witnesses from the groups whose core interests lay in the inquiry district. In hearing week 3, between 9 and 13 October at the Armitage Hotel, Tauranga, we heard from those groups that have interests within the Tauranga Moana inquiry district but who also have substantial interests in areas bordering the inquiry district. These groups were Waitaha, Ngāti Mahana and Ngāti Motai, Ngāti Hinerangi, Ngāti Ruahine, Marutūahu, and Hauraki. The Armitage Hotel was also the venue for week 4, from 30 October to 3 November, where we heard technical witnesses and evidence from local authority witnesses. Closing submissions were heard in week 5 at Hangarau Marae at Bethlehem, between 11 and 15 December 2006. Submissions in reply were filed during the first half of 2007.

1.7 TREATY TEXT AND PRINCIPLES

The Tribunal's report on the raupatu claims in the Tauranga Moana inquiry district set out a detailed discussion of the Treaty and its associated principles as applicable to the issues being investigated in stage 1.⁵¹ We summarise that discussion here and supplement it by further comment on principles relevant to a consideration of stage 2 issues. More detailed discussion will be included in the main chapters of the report.

50. Paper 2.481

51. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, pp18–25

1.7.1 The Treaty of Waitangi

In fulfilling its duty to inquire into claims brought under the Treaty of Waitangi Act 1975 and its amendments, the Tribunal is authorised to ‘determine the meaning and effect of the Treaty’ as embodied in the English and Māori texts and ‘to decide issues raised by the differences between them’. Although the Act does not prefer one text over the other, we agree with the Ōrākei Tribunal’s view, namely that considerable weight should be given to the Māori text because that was the version assented to by the Māori signatories.⁵² We also note the widely accepted principle of *contra proferentem*, whereby any ambiguity in a contract is to be interpreted in favour of the non-drafting party. Both texts of the Treaty of Waitangi were drafted by Crown representatives; the chiefs had no direct say in the wording used and were merely, in the phrasing of the preamble, ‘invite[d] . . . to concur’ in the terms drawn up and presented to them.

Over time, there has been wide discussion of the differences between the English and Māori texts, particularly with regard to the meaning of ‘kawanatanga’ and ‘sovereignty’ on the one hand, and ‘tino rangatiratanga’ on the other. Like other Tribunals before us, we see kawanatanga as meaning the right to exercise governance and to make laws for the whole of New Zealand, and we see tino rangatiratanga as equating with mana motuhake or aboriginal autonomy.⁵³ Tino rangatiratanga and kawanatanga, and their interplay, are at the heart of the relationship between the Crown and Māori. The Ōrākei Tribunal’s view, widely endorsed by other panels, was that the sovereignty ceded to the Crown in article 1 of the Treaty must be qualified by the recognition of tino rangatiratanga in article 2.⁵⁴ The *Taranaki Report* expands on the duties and responsibilities of each party and aptly describes the relationship as ‘symbiotic’.⁵⁵ Each party depends on, and must accommodate, the other. In that spirit, we echo the call of the Taranaki and central North Island Tribunals for the Crown to recognise that ‘conciliation requires empowerment, not suppression’.⁵⁶ Our examination of issues in stage 2 is underpinned by a belief that the Crown, in exercising its sovereign authority, has a duty to respect te tino rangatiratanga of Tauranga Māori and to foster their empowerment and autonomy. In our view, strong, confident iwi and hapū are in a better position to contribute to the wellbeing of the nation as a whole.

52. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 3rd ed (Wellington, GP Publications, 1996), p 180

53. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 4, pp 1238, 1241; Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), p 19

54. Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend Ltd, 1991), vol 2, pp 236–237

55. Waitangi Tribunal, *The Taranaki Report*, p 19

56. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 173

1.7.2 The principle of reciprocity

Reciprocity is implicit in the Treaty. The Crown's sovereignty was recognised by Māori in exchange for the Crown's recognition of their tino rangatiratanga as stated in article 2. That is, the Treaty was based from the outset on the principle of reciprocity – a reciprocity which is viewed by Māori as being ongoing. Indeed, reciprocity reflects the Māori concept of utu, where one act is always balanced by another, described by one historian as 'one of the imperatives that drove Maori society'.⁵⁷

In the words of the Muriwhenua Tribunal, the Treaty was drawn up as 'a political agreement to forge a working relationship between two people'.⁵⁸ The *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim* said: 'The basic concept was that a place could be made for two people of vastly different cultures, to their mutual advantage, and where the rights, values and needs of neither would necessarily be subsumed'.⁵⁹ These notions of mutual benefit and mutual obligation are a further expression of reciprocity.

The Taranaki Tribunal agreed that: 'When peoples meet, the authority of each is to be respected'. It went on to pose the question of 'how, in the interests of peace, respective authorities are to be reconciled'.⁶⁰ Clearly, as the *Report on the Mangonui Sewerage Claim* had earlier noted, the principle of reciprocity needs to extend to a spirit of compromise on both sides, and a balancing of interests. The Tūranga (Gisborne) Tribunal has since grappled with the same question. By way of a practical illustration of how this balancing should work in action, it gave the example of Māori having surrendered the power to operate outside the Crown's laws, in return for which the Crown must ensure that its laws do not defeat or neutralise its Treaty guarantees to Māori.⁶¹ In the context of Tauranga Moana, the Tribunal has already found that, for the period investigated in stage 1, an 'undermining of the tribal right, guaranteed by article 2 of the Treaty, was experienced alike by those who were "rebel" or "loyal"'.⁶² In this stage 2 report, we shall be investigating whether the Crown has upheld the principle of reciprocity better in the years since 1886 than it did in that earlier period. A failure to do so would compound that earlier breach.

1.7.3 The principle of partnership

The notions of reciprocity and a balancing of interests are also reflected in the now well-known description of the Treaty relationship as 'akin to a partnership' which, since the

57. Angela Ballara (Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 108)

58. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), p 386

59. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim* (Wellington: Department of Justice, 1988), p 4

60. Waitangi Tribunal, *The Taranaki Report*, p 82

61. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: the Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, pp 534–535

62. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 405

Treaty was not limited to a specific timeframe, is a partnership that must be regarded as ongoing.⁶³

In a partnership, there is a sense of shared enterprise and mutual benefit. Each partner must take account of the needs and legitimate interests of the other. In the words of the Court of Appeal, inherent in partnership is a duty for each partner to act ‘with the utmost good faith’, fairly, reasonably, and honourably, in a spirit of cooperation.⁶⁴ The Court of Appeal also found that the Crown had a duty to make informed decisions, which might require consultation with its Treaty partner, although the court did not consider consultation to be an absolute duty in all situations.⁶⁵ In a later case, the court specified that good faith ‘must extend to consultation on truly major issues. That is really clearly beyond argument’.⁶⁶

The Court of Appeal has stressed that the principles that flow from the Treaty relationship of partnership and reciprocity between Māori and the Crown require more than merely consultation.⁶⁷ Every effort must be made to achieve compromise, yet ultimately each Treaty partner must respect the authority of the other, within their respective spheres. In Treaty terms, Māori must, as the Motunui–Waitara Tribunal put it, ‘recognise those things that reasonably go with good governance’ just as the Crown must ‘recognise those things that reasonably go with being Maori’.⁶⁸

Discussing the nature of consultation more generally, the court has stated that it must be undertaken with an open mind, and that the parties consulted must be provided with sufficient information for them to be able to engage meaningfully.⁶⁹ Consultation does not, however, presume eventual agreement, or even negotiation.⁷⁰

For its part, the central North Island Tribunal was of the view that the Crown has a duty to ‘consult Maori on matters of importance to them and to obtain their full, free, prior, and informed consent to anything which alters their possession of those lands, resources, and taonga guaranteed to them in article 2’.

In the view of the central North Island Tribunal, the Crown ‘was and is obliged to make informed decisions about the impact of proposed omissions, policies, actions, or legislation on Māori interests in the environment and natural resources’. It added, however: ‘The test of what consultation is reasonable in the prevailing circumstances depends on the nature of the resource or taonga, and the likely effects of the policy, action, or legislation.’

63. *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at 664 per Cooke P, 693 per Somers J, 704 per Casey J

64. *Ibid* at 664–666 per Cooke P, 673, 681–682 per Richardson J, 693, 701 per Somers J

65. *Ibid* at 665 per Cooke P, 693 per Somers J

66. *New Zealand Māori Council v Attorney-General* [1989] 2 NZLR 142 (CA) at 152

67. *Ōngai Tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553, at 560 per Cooke P

68. Waitangi Tribunal, *Te Whanau o Waipareira Report* (Wellington: GP Publications, 1998), p 29 (citing Waitangi Tribunal, *Report on the Motunui–Waitara Claim*, 2nd ed (Wellington: Waitangi Tribunal, 1989), pp 50–52)

69. *Wellington International Airport Ltd v Air New Zealand* [1993] 1 NZLR 671 (CA) at 676 per McKay J

70. *New Zealand Fishing Industry v Minister of Agriculture and Fisheries* [1988] 1 NZLR 544 (CA) at 551

In the context of our stage 2 inquiry, we will particularly look at how well ‘things that reasonably go with good governance’ and ‘things that reasonably go with being Maori’ have been balanced in the spheres of economic and environmental planning and local government. We will also pay particular attention to the issue of consultation.

1.7.4 The duty of active protection

From the principles of reciprocity and partnership arises what the Court of Appeal has described as a duty to actively protect Māori in the use of their lands and waters to the fullest extent practicable. The president of the Court of Appeal described the Crown’s responsibility to provide active protection as ‘analogous to fiduciary duties.’⁷¹ Following previous Tribunals, we call this the duty of active protection.

Several Tribunals have argued that the duty of active protection goes beyond the obligation to protect specific Māori resources. They point to the text of the Treaty’s preamble which, addressing itself to ‘nga Rangatira me nga Hapu o Nu Tirani’ (in the English version, ‘the Native Chiefs and Tribes of New Zealand’), expresses the Queen’s anxiety ‘kia tohungia ki a ratou o ratou rangatiratanga me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki’ (‘to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order’). Mention of ‘just rights’ and ‘the enjoyment of peace and good order’ points to a more holistic interpretation of the Crown’s protective duty than merely ensuring that Māori retained (for as long as they wished) ownership of the land and other resources specifically mentioned in article 2. As the Tribunal said in its *Te Whanau o Waipareira Report* (1998): ‘The Treaty was directed to the protection of Maori interests generally and not merely to the classes of property interests specified in article 2.’⁷² In line with this, other Tribunals have found that the duty of active protection extends to aspects of Government policy such as the provision of health and welfare services to Māori.⁷³

In the view of previous Tribunals, the Crown also has a duty actively to ensure not only that Māori are allowed to keep their land and taonga for as long as they wish, but that they retain an endowment sufficient for their wellbeing. Further, the Crown’s duty of active protection extends to ensuring that Māori receive effective government aid, at least on a par with that provided to their fellow citizens, to fully develop their land and property.⁷⁴

71. *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at 665 per Cooke P

72. Waitangi Tribunal, *Te Whanau o Waipareira Report* (Wellington: GP Publications, 1998), p 16

73. Waitangi Tribunal, *Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), pp 49–57; Waitangi Tribunal, *Te Whanau o Waipareira Report*, pp 213–214

74. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 2nd ed (Wellington: Waitangi Tribunal, 1989), p 194; Waitangi Tribunal, *Report of the Waitangi Tribunal on Claims Concerning the Allocation of Radio Frequencies* (Wellington: Brooker and Friend, 1990), pp 31–32; Waitangi Tribunal, *The Radio Spectrum Management and Development Final Report* (Wellington: GP Publications, 1999), pp 40–41

In the *Ngawha Geothermal Report* (1993), the Tribunal went into some detail on the implications for the Crown of its duty of active protection of Māori resource-use. It identified several important elements of the duty, including:

- ▶ That Māori are not unnecessarily inhibited by legislative or administrative constraint from using their resources according to their cultural preferences.
- ▶ That Māori are protected from the actions of others which impinge upon their rangatiratanga by adversely affecting the continued use or enjoyment of their resources whether in spiritual or physical terms.
- ▶ That the degree of protection to be given to Māori resources will depend upon the nature and value of the resource. In the case of a very highly valued rare and irreplaceable taonga of great physical and spiritual importance to Māori, the Crown is under an obligation to ensure its protection (save in very exceptional circumstances), for so long as Māori wish it to be protected.
- ▶ That the Crown cannot avoid its Treaty duty of active protection by delegation to local authorities or other bodies (whether under legislative provisions or otherwise) of responsibility for the control of natural resources in terms which do not require such authorities or bodies to afford the same degree of protection as is required by the Treaty to be afforded by the Crown. If the Crown chooses to so delegate it must do so in terms which ensure that its Treaty duty of protection is fulfilled.⁷⁵

We agree with these views on the nature and extent of the Crown's duty of active protection. We consider that duty to be especially important in Tauranga Moana in the period after 1886, given the reduced land and resource base of tangata whenua following the Crown's confiscation and limited 'return' of lands. We highlight too the significance of the finding that the Crown must ensure its delegates fulfil the duty of active protection, and not only with regard to natural resources, in that very many of the claims issues investigated at stage 2 arise in relation to matters involving local government.

The protection of Māori resources and taonga is an area where consultation in the spirit of utmost good faith between the Treaty partners is of paramount importance. Decisions over their use and protection will require significant compromises from both Treaty partners, given that governments with limited means must inevitably adjudicate over competing claims to finite resources.

1.7.5 The principle of autonomy

As previous Tribunals have found, the Crown has a particular duty to respect and actively protect Māori autonomy, which they are entitled to as the natural expression of their tino

⁷⁵ Waitangi Tribunal, *Ngawha Geothermal Resource Report 1993* (Wellington: Brooker and Friend Ltd, 1993), pp100–102

rangatiratanga.⁷⁶ We follow the Tūranga Tribunal's understanding of Māori autonomy as 'the ability of tribal communities to govern themselves as they had for centuries, to determine their own internal political, economic, and social rights and objectives, and to act collectively in accordance with those objectives.'⁷⁷ In our view, the essence of autonomy is the capacity of Māori hapū and iwi to exercise authority over their own affairs. A natural outcome of the overarching principles of reciprocity and partnership that characterise the Treaty exchange is for the Crown to recognise and protect Māori autonomy and authority over their own affairs, within the minimum parameters necessary for the proper operation of the State.

1.7.6 The principle of mutual benefit

The fundamental rationale for signing the Treaty was that Māori and settlers would each participate in the security and prosperity of the new nation thereby created. As the Muriwhenua fishing Tribunal noted, Māori expected to gain from new technologies and markets, and settlers from the acquisition of settlement rights; both would benefit from the cession of sovereignty to an overarching State power.⁷⁸ In working to achieve this end, Māori and the Crown therefore had mutual obligations and responsibilities to one another. Each needed to retain or obtain sufficient lands and resources for all to prosper, and each required the help of its Treaty partner to do so.

1.7.7 The principle of options

Respect by the Crown for the autonomy and authority of its Treaty partner required that Māori be free to choose their own direction in the new society established under the Treaty. They might, as the *Te Tau Ihu Report* put it, 'choose to continue their tikanga and way of life largely as it was, to assimilate to the new society and economy, or to combine elements of both and walk in two worlds.'⁷⁹ As the *Ngai Tahu Sea Fisheries Report 1992* commented, 'The Treaty envisages that Maori should be free to pursue either or indeed both options in appropriate circumstances.'⁸⁰

76. Waitangi Tribunal, *Report on the Orakei Claim*, p 53; Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, pp 179–180

77. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 1, p 113

78. Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, pp 190–191, 215; Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1236

79. Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui: Report on the Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, p 5

80. Waitangi Tribunal, *The Ngai Tahu Sea Fisheries Report 1992* (Wellington: Brooker and Friend Ltd, 1992), p 274

1.7.8

1.7.8 The right of development

The essential bargain transacted through the Treaty was the exchange of the right to govern for the right of Māori to retain authority and control over their properties and taonga. As the central North Island Tribunal pointed out, a right of development is inherent in these property guarantees, ‘because a right of development is part of the full rights of property ownership.’⁸¹ Further, the Treaty was intended to bring mutual benefit. Thus, the Treaty right of development cannot be confined to customary uses or to the state of knowledge as at 1840. As the *Report on the Motunui–Waitara Claim* put it, the Treaty was never intended to ‘fossilise a status quo’ but rather was to be ‘the foundation for a developing social contract.’⁸² The principle of partnership would not be upheld if only one partner were allowed to develop their lands and resources.

We also note the Court of Appeal’s judgment in the *Lands* case, which found that the Crown had an active duty to assist Māori in the development of their properties and taonga: ‘The duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable.’⁸³

As previous Tribunals have found, part of that duty involves the active protection of a sufficiency of land and resources to permit future development. It also requires the Crown to do more than just protect a subsistence lifestyle.⁸⁴ As the central North Island Tribunal said: ‘Governments could and should have provided active assistance for Maori economic development (at least to the extent that they did for settlers) and provided the means to deliver on the Treaty bargain of mutual prosperity from settlement.’⁸⁵

1.7.9 The principles of equity and equal treatment

It is axiomatic in our view that governments abide by the values of respect for the rule of law, fairness, and non-discrimination.⁸⁶ That is, governments have a duty to be just and fair to all.⁸⁷ Indeed, it was the promise of such good government which underpinned the willingness of many Māori to sign the Treaty.⁸⁸

81. Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 891

82. Waitangi Tribunal, *Report on the Motunui–Waitara Claim*, 2nd ed, p 52; Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 898

83. *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at 664

84. Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 894

85. *Ibid*, p 896

86. Waitangi Tribunal, *Report on the Crown’s Foreshore and Seabed Policy* (Wellington: Legislation Direct 2004), pp xiii, xiv

87. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, p 737

88. Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, pp 57,

A key aspect of the Crown's Treaty obligation of good governance is to treat like cases alike, and not make arbitrary distinctions between groups so as to unjustly favour some ahead of others.⁸⁹ Māori are entitled to the full rights and privileges of all other citizens, and the Crown is required to act fairly to all groups of citizens.⁹⁰ This constitutes the principle of equity.

The Crown is also required to act fairly between Māori groups, and treat them impartially and equally.⁹¹ The Crown should not, 'by its actions, allow one iwi an unfair advantage over another.'⁹² This constitutes the principle of equal treatment.⁹³

1.7.10 The principle of redress

From the Crown's duty of active protection, and its obligation as a Treaty partner to act reasonably and in good faith, flows an obligation upon the Crown to remedy past breaches of the Treaty. Redress is necessary to restore the honour and integrity of the Crown, and the mana and status of Māori, as part of the reconciliation process. Fundamentally, the Crown's approach to redress ought to be restorative, and directed towards making appropriate and sufficient recompense for specific breaches of the Treaty. Hence, in cases where Crown actions or omissions have caused damage to iwi or hapū taonga, such as significant waterways, the Crown might make appropriate redress by working to restore those specific taonga to better health, and providing hapū with roles in the ongoing management of these significant taonga.⁹⁴ We agree with the Waiheke Island Tribunal that sufficient redress should be such as to 'rebuild the tribes and furnish those needing it with the land endowments necessary for their own tribal programmes'.⁹⁵ Further, in the context of our stage 2 inquiry, it needs to be remembered that any prejudice suffered by Tauranga Māori as a result of Crown acts or omissions since 1886 comes on top of prejudice already found to have been caused them in the earlier period (for which, see the Tribunal's report on stage 1).

89. Waitangi Tribunal, *Te Urewera: Pre-Publication Part One* (Wellington: Legislation Direct, 2009), p 220

90. Waitangi Tribunal, *Napier Hospital and Health Services Report*, pp 61–64

91. Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui*, vol 1, p 5

92. Waitangi Tribunal, *Maori Development Corporation Report* (Wellington: Brooker and Friend Ltd, 1993), pp 31–32; Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, pp 24–25

93. Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui*, vol 1, p 5

94. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1248

95. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Waiheke Island Claim*, 2nd ed (Wellington: Government Printing Office, 1989), p 41

1.8 THE ISSUES TO BE EXAMINED

The chapters in this report discuss key issues raised by the claims, which are arranged by theme.

Chapter 2 deals with the administration and alienation of Māori-owned land in the Tauranga district between 1886 and 2006, and examines the administrative and developmental challenges presented by the ever-increasing fractionalisation of ownership of Māori land.

Chapter 3 surveys the nature and legacy of the land-development assistance offered by the Crown to Māori land owners in the Tauranga district after 1886, and considers to what extent the Crown enabled Tauranga Māori to retain and develop their lands as they wished.

Chapter 4 deals with the impact of the Crown's public works legislation and policy on tangata whenua. This is a crucial issue in the Tauranga district, and one closely linked to the period of rapid urbanisation following the Second World War.

Chapter 5 addresses the contentious subject of rates on Māori land. Again, the focus is primarily on the impact of urbanisation, especially after 1950 when town and country planning legislation and policy affected the zoning, valuation, rates, and development options for Māori-owned land and resources. It also looks at Māori representation in local government in the period to 1986.

Chapter 6 deals with a broad range of local government issues in the period after 1987, including Māori representation in local government, and consultation in regard to planning.

Chapter 7 addresses environmental and resource management issues such as pollution; access to mahinga kai; and provision for rangatiratanga and kaitiakitanga. Some issues relating to the foreshore and seabed are also mentioned in the chapter, within the context of the historical process of managing and developing Tauranga Harbour. Issues relating to the ownership of the foreshore and seabed have been traversed in detail in the Tribunal's *Report on the Crown's Foreshore and Seabed Policy*, issued in 2004. Wai 211 (lodged by Ngāi Tūkairangi of Ngāi Te Rangi), Wai 659 (Ngāi Tamarāwaho of Ngāti Ranginui), and Wai 664 (Waitaha) were part of that urgent inquiry, and Kihī Ngatai, of Ngāi Te Rangi and Ngāti Ranginui, gave evidence.⁹⁶

Chapter 8 discusses issues surrounding the protection of cultural heritage, in particular wāhi tapu and taonga which, like public works, have taken on particular importance in Tauranga Moana in the wake of rapid urbanisation.

Chapter 9 deals with the socioeconomic status of tangata whenua relative to Pākehā, and surveys significant economic and cultural issues of importance to tangata whenua in the period from 1886 to 2006. It assesses the impact of land and resource loss, and of legislative regulations for landholding, on the socioeconomic status of Tauranga Māori, and considers whether the Crown met its Treaty obligations to hapū left with little or no land after 1886. It

96. Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy*, pp151, 155, 160

also examines whether the services provided by the Crown in spheres such as health, education, and State housing fulfilled the Crown's obligations toward Māori under the Treaty.

Chapter 10 examines the contemporary issue of landbanking and, in particular, a change in Crown policy that was implemented in 2005.

Each of these main chapters sets out the critical questions to be answered, together with a general factual summary of events bearing on the chapter's subject matter. We then survey relevant Crown policy and legislation, and look at the impact of that on the tangata whenua of the Tauranga inquiry district, drawing on evidence presented in the inquiry. Case studies are used in several of the chapters to provide illustrative examples. After that, we summarise the claimants' and Crown's position on the issues identified, as expressed in their closing submissions. Finally, we discuss the evidence that has been set out, and measure what has occurred against the principles of the Treaty. Our conclusions and findings of Treaty breach appear at the end of each chapter. Those findings are intended to be of general application to the claims investigated in this inquiry and, with one exception, we do not make individual findings for specific claims. The exception is Wai 1328, relating to the Crown's policy on landbanking, which we examine in chapter 10.

Our concluding chapter (ch 11) then summarises the broad sweep of our discussion in the report, highlighting patterns that emerge from our analysis, and gives our recommendations.

1.9 SUMMARY OF CHAPTER 1

From the present chapter, we would draw attention to the following points:

- ▶ The current report is the result of a second stage of inquiry into Tauranga Moana claims and covers claims relating to non-raupatu issues for the period from 1886 to 2006.
- ▶ A major focus of this report on stage 2 is the experience of Māori communities and Māori land owners during the rapid expansion of Tauranga City and Mount Maungau-nui and the urbanisation of the local Māori population, particularly after 1945.
- ▶ Hearings for stage 2 took place over five weeks between 29 May and 15 December 2006, with submissions in reply being filed in the early part of 2007.
- ▶ The five main tribal groupings from the stage 1 inquiry (Ngāti Ranginui, Ngāi Te Rangi, Ngāti Pūkenga, Waitaha, and Hauraki iwi) also participated in the stage 2 inquiry, along with three additional claimant groups: Ngāti Mahana and Ngāti Motai, of Ngāti Raukawa, and Ngāti Hinerangi.
- ▶ New claims registered since the end of hearings are listed in appendix 2.
- ▶ Treaty principles, discussed at a general level in chapter 1, will be addressed in more detail in the body of the report in relation to specific issues.
- ▶ The panel's recommendations are to be found at the end of the report, in chapter 11.

CHAPTER 2

LAND ALIENATION, 1886–2006

Turangawaewae is a fundamental concept of Maori life. It represents not mere ownership of a piece of land. For the Maori his whole history and cultural heritage is enshrined in his tribal land in which he has a share, and of which he feels himself to be a part, and which gives him the right of participation in the community life of his people.

Māori Synod of the Presbyterian Church of New Zealand¹

The land is our strength and our life, we must hold on to the last of our lands as they are a gift: from our ancestors.

Desmond Heke Kaiawha, Ngāti Hē²

2.1 INTRODUCTION

By 1886, some hapū, particularly of Ngāti Ranginui, had minimal landholdings. Others, notably some Ngāi Te Rangi hapū, had larger areas that included pockets of fertile land around the eastern fringes of Tauranga Harbour and on Matakana Island. This chapter is concerned with the subsequent alienation of some 42,800 acres (17,320 ha) – more than half the area held by Tauranga Māori as at 1886.

The Tauranga stage 1 report on the Tauranga confiscation claims showed that the original confiscation proclamation of 18 May 1865 enclosed an estimated 214,000 acres (around 86,603 hectares).³ That was extended in 1868 to some 290,000 acres (about 117,359 hectares). Of this area, 50,000 acres (20,234 ha) running southwards from the Te Papa Peninsula, less some 8000 acres (3237 ha) of reserves, was finally confiscated.

1. Māori Synod of the Presbyterian Church of New Zealand, *A Maori View of the 'Hunn Report'* (Christchurch: Presbyterian Bookroom, 1961), p 28

2. Desmond Parekura Heke Kaiawha, brief of evidence, undated (doc Q29), p 19

3. Measurements will generally be given in both metric and imperial units in this report since, although cumbersome, it assists comparison of data across the whole period from 1886 to 2006.

The 93,000-acre (37,636-ha) Te Puna–Katikati block was immediately purchased by the Crown. Some 136,191 acres (55,115 ha) of land were ‘returned’ in the southern and eastern parts of the confiscation district, and on Matakana Island. Included in this ‘returned’ land were a number of blocks, particularly small urban ones, granted to Māori from outside the Tauranga area, in recognition of their support for the Crown during the military campaign. The vast majority of these blocks were soon alienated.⁴ By 1886, Māori-owned land in our inquiry district had been reduced by Crown and private purchases to an estimated 75,000 acres (30,351 ha), none of it in customary title.⁵ By the time of our hearings in 2006, Crown and private purchases, and public works takings, had reduced the area to 32,220 acres (13,039 ha) – equating to less than a quarter of the area originally ‘returned’. Around 60 per cent of this remaining land is held in just 11 blocks.⁶

After the raupatu and the Te Puna–Katikati purchase, remaining land was ‘returned’ by the Tauranga Lands Commission in large blocks, frequently to multiple owners who were awarded individualised shares on the title. But owners’ interests were not divided ‘on the ground’. To get individual title to a specific part of a block, an owner had to apply to the Native Land Court for a partition. That tended to happen if, for example, one group of owners sold their interests to the Crown or to a private purchaser and it was necessary to cut out their portion of the block. It could also occur if a few owners wanted to cut out their interests for farming purposes – although in other cases title-holders continued to make informal customary arrangements to allocate land for houses and cultivations, and the land remained in joint title. As time went by, the listed owners of each block multiplied exponentially because the Native Land Court decided that the interests of intestate owners were to be divided equally between all children. This practice was based on Chief Judge Fenton’s decision in the *Papakura* case of 1867, where hapū members had contested succession to the estate of a person who had died intestate. Noting that the intention of the Native Lands Act 1865 was apparently that English law should regulate succession ‘except in a case where a strict adherence to English rules of law would be very repugnant to native ideas and customs’, Fenton was prepared to accept that it was not appropriate for only the eldest child to inherit. Nevertheless, he thought the facts of the *Papakura* case disclosed ‘no equities in favour of the tribe’, and he was anyway of the view that it would be ‘highly prejudicial to allow the tribal tenure to grow up and affect land that has once been clothed with a lawful title’. He made no comment in his judgment about the position of the wife, who was still living, but ruled in favour of equal inheritance for all three children (one girl and

4. Michael Belgrave, Grant Young, Adam Heinz, and David Belgrave, ‘Tauranga Maori Land Alienation: A Quantitative Overview, 1886–2006, Final Report’ (commissioned research report, Wellington: Waitangi Tribunal, 2006) (doc T16(a)), p16. We say ‘returned’ precisely because it was not necessarily given back to the same people from whom it had been taken. In addition, the nature of its title had been changed.

5. Waitangi Tribunal, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims* (Wellington: Legislation Direct, 2004), pp 403–404

6. Document T16(a), p 24

two boys).⁷ The precedent created by this decision was to result in burgeoning numbers of names on ownership lists throughout New Zealand, and our concern here is the effect this was to have on Tauranga lands.

By 1886, the Tauranga Lands Commission had devised lists of individual owners for the returned blocks. Thereafter, the land court was used to arrange subdivisions and successions. As was the case elsewhere, the partition of Māori land in Tauranga into smaller parcels, with ever-increasing numbers of owners, provided serious obstacles to developing and using the land. This, in turn, sometimes led to further partitioning when groups of owners, despairing of being able to do anything worthwhile with the land, decided to sell off their interests – leaving a still smaller block for the remaining owners. This structurally disadvantaged Māori in the new economy.

The stage 1 raupatu report cited and endorsed previous Tribunal reports that had found that ‘the imposition of tenure reform, whether by confiscation or through the determination of title in the Native Land Court, was a clear Treaty breach’. In the case of Tauranga, the Tribunal found that the:

unilateral nature of the imposition of individual title, through the confiscation and return of land, was at odds with the Maori text of article 2 of the Treaty, which required the Crown to allow for the continued exercise of Maori rangatiratanga over their land.⁸

Returning land in individualised shareholdings made it more difficult for hapū and iwi to collectively manage their lands – to exercise their collective tino rangatiratanga – and paved the way for alienation to the Crown, and Pākehā settlers. As we noted in chapter 1, hapū management and control of land was a continuing quest of prominent Tauranga rangatira as they sought to work through local committees and, in the wider sphere, supported the Kīngitanga and Kotahitanga. But, apart from the brief attempts by John Ballance (in 1886) and James Carroll (in 1900) to bring hapū into the land management and alienation system through komiti, the Crown persisted with its policy of individualising shareholding which facilitated the alienation of much of the remaining Tauranga land. The introduced system of tradable title transformed land into a commodity, a Pākehā view that came into conflict with a Māori view of the land as a ‘taonga tuku iho’, a gift from the ancestors to be handed down to future generations in their turn. Indeed, it was not until Te Ture Whenua Māori Act 1993 that a more Māori view of the land became enshrined in legislation.

7. Chief Judge FD Fenton, ‘Native Land Court: Papakura – Claim of Succession’, April 1867, in *Important Judgments Delivered in the Compensation Court and Native Land Court, 1866–1879* (Auckland: Henry Brett, 1879), pp 19–20; Tom Bennion and Judi Boyd, *Succession to Maori Land, 1900–52*, Rangahaua Whānui Series (Wellington: Waitangi Tribunal, 1997), p 40. We note in passing that an 1881 legislative attempt to vary inheritance provisions to include spouses married ‘according to the customs and usages of the Natives’ was reversed in 1882: Native Succession Act 1881, s 3; Native Land Acts Amendment Act 1882, s 4.

8. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, pp 305, 310

2.2 THE ISSUES TO BE INVESTIGATED

We have divided our examination of the land issues facing the Tauranga iwi and hapū into two chapters. This chapter focuses on *alienation*, examining, in particular, private and Crown purchasing of the returned land that remained in Māori ownership in 1886.⁹ Chapter 3 addresses *development*, examining Māori attempts to farm remaining land, with particular emphasis on the land development schemes in the Tauranga district from the 1930s.

Our discussions in the present chapter focus on two main allegations that were raised repeatedly by the claimants. The claimants allege that the Crown failed to:

- ▶ restrict, or remedy, the widespread alienation of Tauranga Māori lands; and
- ▶ ensure that Tauranga Māori had sufficient lands for their actual and future needs.

We will begin by examining the alienation of Māori land in Tauranga Moana in successive periods bounded by major statutes that had important effects on alienation. Our discussion of alienation in each period follows a regular pattern. We begin with a brief discussion of the legislative regime; follow with discussion of the administration of the alienation process, where possible highlighting examples from the Tauranga area; outline the overall quantum of alienation to the Crown and private purchasers; and look in detail at selected case studies of alienations that are representative of the processes of alienation and the Crown's role in them. A table at the end of this chapter (annex 1) summarises the main legislative provisions discussed.

For statistics on the quantum of alienation we rely mainly on the report by Michael Belgrave, Grant Young, Adam Heinz, and David Belgrave (referred to hereafter as 'Belgrave et al').¹⁰ We note that some qualifications are needed in using this material. First, in each table that Belgrave et al provide, they identify a significant portion of land where, in the Māori Land Court files that are used for source material, the alienation is either undated or the land is disposed of in an unknown manner. Secondly, as Crown counsel pointed out, the data is experimental and does not consider the title to every parcel of land. Finally, the researchers did not investigate alienation by lease. While we accept these reservations, we have no reason to doubt the general pattern of alienation indicated by the data since it reflects the alienation pattern for Māori land nationally. We note, too, that the quantitative material is supplemented by the detailed block histories submitted in evidence, which we have drawn on for case studies to illustrate the statistics for each period and to illuminate the particular issues facing Tauranga Māori.

After looking in detail at the evidence, we will summarise the specific submissions of the Crown and claimants on the twin issues of alienation and land sufficiency, and then discuss those arguments within the framework of Treaty principles. We note in advance that the Crown did not present evidence and in its submissions relied primarily on Tribunal- and claimant-commissioned research. Different Waitangi Tribunal panels have by now

9. Land loss through public works takings and rates debt are dealt with in detail in later chapters.

10. Document T16(a)

investigated the alienation of Māori land in a wide variety of inquiry districts. We draw heavily on their research and findings and, in particular, chapters 8 to 11 of *He Maunga Rongo*, the Tribunal's 2008 report on central North Island claims. We also note that the alienation of Māori land discussed in the early sections of this chapter is, in many ways, a continuation of the processes described in chapters 10 and 11 of the stage 1 Tauranga report. The findings of those chapters thus remain relevant to discussion in the present report.

2.3 CROWN AND PRIVATE PURCHASES, 1886–99

2.3.1 Some context

Māori land alienation in Tauranga from 1886 has to be seen against a background of 20 years' alienation of Māori land in the colony since the Native Lands Act 1865 was passed. That Act established the Native Land Court to ascertain customary rights to land and then award title to specified owners. Though the Tauranga Lands Commission had replaced the land court in Tauranga, the commission operated in a similar way to the court: it awarded alienable title to named individuals, in undivided shares, to the returned blocks of land. However, as customary tenure had been extinguished by raupatu, the commissioners, unlike the Native Land Court judges, did not have to ascertain who had customary rights, but merely to award legal titles to individuals. The Tauranga stage 1 report has already noted that the commissioners' proceedings were not subject to official scrutiny, nor was there any obligation on the commissioners to keep notes.¹¹ However, from Dame Evelyn Stokes' research it seems that in practice they based their lists of names on those deemed to have held customary rights – usually, as with the Native Land Court judges, by asking the claimants admitted to have rights to suggest lists of names. Stokes argued that a major problem with the commissioners' inquiries was that they were not bound by claims of ancestral rights,¹² but other researchers accepted that Commissioner Herbert Brabant, in particular, 'was conscientious in ensuring that the rightful customary owners were known when land was being awarded'. That said, as the Tauranga stage 1 report observed, Brabant then 'often proceeded to award the vast majority of a block to a minority of owners who had previously entered into agreements to sell to a Pakeha'.¹³

As we noted in chapter 1, in February 1885 the Native Minister, John Ballance, visited Tauranga, where he had discussions with a gathering of 'Ngaiterangi' at Whareroa. At the hui, a number of the rangatira present stressed their desire for a better working relationship with the Government and urged greater consideration of their situation. Te Mete Raukawa

11. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 264

12. Evelyn Stokes, *Te Raupatu o Tauranga Moana: The Confiscation of Tauranga Lands* (Hamilton: University of Waikato, 1990) (doc A2), p 155

13. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 352



Figure 2.1: Hori Ngatai, circa 1910

Photographer unknown. Reproduced courtesy of the Alexander Turnbull Library (PAColl-5671-56).

said they had been holding firmly to the peace, and Hori Ngatai told the Minister they deserved better treatment than they were getting.¹⁴ Ngatai pointed to inequalities between Europeans and Māori, and said that Tauranga Māori were ‘not living in a state of prosperity’. Wiremu Parera echoed his sentiments, urging greater opportunity for partnership and participation.¹⁵

The chiefs pressed for better representation and a greater opportunity to exercise their rangatiratanga. At central government level they sought a place on the Legislative Council, and at the local level they asked for their own native district committee, separate from that of Te Arawa with whom they were at that time combined. Already in the 1870s and early 1880s, there had been hapū and iwi-based komiti and rūnanga around New Zealand. The Tauranga komiti had been especially active, being used, among other purposes, to settle disputes and avoid the costs and European control of the resident magistrates system. In 1881 for instance, the resident magistrate at Tauranga heard no cases whatsoever in which both parties were Māori as ‘their disputes are generally now settled by their Committee, or referred to the Native Assessor; they allege that the fees of the Court are too heavy for them to avail themselves of it in petty disputes.’¹⁶ However, as the central North Island report, *He Maunga Rongo*, points out, a major difficulty for these komiti was their lack of legally enforceable power.¹⁷ In particular, the komiti had no legal powers in relation to title determination.¹⁸

In 1883, a Native Committees Act had been passed. Tauranga Māori were included with Te Arawa in the Rotorua district, and were singularly unimpressed with their allocation of just one seat out of 12 on the district committee. As a result, the 1884 elections to the committee attracted little interest from them. A principal chief of Matapihi informed the *Bay of Plenty Times* that ‘the electoral district was so large, and the interests so varied, it would be utterly impossible’ for it to gain support or relevance. He said that local Māori were therefore refusing to return from gum digging at Te Aroha to vote.¹⁹ Brabant similarly reported in 1884:

The district for which the Committee was elected comprised those of Tauranga, Maketu, Rotorua, and Taupo. Very few Natives voted, and very little interest was taken in the matter.

14. ‘Notes of Native Meetings,’ 7 January 1885, AJHR, 1885, G-1, pp 60–61

15. *Ibid*, p 58

16. H W Brabant, ‘Annual Report on Native Affairs in Tauranga District,’ 31 May 1881, AJHR, 1881, G-8, p 11 (cited in Kathryn Rose, ‘The Impact of Confiscation: Socio-Economic Conditions of Tauranga Maori, 1865–1965,’ January 1997 (doc A38), pp 46–47). See also Evelyn Stokes, *Matakana and Rangiwaia: A Report on an Island Community in Tauranga Moana* (Hamilton: University of Waikato, 1980), p 40, for information on the komiti based at Rangiwaia Marae, which included delegates from Whareroa, Bethlehem–Wairoa, Rereatukahia, and Matakana.

17. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, p 284

18. Vincent O’Malley, *Agents of Autonomy: Maori Committees in the Nineteenth Century* (Wellington: Huia, 1998), p 182

19. *Bay of Plenty Times*, 15 July 1884, p 2

This the Natives account for by saying that the district was too large and what they want is a Committee for each tribe.²⁰

Also in 1884, Wi Pere, member for the East Coast, had introduced a Bill to Parliament which sought to enable title-determination through local committees, but the Bill had failed to pass.

All this, then, was the background to the 1885 request to Ballance for a separate district committee for Tauranga Māori.

In response to the range of issues raised by the rangatira, Ballance pledged them his support and protection, saying that he was doing his best ‘to bring the two races together, on the ground of equal justice and protection to the Native people.’ Indeed, he went so far as to say that as long as he was Native Minister he would not see them ‘wronged in any respect without standing up in [their] defence.’²¹ At the same time, he urged them towards self-sufficiency: ‘We think that the people should be independent; and you can be independent, with your splendid landed territory, if you only take care of it.’²² ‘[P]rosperity will largely depend upon yourselves,’ he told them, but ‘it will be the earnest desire of the Government to assist you in attaining it.’²³ Further, he promised to see what he could do to promote them having their own native committee.²⁴ Both sides stressed the need for a relationship based on peace and partnership, and Ballance undertook to visit as often as he could.²⁵

In the circumstances, Tauranga Māori might have felt encouraged to think the Government was sympathetic to them having a measure of autonomy over their affairs. Indeed, Ballance explicitly told them:

It is our desire to extend to you larger powers of local government, so that you may be able to protect yourselves to a large extent, that is to say, to have the right through your Committees to do certain things through the law of the Colony.²⁶

Also at the hui, Ballance indicated his intention to introduce a Bill at the next session of Parliament which would allow the owners of each land block to elect their own block committee. These committees would then have the power to decide the future of the block and whether it was to be sold, leased, or retained.²⁷ In the meantime, he said, existing restrictions on sales were to continue, notably in the area affected by the Thermal Springs District Act of 1881 (which included part of the Tauranga area): ‘We think that the land in that part

20. Brabant to under-secretary, Native Department, 14 May 1884, AJHR, 1884, sess 2, G-1, p 14 (doc A38, p 46)

21. ‘Notes of Native Meetings’, 21 February 1885, AJHR, 1885, G-1, p 59

22. *Ibid*, p 65

23. *Ibid*, p 59

24. *Ibid*, p 62

25. *Ibid*, p 59

26. *Ibid*

27. *Ibid*, pp 61–62

of the country should not be sold; we think it should be managed for the benefit of the Native owners.²⁸

It was a significant meeting. Tauranga Māori were clearly keen to restore as much of their mana and autonomy as they could, following the wars and the raupatu, and Ballance, for the Crown, was not discouraging of them taking more responsibility for their own affairs. Indeed, a Tauranga Native Committee District was proclaimed on 27 April 1886.²⁹ Tauranga Māori responded eagerly with a carefully thought-out plan of action. As Brabant reported:

The manner in which the tribe managed the election is, perhaps, worth recording. The [1883] Act provides merely that the Returning Officer shall give notice of a day on which the Native residents in the district shall elect a Committee not exceeding twelve persons. The Ngaiterangi, a fortnight before the day so appointed, held a meeting of the whole tribe, and apportioned the twelve seats amongst the various hapus in proportion to the population. Each of the hapu or hapus to whom a seat was apportioned elected their own member, and the tribe then appointed delegates to nominate the whole twelve before the Returning Officer on the day appointed. The twelve were elected without opposition, and the whole proceeding appears to have given great satisfaction. The plan of having each hapu represented certainly appears a good one, and the Natives consider that they have improved upon the mode of election as provided by Parliament.³⁰

But the committees set up under the Native Committees Act largely proved a failure, and William Lee Rees and James Carroll, in their 1891 report on native land legislation (discussed further at section 2.3.2) were later damning of the Act, reporting that it:

is a hollow shell, the object of which is difficult to see. It mocked and still mocks the Natives with a semblance of authority. They wish it to be turned into a living Act, giving them power to do something for themselves.³¹

In short, the 1883 Act did little or nothing to assist Māori to manage their land and control its alienation or retention.

The year after the Whareroa meeting with Ballance, however, the Government passed the Native Land Administration Act 1886.

28. Ibid, p 62

29. Proclamation declaring the Ngaiterangi Native Committee District, 13 May 1886, *New Zealand Gazette*, 1886, no 29, pp 593–594 (doc A38(d), p1169)

30. Brabant to under-secretary, Native Department, 4 May 1886, AJHR, 1886, G-1, p 11

31. W L Rees, J Carroll, and T McKay, 'Report of the Commission Appointed to Inquire into the Subject of Native Land Laws', 1891, AJHR, 1891, sess 2, G-1, p xvi

2.3.2 The legislative regime

Wi Pere's 1884 Bill having failed to pass, the Native Land Administration Act 1886 represented the first substantial legislative attempt since the Native Lands Act 1865 to find some mechanism to temper the individualism inherent in the statutory system of Māori land title – a system that was highly unpopular with Māori, who resented their loss of communal control over their land. The Native Land Laws Commission would later describe Ballance's 1886 Act as the only 'redeeming feature' in 'a long period of unsatisfactory legislation'. Moreover, the legislation was unusual in having been discussed in advance with Māori – including representatives from Tauranga – at a large hui at Waipatu, near Hastings.³²

The Act, as passed, provided for block committees to be elected by owners of any block of land in order that collective decisions could be made about the sale or lease of land. But committees did not control alienation, which had to be carried out by the district commissioner – a Government official – who was to auction the land. Māori were clearly not comfortable with this provision: at the Waipatu hui they had requested that their district committees, elected under the 1883 Native Committees Act, be strengthened and given a role alongside the district commissioners. Ballance had promised the idea his 'best consideration'.³³ In the event, their proposal was ignored and, as a result, little land was dealt with under the Act. As Professor Alan Ward commented in *A Show of Justice*:

Maori owners did not care to put land under Government Commissioners, no matter how carefully the terms of alienation were prescribed. . . . Perhaps the fairest attempt to balance the interests of settlement and Maori landholders that the Colony had yet seen was a dead letter.³⁴

In any case, there was little time to bring the Act into operation. The Stout–Vogel Ministry fell in September 1887 and the replacement Ministry, headed by Harry Atkinson and susceptible to pressures from Pākehā settlers for a return to 'free trade' in Māori land, repealed the Act in 1888. The replacement Native Land Act 1888 allowed Māori to alienate and dispose of their land as they saw fit. Debate on the legislation in the House suggests that most Māori were in favour of doing away with pre-emption, but James Carroll, member for Eastern Māori, expressed considerable reservation about the move to 'interfere with the restrictions imposed on Native land'.³⁵ Those restrictions had included limiting alienation to leases of not more than 21 years, unless with the consent of some authority such as the

32. W L Rees, J Carroll, and T McKay, 'Report of the Commission Appointed to Inquire into the Subject of Native Land Laws', 1891, AJHR, 1891, sess 2, G-1, p xvi, p xiii; 'Notes of a Native Meeting at Hastings', January 1886, AJHR, 1886, G-2, pp 1–20

33. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 349–353; 'Notes of a Native Meeting at Hastings', January 1886, AJHR, 1886, G-2, pp 11–12, 13

34. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1974), p 297

35. James Carroll, 11 July 1888, NZPD 1888, vol 61, p 684

Governor. Under the new legislation, existing restrictions on alienation could be removed or declared void by the Governor in Council on the application of ‘a majority in number of the Native owners.’³⁶ A companion piece of legislation declared that any *new* restriction on alienation could be annulled by the Native Land Court, on application from the majority of owners and after being notified in the *Gazette*.³⁷ Nevertheless, a proviso still existed under the Native Land Frauds Prevention Act 1881 and its amending legislation whereby the court needed to be satisfied that each owner would still have sufficient land for his or her occupation and support. That safeguard was continued under the 1888 legislation and, where the remaining land was deemed insufficient, the court was required to declare inalienable such parts as were needed for the support of the person concerned.³⁸ A further new measure introduced in 1888 was that, when a piece of land was brought before the court for title determination or partition, the court was obliged to decide the relative weight of interests of each owner.³⁹ Individualisation was thus taken a step further: under the Native Land Court Act 1886, determining the size of each individual interest in court-awarded titles had been optional.⁴⁰

In 1891, just after Ballance returned to office, this time as premier in a Liberal administration, the Native Land Laws Commission was appointed. The commissioners, Rees, Carroll, and Thomas Mackay, were required to investigate the working of the native land Acts of the previous 30 years. They came out with a devastating critique of that legislation. One proposed remedy was to reintroduce Crown pre-emption, but the commissioners were not unanimous in their support of the idea. The majority report quoted ‘[t]he opinions of some of the most experienced witnesses . . . that the abandonment of the Crown’s pre-emptive right was a grave and serious error’ and recommended that pre-emption be resumed.⁴¹ Carroll, in his minority opinion, dissented and argued instead that there had been ‘ample opportunity’ to test the working of pre-emption from 1840 to 1862 and that the Crown should not re-assume the prerogative without Māori consent. He warned that, ‘[t]o the Native mind . . . such a proceeding would be regarded by the present generation of Maoris as simply confiscation.’⁴² The right of Crown pre-emption was resumed in 1892, and, as the Stout–Ngata commission later noted, ‘the Government set about the purchase of Native lands in a systematic manner.’⁴³ In 1894, however, the Governor in Council was

36. Native Land Act 1888, ss 4–5

37. Native Land Court Act 1886 Amendment Act 1888, s 6

38. Native Lands Frauds Prevention Act 1881, s 6; Native Lands Frauds Prevention Act 1881 Amendment Act 1888, s 4; Native Land Court Act 1886 Amendment Act 1888, s 13

39. Native Land Court Act 1886 Amendment Act 1888, s 21

40. Native Land Court Act 1886, s 42

41. W L Rees, J Carroll, and T McKay, ‘Report of the Commission Appointed to Inquire into the Subject of Native Land Laws’, AJHR, 1891, sess 2, G-1, pp xix–xxi

42. *Ibid*, pp xxvii– xxviii

43. ‘Native Lands and Native Land Tenure: General Report on Lands Already Dealt With and Covered by Interim Reports’, AJHR, 1907, G-1C, p 4

given the authority to remove the pre-emptive restriction on a case-by-case basis, and this was frequently done.

The Native Land Court Act 1894 made an important innovation: the first significant provision for incorporations. With the consent of the owners, the court could make an order for the incorporation of owners of land where the Crown held no interests. The incorporations were to be run by committees of between three and seven people, who could be – but did not have to be – owners.⁴⁴ These provisions were not, however, widely taken up as a means of administering Māori land until the twentieth century.

2.3.3 The administration of alienation

As we have already noted in passing, there had been provisions in earlier legislation to restrict alienation in certain circumstances. David Williams, in his book *Te Kooti Tango Whenua*, is of the view that such restrictions were only ever intended to slow alienation of the land concerned, not to prevent it completely: ‘At no time’, he says, ‘were alienation restrictions intended by the Government in office to be permanent restrictions.’⁴⁵ The Tauranga evidence would appear to support this conclusion – indeed, the mechanism’s effectiveness in even slowing alienation there is somewhat mixed. It has been calculated that in the period from 1 April 1880 to 31 March 1885, alienation restrictions had already been removed in respect of 33,033 acres (13,368 ha) of Māori land in the district, ‘almost always on the application of Europeans proposing to purchase the land.’⁴⁶

In November 1885, George Barton, a lawyer and former member of the House of Representatives, was appointed as commissioner to inquire into applications for the removal of restrictions on the sale of native lands.⁴⁷ He was specifically directed to ‘ascertain whether the persons to whom the lands were proposed to be alienated had acted with good faith in their negotiations with the Natives, and were paying sufficient prices.’⁴⁸ He headed first for Tauranga, arriving there only six weeks after his appointment because it was, in his estimation, ‘the district where inquiry was most urgently called for.’⁴⁹ We do not know how much advance notice was given of the impending investigation, but when he arrived he was disappointed to find that ‘large numbers of the Natives interested in the

44. Native Land Court Act 1894, ss122–123. Ashley Gould notes that the first actual legislative mention of incorporations was in the Mangatū Empowering Act 1893: Gould, ‘Maori Land Development Schemes: Generic Overview, circa 1929–1993’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc T37), p 83, n110

45. David V Williams, *Te Kooti Tango Whenua: The Native Land Court, 1864–1909* (Wellington: Huia, 1999), p 275

46. Vincent O’Malley, ‘The Aftermath of the Tauranga Raupatu, 1864–1981’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 1995) (doc A22), p 72

47. *Ibid*, p 77

48. George Elliott Barton, ‘Removal of Restrictions on Sale of Native Lands 1886’, 14 May 1886, AJHR, 1886, G-11, p 1

49. *Ibid*

principal lands under consideration' had just left for the gumfields.⁵⁰ A number of contemporary newspaper articles discussing his arrival and activities clearly indicated that settler hopes were pinned on the inquiry leading to the removal of alienation restrictions.⁵¹ Barton recorded that those Tauranga Māori he did manage to interview were reluctant to 'disclose any misconduct, even although they had suffered from it', but put it down to 'a vague fear that they might lay themselves open to criminal proceedings, ending in imprisonment and loss of character'.⁵² At Whakatane, his next port of call, his 'searching enquiry into every circumstance' connected with transactions was reported as arousing in Māori there a similar 'feeling of uneasiness'.⁵³

Barton's inquiry nevertheless appears to have been painstaking and, in his own words, he '[a]s far as possible . . . avoided being influenced by political or general considerations in judging of matters laid before [him]'.⁵⁴ Further, unlike the Tauranga Lands Commission some twenty years earlier, he was anxious to ensure that the material on which his findings were based should all be placed on record. He reported in May 1886, and for Tauranga found that:

- ▶ an official Government notice in the *Bay of Plenty Times* on 12 November 1878 stating that all lands returned should be inalienable was effectively a 'dead-letter' to both Crown and private purchasers;⁵⁵
- ▶ purchases were initiated before boundaries had been defined, before reserves had been set aside for Māori, and before conflicting land claims had been adjudicated by the Commissioners' Court, though he regarded these transactions as legally void rather than illegal;⁵⁶ and
- ▶ purchase negotiations were 'very loosely conducted' and that this 'opened a wide door for fraudulent practices'.⁵⁷

Barton found evidence that such loose conduct included agents or middlemen debiting money for themselves both from their employers and from Māori. In addition, receipts recording transactions were manipulated in a number of ways: some had survey charges added to them, some were left blank, some were altered, some were entered more than once, and some had dubious signatures affixed to them. In particular, a certain 'form C', instrumental in establishing to the commissioners the *bona fides* of sale, had been in Barton's view 'a positive cloak for fraud'. In summary, he concluded:

50. Ibid

51. See, for example, *Bay of Plenty Times*, 9 January 1886, p 2; 21 January 1886, p 2; 2 February 1886, p 2; 13 February 1886, p 2; 18 February 1886, p 2; 20 February 1886, p 2; 27 February 1886, p 2; also doc A22, p 78

52. Barton, 14 May 1886, AJHR, 1886, G-11, pp 1–2

53. 'Mr Commissioner Barton at Whakatane', *Bay of Plenty Times*, 18 March 1886, p 2

54. Barton, 14 May 1886, AJHR, 1886, G-11, p 3

55. Ibid, p 2

56. George Elliott Barton, 'Removal of Restrictions on Sale of Native Lands 1886', 31 May 1886, AJHR, 1886, G-11A, p 3

57. Barton, 14 May 1886, AJHR, 1886, G-11, p 2

I found that the books and documents purporting to record the transactions of the agents and sub-agents were so manipulated and altered in different handwritings as to entirely destroy their reliability, especially taken in connection with the instances of actual fraud sworn to before me.⁵⁸

He also made recommendations about eight particular transactions in the Tauranga area, giving his view on which should be upheld and which disallowed.⁵⁹

In short, dealings in the late 1870s and early 1880s were clearly conducted in a manner that was far from satisfactory. Even before grants were issued, land was under negotiation for sale, and purchasing agents appeared to take advantage of the confusion. The Tauranga stage 1 report acknowledged that this process was not illegal, but added that the Government could have refused to allow titles to be transferred to Pākehā, though it did not do so. Public notification that ‘returned’ lands were inalienable was ignored.

The 1891 Native Land Laws Commission was also critical of the Crown’s administration of alienation and concluded that a new national framework was needed to administer Māori land. The commission recommended that:

- ▶ a Native Land Titles Court be established to deal with past disputes;
- ▶ each block should have its own block committee which would be responsible for making decisions about whether to alienate land;
- ▶ there should be district or tribal committees, chaired by district judges or district commissioners who were to be responsible for examining recommendations of block committees on alienation and for the distribution of moneys; and
- ▶ a native land board should be established as the corporate body responsible for giving all titles, for all leasing of Māori land, and to act where owners or committees refused or neglected to act.⁶⁰

We also note that, in response to many complaints from both Māori and Pākehā about the workings of the Native Land Court, the commissioners recommended that the court should be remodelled as it was ‘too formal and cumbrous, while its practice and procedure is unsatisfactory.’⁶¹ They concluded by stating that a new law effecting their recommendations ‘should be imperative, and in no sense optional.’⁶²

Some of the findings of the commission were implemented fairly soon – for instance the creation of a court for the validation of titles in 1893 – and others later when Carroll, as Native Minister, enacted the Māori Lands Administration Act and the Māori Councils Act in 1900. The first of these two Acts limited Māori land alienation, and Carroll was accused

58. Barton, 14 May 1886, AJHR, 1886, G-11, p 3

59. Barton, 31 May 1886, AJHR, 1886, G-11A, pp 1–7

60. WL Rees, J Carroll, and T McKay, ‘Report of the Commission Appointed to Inquire into the Subject of Native Land Laws’, 1891, AJHR, 1891, sess 2, G-1, pp xxiii–xxiv

61. Ibid, p xxiii

62. Ibid, p xxv

of following a ‘taihoa’ (‘wait a while’) policy. These matters are discussed more fully in section 2.4 below.

As noted in the stage 1 report, the commissioners had played a dual role in the alienation of Tauranga land immediately before 1886. Commissioner Brabant, for example, was involved not only in the listing of individual owners but also in the confirmation of land boundaries and, more significantly, in the negotiation of purchases for the Crown.⁶³ Such duality of functions, with all the dangers of potential conflicts of interest, did not cease in 1886. We note that Brabant, and later his successor as resident magistrate, Robert Bush, also acted as Crown purchase officers. Later in this chapter we discuss how Native Land Court judges controlled the operations of the Māori land boards, and also how senior officials in the Department of Native (later Māori) Affairs simultaneously acted as Native (later Māori) Trustee.

The stage 1 report concluded that the administration of Tauranga Māori land in the period immediately before 1886 was ineffective in actively protecting the interests of Tauranga iwi and hapū.⁶⁴ We take up this issue again in our discussion of case studies at section 2.3.5 below.

2.3.4 The quantum of alienation

By 1886, some 80,000 acres (32,375 ha) of returned land in the Tauranga district had been purchased, or was being purchased, by the Crown and private purchasers. The location of residual land, still in Māori ownership as at 1886, is shown in map 2.1.

Pressure from settlers to acquire more Māori land was intense, being seen as a way to invigorate the local economy in a time of depression. A Bay of Plenty Times editorial from January 1886 commented approvingly that ‘[a]fter a good deal of agitation’ the Government had been ‘brought to see the necessity of throwing open for settlement the unoccupied land in the neighbourhood’. Referring to Barton’s inquiry, the editorial went on enthusiastically:

This will be the means of opening for settlement some of the best land in the neighbourhood, land whose quality will no doubt quickly induce occupation, and bring what is perhaps more than anything else required, viz., the proper class of *bona fide* settlers.⁶⁵

Although that view misrepresented the main purpose of Barton’s inquiry, alienation figures for the Tauranga district did rise sharply during the 1880s and remained high in the 1890s (see fig 2.2).

Unfortunately, the alienation analysis presented to us in evidence, being organised only by decade, cannot give us a breakdown of figures that begins in 1886. However, Belgrave

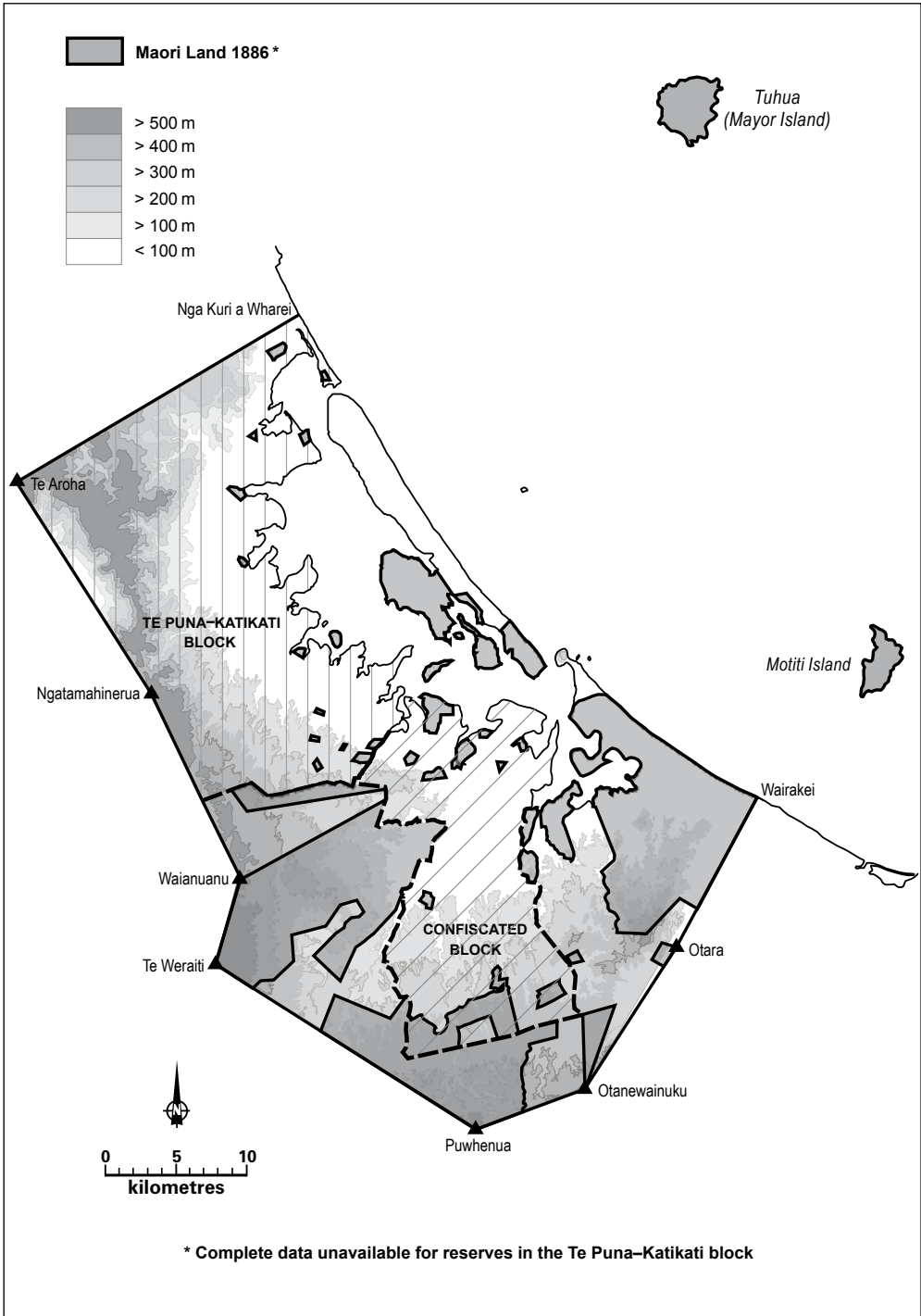
63. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, pp 302, 328, 329, 332

64. *Ibid*, pp 352–353

65. *Bay of Plenty Times*, 9 January 1886, p 2

TAURANGA MOANA, 1886-2006

2.3.4



Map 2.1: Māori land as at 1886

LAND ALIENATION, 1886–2006

2.3.4

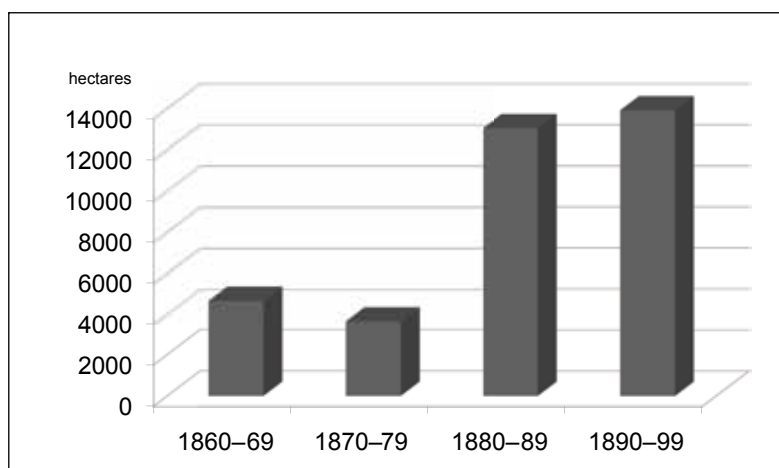


Figure 2.2: Amount of Māori land alienated in the Tauranga district, by decade, 1860–99

and his colleagues calculated that from 1880 to 1889 13,046 hectares (32,237 acres) of Māori land was lost through purchase. The bulk of the land, 10,871 hectares (26,862 acres), was purchased privately, with the Crown purchasing only 2175 hectares (5375 acres). In the next decade, 13,908 hectares (34,367 acres) were purchased, though in this decade the balance was reversed with the Crown purchasing 10,073 hectares (24,892 acres) and private buyers 3835 hectares (9476 acres).⁶⁶ We note that the last figure suggests that Crown pre-emption, restored in 1892, was not rigidly adhered to.

In some cases, alienations may have been strategic. In 1895, Te Mete Raukawa of Ngāti Hangarau wrote:

We are one of the original tribes of Tauranga, and we owned a large tract of land confiscated by the Queen. No land was returned to us near the town of Tauranga. The lands returned to us are in the bush seventeen or eighteen miles away from town and without a good road to them.⁶⁷

The remoteness of Ngāti Hangarau’s returned lands may well have been an important factor in their decision to alienate several thousand acres in the hilly, bush-covered Taumata blocks which straddle the southern boundary of our inquiry district. Some parts of those blocks would have been considerably more than 18 miles (28.9 km) away from Tauranga. By this time, the hapū was occupying land situated closer to both the town and the coast, which Te Mete Raukawa described as ‘belong[ing] to other Maoris’.⁶⁸ That land proved insufficient, and in 1898 he wrote to the Minister of Native Lands saying that they were having ‘great

66. Document T16(a), p 31. Decimals have been rounded to the nearest whole number.

67. Petition of Te Mete Raukawa and 60 others, 6 August 1895 (‘Supporting Documents to the Report of Kathryn Rose’, vol 2 (doc A38(b), p 472)

68. Ibid

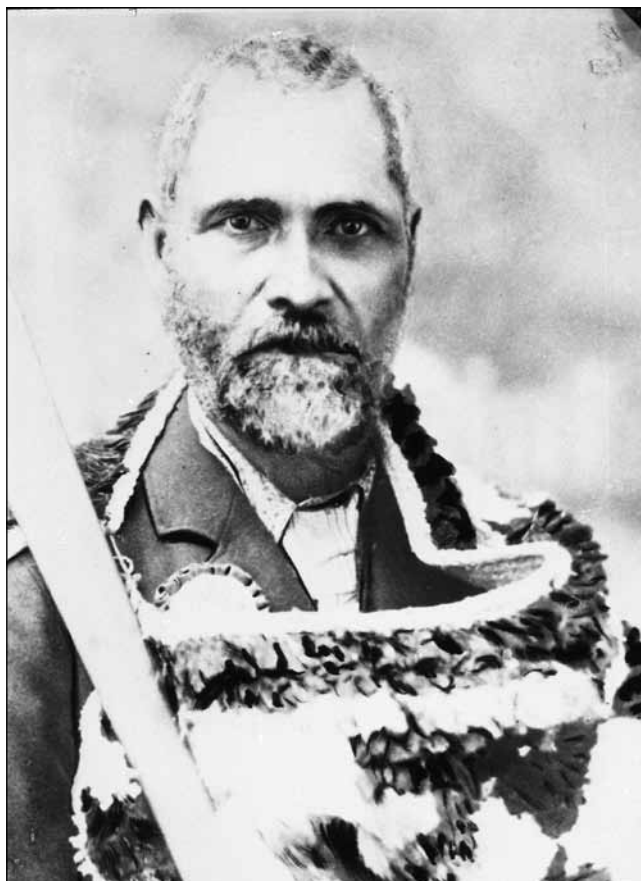


Figure 2.3: Te Mete Raukawa, 1897

Photographer unknown. Reproduced courtesy of Tauranga City Libraries (09-020).

difficulty making a living.’⁶⁹ He explained that the hapū was seeking land at Ōtūmoetai, and that they had applied to the Government for some of the native reserve there. When this approach had not yielded a response, he had tried to obtain 434 acres of resource-rich salt marsh at Ōtūmoetai from John Tinline, offering him over 2000 acres at Paengaroa 2 (south-east of Te Puke) in exchange. But Tinline, a wealthy South Island runholder and speculator, wanted cash, which the hapū did not have. Raukawa therefore offered the Paengaroa land to the Crown, in the hope that the Crown would, in turn, purchase the Ōtūmoetai land for them. The outcome is not clear from the evidence available to us, but a note on Raukawa’s letter, possibly made by the Surveyor General, does make the point that ‘They are essentially a sea-side people and have only enough land there to *starve* on’ (emphasis in original).⁷⁰ As a postscript, we note that in 1905 they were still trying to exchange land in Paengaroa 2, ‘about 15 miles inland and unsuitable for their cultivation’, for land that

69. Te Mete Raukawa to R Seddon, Minister of Native Lands, 15 November 1898 (doc A38(b), pp 450–452)

70. Ibid

gave them access to water resources – this time, land on the west bank of the Wairoa River, across from Bethlehem.⁷¹

Overall, as Belgrave et al's figures showed, the 1890s saw more Māori land permanently alienated in the Tauranga district than in any other decade between 1880 and 2006.⁷²

2.3.5 Case studies of Crown and private purchases

In this section, we discuss a number of Crown and private purchases that illustrate the Crown's procedures and administration while directly purchasing Māori land or facilitating private purchases. Several of the purchases that we discuss were under way by 1886 and were briefly discussed in our stage 1 report. We discuss here the Crown purchase of the Pāpāmoa and Ōtawa blocks in the eastern part of our district, and pick up on the stage 1 report's discussion of the Waimanu, Te Irihanga, Oteoroa, Te Mahau, and Poripori blocks in the foothills of the Kaimai Range between the Wairoa and Te Puna Rivers. We also discuss the private purchase of Tuingara on Matakana Island.

(1) Pāpāmoa and Ōtawa

The cases of Pāpāmoa and Ōtawa demonstrate how, with the individualisation of title, the Crown was able to eventually purchase the greater part of blocks that were regarded as necessary for the progress of European settlement in the district. The Pāpāmoa area runs from the eastern edge of the confiscation district back to the eastern edge of Tauranga Harbour, at Mangatawa, and it included much of the swampy Pāpāmoa flats running between the coast and the hills. The Tauranga Lands Commissioner awarded titles for Pāpāmoa in 1877 and 1878, mainly to Ngā Pōtiki. Their kaumātua had the 1295-acre (around 524-hectare) Mangatawa block cut off as a reserve for Ngā Pōtiki alone, and a certificate of title for it was issued in August 1878, naming 102 owners. The remaining 12,763 acres (5165 ha) of Pāpāmoa was awarded to 60 owners, mostly of Ngā Pōtiki but also including some from other hapū. The certificate of title for this Pāpāmoa block was not issued until two years later.

While in Tauranga in February 1885, Ballance met not only with 'Ngaiterangi' but also with the local Pākehā community.⁷³ Whereas he signalled to Māori his intent to introduce legislation allowing block committees to manage the sale or lease of their lands, he promised local Europeans that he would give his 'best support' to large-scale Crown purchasing of Māori land in the eastern part of the district.⁷⁴ The intention appears to have been to provide for a settlement corridor through to the newly established Vesey Stewart settlement

71. IG Baker to R Seddon, Prime Minister, 23 March 1905 (doc A38(b), pp 428–430)

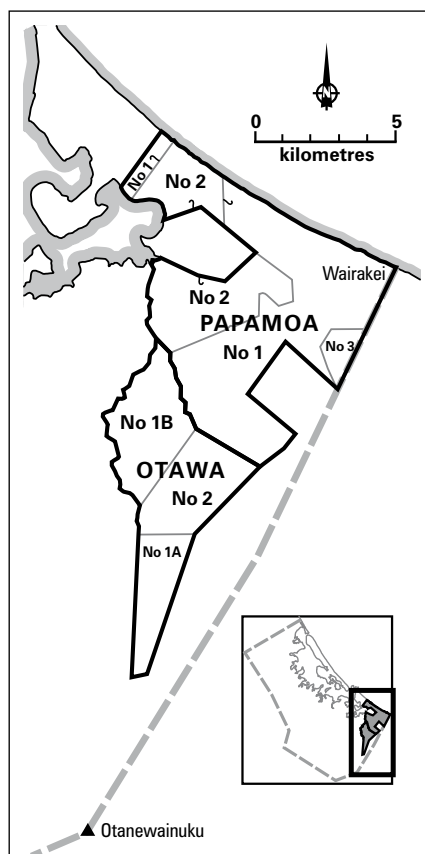
72. Document T16(a), p 31

73. As noted in chapter 1, Government officials and others in the nineteenth century used the term 'Ngaiterangi' as shorthand for all Tauranga Māori.

74. 'Mr Ballance at Tauranga', *Bay of Plenty Times*, 17 February 1885, p 2, cols 3–4

TAURANGA MOANA, 1886–2006

2.3.5(1)



Map 2.2: The Pāpāmoa and Ōtawa blocks

in Te Puke. The mayor of Tauranga, Thomas Wrigley, lost no time in informing Richard Gill, the under-secretary of the Native Land Purchase Department, of Ballance's promise, and officially requested the Crown to proceed with the purchase of the Pāpāmoa and Ōtawa blocks. Brabant, in response to a query from Gill, indicated that Ōtawa had been divided into two. He provided a list of 143 owners for Ōtawa 1, said that it had no alienation restrictions, but noted that a survey was still required. Ōtawa 2, on the other hand, was mostly owned by minors and was inalienable. In April 1885 Brabant approached one of the owners, Hone Makarauri, for assistance to buy both Ōtawa 1 and Pāpāmoa.⁷⁵

In November 1885, the *Bay of Plenty Times* reported that Jonathan Brown had obtained a lease over part of the Pāpāmoa block through the exertions of David Asher who was described as having interests in the block and 'much influence with the native owners.'⁷⁶ Brown had also acquired considerable land interests from Ngāti Hē in the Ohauti district. Asher, a Tauranga pub-

lican, was married to Katerina Te Atirau of Ngāti Pūkenga who had interests in the Ngāpeke and Pāpāmoa lands. A fluent Māori speaker, Asher acted as a kaikōrero for his wife in the Native Land Court though, as the Brown lease demonstrates, he also acted for European interests.

As the *Bay of Plenty Times* also noted, the Government had put aside a large amount of money to purchase Pāpāmoa and other blocks, though it was not until 1886 that the Crown began negotiating for the purchase of the Pāpāmoa block. Ballance visited Tauranga a second time in April 1886, when he met the mayor and local settlers (but not Māori, despite his promise at the previous meeting to continue to consult them). Though Ballance did not give in to all settler demands, such as the removal of restrictions on private purchases of land, he reportedly assured the settler delegation that the Government supported and was

75. Grant Young, 'The Alienation by Sale of the Hapu Estate of Ngati He at Tauranga Moana', 2 vols (commissioned research report, Wellington: Waitangi Tribunal, 2001), vol 1 (doc L2), pp 72–73; Heather Bassett and Richard Kay, 'Crown Acquisition and Desecration of Nga Potiki Land' (commissioned research report, Wellington: Waitangi Tribunal, 1999) (doc E1), p 4

76. *Bay of Plenty Times*, 26 November 1885, p 2, col 3

arranging purchases of Māori land in the district.⁷⁷ Nevertheless, progress with the purchase of interests in Pāpāmoa was slow: by May 1886 the Crown had purchased only £80 worth of shares, equivalent to 245 acres in the 12,763 acre block, and none at all in Ōtawa. By the end of 1887, the Crown's tally of shares in Pāpāmoa still stood at a mere 14 – at a cost of £705 – with only six of 143 shares purchased in Ōtawa. There was obviously considerable collective resistance to sale. Fortuitously for Brabant, however, nature intervened, creating conditions that made it difficult for hapū to hold on to their land. As he subsequently admitted in his annual report for the district:

This year the Natives are very short of food and I have been informed by some chiefs that meetings are being held to consider their advisability of selling and that there is a probability of land being offered to Government voluntarily within the next month or two.⁷⁸

Although Brabant admitted that several holders of shares were 'merely selling through want of food', he wanted to use such offers as a first step towards purchasing Ōtawa. Brabant's proposal was accepted by the Native Office, though he was instructed to keep the payment down to five or six shillings an acre.⁷⁹

Brabant's successor in Tauranga, Robert Bush, was equally intent on purchasing the Pāpāmoa and Ōtawa blocks: 'I shall not lose a chance of acquiring a signature when offered, or of pursuing it if it can possibly be got', he assured head office. He too was confident that economic necessity would soon lead to more sales. Though owners were currently dependent on seasonal work and gum digging, he was sure that once savings from those activities were spent, sales of land would quickly follow.⁸⁰ Exploiting Māori hunger arising from natural disasters to acquire their interests in land was nothing new in Tauranga: as the Tribunal's stage 1 report has already pointed out, this had been done to pressure Hori Ngatai to sell his interest in Mauao when his crops were damaged by a flood.⁸¹ It was a useful tool in breaking communal resistance to sales.

Although resistance was largely organised by local rangatira and informal committees, it was also inspired by the continuing allegiance of Tauranga Māori to the Kingitanga. After he emerged from seclusion in the King Country in 1884, Tawhiao became a frequent visitor to Tauranga. Tauranga Māori contributed funds to the Kingitanga and supported its ban on land sales. In late 1886, Brabant noted with some relief that individuals from time to time

77. *Bay of Plenty Times*, 10 October 1885, p 2 col 1; 20 April 1886, p 2, cols 5–6

78. Document L2, p 74

79. *Ibid.*, pp 74–75

80. RS Bush to under-secretary, Native Land Purchase Department, 3 August 1891 (Fiona Hamilton, 'Ngai Te Ahi Historical Report' (commissioned research report, Wellington: Waitangi Tribunal, 2000) (doc G1), pp 83–84)

81. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 328

clandestinely sold their shares, but his report of the following year continued to attribute the reluctance of Tauranga Māori to sell land to Kingitanga activities.⁸²

Yet, in the longer term, individual acquiescence gradually supplanted communal opposition. Although Brabant failed to complete the Pāpāmoa and Ōtawa purchases, his successor, Bush, did so. By March 1889 Bush was negotiating to purchase the shares of five further owners in Ōtawa – significantly, all absentees – and over the next four years he managed to obtain over four-fifths of all shares in the block.⁸³

Meanwhile, by 1891 the Crown had purchased nearly half the shares in Pāpāmoa. A report in the *Bay of Plenty Times* on 31 July 1891 urged the Government to complete the purchase.⁸⁴ By May 1893, the Crown evidently considered it had acquired enough shares in the Pāpāmoa block for it to apply to have the block partitioned. On 13 May 1893, the Pāpāmoa block was finally partitioned by the Native Land Court and the Crown's shares were cut out as Pāpāmoa 1 (7910 acres, or around 3201 hectares). The part awarded to non-sellers became the much smaller Pāpāmoa 2 (4265 acres, or almost 1276 hectares), while Pāpāmoa 3 (smaller again at 480 acres, or 194 hectares) was awarded to four minors. In February 1894, the Pāpāmoa 1 block was declared Crown land.⁸⁵ There was, however, a discrepancy in the amount of land awarded to the Crown, in that it acquired in error the entire one and a half shares owned by two minors (amounting to 180 acres), instead of only half a share as intended by the minors' trustee. Although the error was rectified to the extent that the two minors were subsequently added to the list of owners in Pāpāmoa 2, there is nothing on record to show that the amounts of land awarded to the Crown and non-sellers were adjusted.⁸⁶

Crown counsel argued before this Tribunal that there was insufficient evidence provided to pursue any claim of fraud in the Pāpāmoa purchase. Furthermore, Heather Bassett conceded that she could not say whether owners were unwilling sellers.⁸⁷

Tribunal-commissioned researchers Bassett and Richard Kay do acknowledge that the correspondence records of the native land purchase officers involved in acquiring Pāpāmoa 1 no longer exist. The only remaining record can be found in summaries of incoming correspondence in register books.⁸⁸ From these summaries, Bassett and Kay concluded that:

- ▶ the Crown paid one owner . . . to assist it in convincing other owners to sell;
- ▶ some of the shares sold belonged to minors, which was in breach of the law, though a special exemption was approved by the Chief Justice [to validate this];

82. Brabant to Lewis, 22 October 1886 (doc L2, p 74); Brabant to under-secretary, Native Department, 20 May 1887, AJHR, 1886, G-1, p 9

83. Document L2, pp 75–76

84. Document E1, p 16; *Bay of Plenty Times*, 31 July 1891, p 2, col 4 (doc G1, p 83)

85. Document E1, pp 18–19; doc T16(a), p 77; survey plan of Pāpāmoa 1, ML 4868C

86. Document E1, pp 18–19

87. Crown counsel, closing submissions: introduction and issues 1–2, 8 December 2006 (doc U26), pp 10–11

88. Document E1, p 13

- ▶ there was some confusion over the price being paid;
- ▶ purchases were made of the shares of deceased owners without their successors having been formally appointed by the court, which meant that the Crown may not necessarily have been buying from the correct successor; and
- ▶ there was an allegation of fraud against Pine Awanui, but the amount was repaid.⁸⁹

In our view, while the Crown may well be correct in arguing that there is not enough evidence to show whether these transactions were fraudulent, there is nevertheless a considerable amount of evidence to the effect that Crown purchase officers exerted undue pressure on distressed individual owners. The Crown also capitalised on the system of individualised title both by inducing willing individuals to convince other owners to sell, and by acquiring the shares of minors and undeclared successors of deceased owners.

The ‘divide-and-buy’ strategy employed by Crown purchase agents in this case highlights the ways in which the system of individualised tenure could be manipulated to serve the economic interests of the Crown and settlers rather than those of the hapū concerned.

(2) Waimanu, Te Irihanga, Oteoroa, Te Mahau, and Poripori

The stage 1 report did not in general discuss the fate of purchases after 1886, though it made an exception in the case of the Kaimai blocks listed here.⁹⁰ We summarise that discussion and add some more information, including findings from Commissioner Barton’s investigation. The interest of speculators from as far afield as London in these Kaimai blocks was aroused by reports of gold discoveries in the late 1860s. The blocks were also valued for their timber. Speculators Thomas Russell, Joseph Foster Buddle, Major John Wilson, and Hugo Friedlander had purchased interests in the blocks before Brabant drew up lists of owners in 1882.

Despite Barton’s suspicions, he could find no concrete evidence of fraud in Buddle’s purchase in Te Irihanga, Wilson’s in Oteoroa, and Russell’s in Te Mahau. All three were allowed to go ahead. However, Barton found that Friedlander and his agents had forged signatures of alleged sellers, failed to pay money that was credited to the blocks, and claimed to have purchased a portion of Waimanu that had not in fact been purchased.⁹¹ Barton recommended that Friedlander’s purchase of Waimanu 1C, Waimanu 2A, and Poripori 1 be disallowed.⁹² With Poripori 2, Barton noted that, apart from possible irregularities of process, the block was a native reserve that had been made absolutely inalienable by Brabant, and again declined to recommend removal of the alienation restrictions.⁹³ He could find no irrefutable evidence of fraud, however, in the purchase of 1274 acres (almost 516 hectares) in Waimanu 1, and recommended that the alienation be confirmed, except for the interests

89. Ibid, pp15–16

90. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, pp 347–348

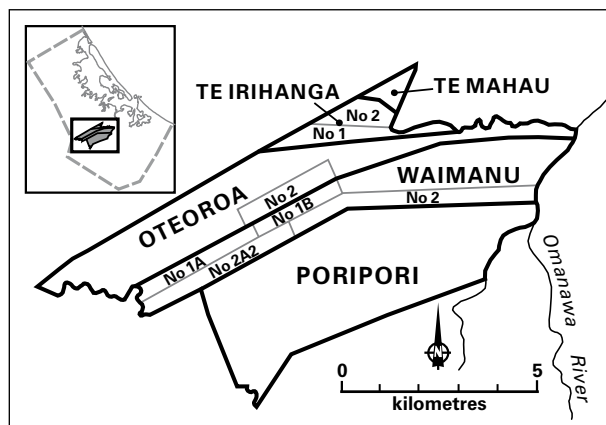
91. Barton, 31 May 1886, AJHR, 1886, G-11A, pp 1–6

92. Ibid, pp 2, 4

93. Ibid, pp 2, 6

2.3.5(2)

TAURANGA MOANA, 1886–2006



Map 2.3: The Waimanu, Te Irihanga, and Oteoroa blocks

of three owners who had not agreed to sell.⁹⁴ As to Waimanu 2A, it appears that in the event, alienation restrictions were retained on around 450 acres (182 ha) of it, but were removed on the rest of the block to enable the owners to repay Ropata Karawe, who had borne the hapū's litigation costs.⁹⁵

Friedlander petitioned the Native Affairs Committee for Barton's adverse findings to be overturned. The committee's consideration of the matter was *ex parte* and they interviewed only those who supported the petition.⁹⁶ While they also had access to Barton's material – which he had been careful to submit along with his report – it is not clear that these were as 'carefully gone into' as Lawrence Grace (the member for Tauranga) asserted to the House in August 1886.⁹⁷ The committee's considerations led it to report in favour of Friedlander, but Cabinet nevertheless refused to sanction the removal of restrictions. The following year, Friedlander made a further petition. It was considered by the Native Affairs Committee in December and again upheld. However, the Colonial Secretary, Thomas Hislop, was of the opinion that the alienation restrictions should remain in place and the matter was referred for decision to Chief Judge John Macdonald of the Native Land Court.⁹⁸ While Macdonald agreed that 'on the facts stated, the conclusions set up in [Commissioner Barton's] report are the only ones that could have been arrived at under the terms of the commission', he thought the terms of Barton's commission had been conceived too narrowly, focussing on 'irrelevant issues as to the conduct of would-be purchasers' and ignoring the question of how much other land the Māori owners had. He went on to indicate that he saw no problem

94. Barton, 31 May 1886, AJHR, 1886, G-11A, p 2

95. Ibid, pp 2, 6–7; doc A22, pp 92–93

96. Barton, memorandum to Native Minister, 21 September 1886 (doc A22, p 86)

97. Document A22, pp 86–87; John Ballance, 24 June 1886, NZPD, 1886, vol 55, p 94; Lawrence Grace, 12 August 1886, NZPD, 1886, vol 56, p 668 (doc A22(b), pp 375–376); *Bay of Plenty Times*, 19 August 1886, p 2, cols 1–3

98. Document A22(b), p 442

in principle with removing restrictions on alienation, as long as the alienors had sufficient other land. In the Friedlander case, he was of the view that ‘the proposed native vendors have ample other Estate.’⁹⁹ However, it seems that Friedlander’s Poripori and Waimanu transactions were still not validated. In 1889, legislation was passed which provided for a further commission to be set up to inquire into pre-1887 transactions, and notice was given that the commissioners would sit in Tauranga in December. Included on the list of cases for inquiry were Friedlander’s transactions in Waimanu 1, Waimanu 1C, and Poripori 1.¹⁰⁰ In response, Friedlander had notices placed in both the *Gazette* and the *Bay of Plenty Times*, indicating that he had submitted documents to the commissioners and was ready to contest ownership of the blocks.¹⁰¹ Unfortunately we have no evidence as to the outcome.¹⁰²

Though the stage 1 report made no finding on the transactions, it did accept Barton’s opinion – namely that transactions carried out before Brabant’s award of title were not illegal, but they were not enforceable at law. The report did not discuss events post-1886. We have now examined the evidence for this later period, but we are still unable to make findings in that the result of the Crown’s actions is unclear. We would nevertheless observe that the situation in relation to the Waimanu and Poripori blocks cannot have been satisfactory for either the Māori owners or the would-be purchaser, and that much of the difficulty seems to stem from the earlier lax administration of the law.

(3) *Tuingara*

Tuingara, otherwise known as Katikati lot 7, is located between the blocks of Wairaka and Pukekahu on Matakana Island, both purchased by William Daldy, as discussed in the stage 1 report (see map 2.4). A Crown grant for Tuingara, measuring 337 acres (around 136 hectares), was awarded in August 1877, the same year that Te Muri, one of the four grantees, died. The Crown grant’s terms were that the grantees should be tenants in common: if one died, that person’s shares should go to his or her successors. It was not till seven years later, in December 1884, that Te Muri’s interests were succeeded to by other family members – and one of those successors subsequently died, thus triggering a further succession order. But in the period between the Crown grant and the first succession order a deed of sale had already been signed, in December 1880, alienating the land to James Horne for £59. The

99. Document A22, pp 85–89; doc A22(b), pp 443–453

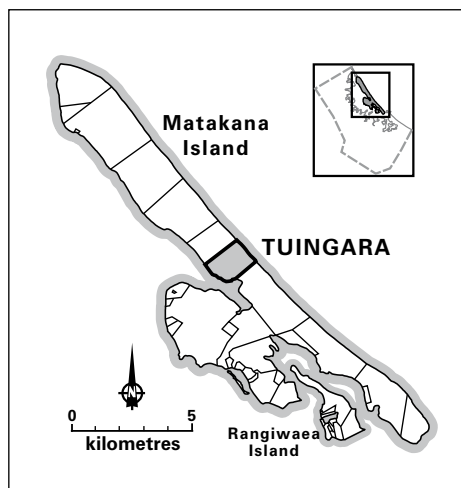
100. Document A22, pp 85–89; Native Land Court Acts Amendment Act 1889, ss 20–28 (doc A22, p 89); ‘Schedule to the Sitting of Commissioner’s Court’, 23 October 1890, *New Zealand Gazette*, 1890, no 59, p 1164 (doc A22(b), p 399)

101. OM Quintal, ‘The Native Land Court Acts Amendment Act, 1889’, 4 December 1890, *New Zealand Gazette*, 1890, no 69, p 1385; 11 December 1890, *New Zealand Gazette*, 1890, no 71, p 1474; 18 December 1890, *New Zealand Gazette*, 1890, no 74, p 1500 (doc A22(b), pp 400, 403, 404); *Bay of Plenty Times*, 15 December 1890, p 3, col 4

102. O’Malley notes that the commission’s minutes are not included in the Tauranga Native Land Court minute books, and he had not had access to the *Bay of Plenty Times* for 1891. The latter is now publicly available online, but a search has not elicited any further information on the matter.

TAURANGA MOANA, 1886–2006

2.4



Map 2.4: The Tuingara block

signatories were three of the original owners and the deceased Te Muri’s husband who in the event was not a successor.¹⁰³

Under the Native Land Act 1873, any deed of sale had first to be ‘properly explained’ to the would-be sellers by a licensed interpreter, and then signed before a judge or resident magistrate. Where one of the sellers was a married woman, the transaction required the signatures of both herself and her husband. The judge or resident magistrate and ‘at least one other male adult credible witness’ were then required to sign the deed as witnesses.¹⁰⁴

According to the evidence, the deed of sale for Tuingara was read over and explained to the sellers by the interpreter Lawrence Grace (later to become member of the House of Representatives for Tauranga). One of the two witnesses was Tatara Wirikake, on whose identity we have no information. However, the other witness was merely the resident magistrate’s clerk and it is not clear that the resident magistrate himself was even present. Further, Te Muri had already passed away, some three years earlier, and the deed was signed only by the other three owners and Te Muri’s husband (who was neither an owner nor a designated successor).¹⁰⁵

The 1873 Act and the Native Lands Frauds Prevention Act 1870 both stated that either the trust commissioner or the Native Land Court must confirm the alienation of a Māori land block before it could be deemed valid. The Native Land Court Act 1894 continued this provision. In this instance, Commissioner Roberts duly confirmed the conveyance at a special sitting of the Native Land Court held on 24 August 1897 – almost 17 years after the signing of the deed of sale.¹⁰⁶ However, the doubtful validity of the original deed of purchase and the 17-year gap between the deed and its confirmation point to an overall laxness in the administration of alienations at this time.

2.4 CROWN AND PRIVATE PURCHASES, 1900–08

As we noted earlier, more Tauranga Māori land was purchased in the last decade of the nineteenth century than in any other decade post-1860. But in the decade beginning in

103. Suzanne Woodley, *Matakana Island*, Research Series (Wellington: Waitangi Tribunal, 1993) (doc A8), pp 33, 35–38

104. Native Land Act 1873, no 56, s 85

105. Document A8, pp 33–34

106. *Bay of Plenty Times*, 25 August 1897, p 2, col 5

1900, the alienation slowed to a mere trickle with only two small blocks, totalling 25.17 hectares (or 62 acres), purchased.¹⁰⁷ This sharp fall can be attributed to Carroll's Māori Lands Administration Act in 1900, which we discuss in detail below. But this good fortune for Māori could not last in the face of growing Pākehā agitation over Māori 'landlordism' and pressure for the opening of 'idle' Māori land for settlement. 'Is [it] the desire of the country,' railed William Herries (member for the Bay of Plenty) in 1903, 'that the Natives should live merely as rent receivers . . . to be drones on the surface of the earth and useless?'¹⁰⁸

In 1907, the Ward government commissioned the chief justice, Robert Stout, and the member of Parliament for Eastern Māori, Apirana Ngata, to inquire into native lands and native land tenure, with a view to tabulating which Māori lands could be made available for European settlement and which should be retained by Māori. When Stout and Ngata reported on Tauranga in 1908, they concluded that most of the Māori land in the district should remain in Māori possession, and should be developed.¹⁰⁹ But even before the Stout–Ngata commission could complete its work, the Government was already moving to facilitate the alienation of more Māori land with native land settlement legislation. We now discuss the moves first to tighten and then to loosen the strings on the alienation of Māori land.

2.4.1 The legislative regime

We begin with the Māori Lands Administration Act 1900, which came after a period of political ferment that had begun in the mid-1880s. In 1887, a year after the passing of the Native Land Administration Act in 1886, a national election saw most Māori members who had supported that Act lose their seats and it was repealed in 1888. There then followed the Rees–Carroll commission's inquiry into the native land laws in 1891, and a period of substantial political activity by the Kīngitanga and Kotahitanga movements in the 1890s.

According to its preamble, the 1900 Act was a response to Māori petitioning Parliament for remaining Māori land to be reserved for their use and benefit. The four aims of the Act were that:

- ▶ the land still remaining in Māori ownership (about five million acres nationwide) should be reserved for their use and benefit, so as to protect them from becoming landless;
- ▶ provision should be made for better settlement and utilisation of large areas of Māori land 'at present lying unoccupied and unproductive';
- ▶ Māori should be encouraged and protected 'in efforts of industry and self-help'; and

107. Document T16(a), p 30

108. William Herries, 12 November 1903, NZPD, 1903, vol 127, p 538

109. Robert Stout and Apirana Ngata, 'Native Lands and Native-Land Tenure: Interim Report of Native Land Commission, on Native Lands in the County of Tauranga', 11 June 1908, AJHR, 1908, G-1K, pp 1–2

- provision should be made for the better administration of Māori lands, to prevent ‘useless and expensive dissensions and litigation.’¹¹⁰

As can be seen in the alienation statistics quoted in our previous section, a huge amount of Tauranga Māori land had already been alienated by the time the Act came into force. In terms of area, almost three-quarters of all alienation for the period from 1880 to 2006 had happened by 1900 (see fig 2.4).

The Act provided for the creation of six (later seven) Māori land districts across the country, each with an associated district Māori land council. Tauranga was to be included in the Waiariki District. Each council was to have two to three Māori representatives elected by the owners, out of a total of five to seven members. The other members were to be appointed by the Governor-General and were to include one Māori. The ambiguous numbers left open the question of whether the councils were to have a Māori majority. The quorum for each council was to be a majority of the members, but had to include at least one Māori member.

The Act suspended all Crown purchasing of Māori land, and the councils were to determine how much land Māori needed for their maintenance and support. A papakāinga certificate would then be issued for this land, which would be absolutely inalienable unless it could be exchanged for more suitable land. Any remaining land could be leased for terms of up to 50 years.¹¹¹

Under the Act, the Māori land councils were also given the authority to exercise all powers then possessed by the Native Land Court ‘as to ascertainment of ownership, partition, succession, the definition of relative interests, and the appointment of trustees for Native owners under disability’, but these powers were not to be used unless authorised by the chief judge of the Native Land Court.¹¹² Where a block had more than 10 owners, the powers of the court to constitute those owners a body corporate, under the provisions of the Native Land Court Act 1894, were now extended to the land councils.¹¹³

Like the 1886 Act, the provision for owners to vest land in the land councils was voluntary – despite Rees and Carroll having advocated a compulsory system of vesting in land boards, some years earlier.¹¹⁴ As with the 1886 Act, vesting of land in the councils was low. For instance, in 1902 and 1904 no land at all was vested in the Waiariki District Land Council, while 3277 acres (1326 ha) was vested in 1903.¹¹⁵ Once again, Māori owners were suspicious of what the councils might do with their land. As the Stout–Ngata commission pointed out in 1907, Māori owners ‘suspected that the new policy was only another attempt

110. Māori Lands Administration Act 1900, preamble

111. Donald M Loveridge, *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900 to 1952*, Rangahaua Whānui Series (Wellington: Waitangi Tribunal, 1996), pp 22–25; Nicola Blackburn, ‘Further Nga Potiki Land Alienation and Public Works Takings’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2000) (doc 11), p 41

112. Māori Lands Administration Act 1900, s 9

113. *Ibid*, s 30(1)

114. Loveridge, *Maori Land Councils and Maori Land Boards*, pp 10, 19

115. *Ibid*, p 37

LAND ALIENATION, 1886–2006

2.4.1

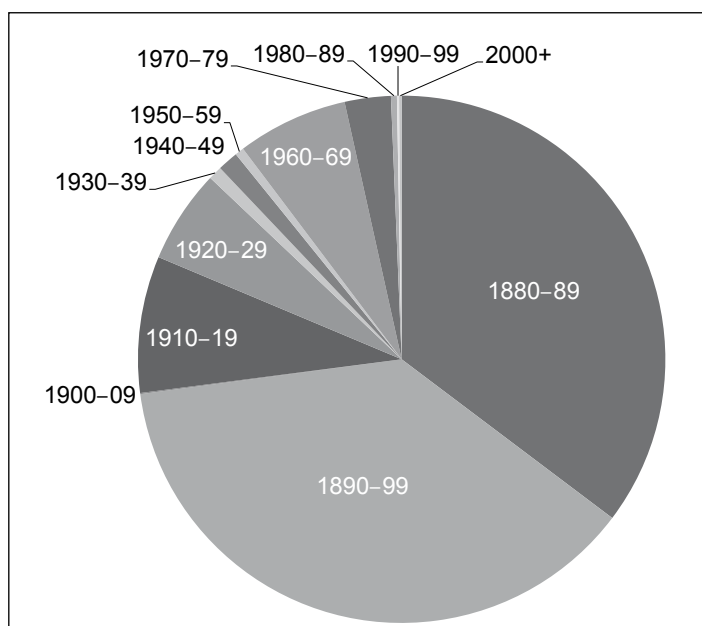


Figure 2.4: Amount of Māori land alienated in the Tauranga district, by decade, from 1880

to sweep into the maw of the State large areas of their rapidly dwindling ancestral lands.¹¹⁶

Stout and Ngata identified four reasons why owners were wary:

- ▶ they objected to being deprived of all authority and management over their ancestral lands;
- ▶ they were not convinced about ‘the stability of legislative enactments’;
- ▶ they had not yet been convinced that ‘expense, delays, and uncertainty attending alienations by direct negotiation’ were a problem; and if such existed, Pākehā would discount for these in the price offered; and
- ▶ they were, in many cases, still absorbed in trying to obtain proper title to their lands through the Native Land Court, and the settlement of those areas considered ‘idle and unproductive’ by Pākehā was ‘for the moment outside the range of their politics’. In other words, ‘the settlement of the country could wait’.¹¹⁷

Loveridge supports the commissioners’ view, arguing that:

Given the long-term loss of control over land which necessarily went with vesting, it should hardly have come as a surprise that many owners would want to wait and see how the Māori Land Council experiment was going to work out before committing themselves.

116. Robert Stout and Apirana Ngata, ‘Native Lands and Native Land Tenure: General Report of Lands Already Dealt with and Covered by Interim Reports’, AJHR, 1907, G-1C, p 6

117. Ibid

Many landowners may also have been wary of the new system because they did not understand how it worked.¹¹⁸

Settler anxiety about Māori ‘landlordism’, arising from the fear that alienation would be restricted to leasing, also played a part in the downfall of the council experiment, leading to the replacement of the Act with the Māori Land Settlement Act in 1905. Under this Act, the Māori land councils were replaced by Māori land boards. The boards had no elected Māori members, but merely three members appointed by the Governor, at least one of whom was to be Māori.¹¹⁹

The Māori Land Settlement Act allowed the Native Minister to compulsorily vest any Māori land that was unused or unsuitable for Māori occupation in a land board, which could administer the land on behalf of the Māori owners. The Act removed all restrictions against alienation by lease (though it retained the 50-year term from the 1900 Act) and permitted the Crown to purchase land (though with stringent conditions to prevent landlessness). The board could, however, under section 8(c), ‘reserve and render inalienable’ any part of the land, whether for the use and occupation of the Māori owners or for ‘papakāingas, burial grounds, eel-pas, fishing-grounds, bird reserves, timber or fuel reserves, or for such other purposes as it may consider expedient’. Any Māori owner who proposed to alienate land was to either retain a papakāinga, or have sufficient other land for a papakāinga, or have ‘an income sufficient for his support’. ‘Sufficient’ land was defined as 25 acres (equivalent to just over 10 hectares) per head of first-class land, 50 acres of second-class land or 100 acres of third-class land.¹²⁰ The reference to other income was, however, an important break with past restrictions that had always involved retaining sufficient *land* for support; now income derived from other sources, such as paid employment, was regarded as sufficient. In addition, before any Crown purchase could be completed, the Governor was to:

ascertain whether any of the Maoris having shares and interests in the block or parcel of land proposed to be acquired have other land sufficient for their maintenance; and if not, then there shall be reserved for the use of such of the said Maoris who have no other land such area of the whole of the block or parcel of land as the Governor thinks sufficient.¹²¹

There was an important concession made to facilitate Crown purchases of Māori land. Under section 20(2), where the Crown had got the consent of a majority of the owners to a sale, it could make payment to the Receiver-General for the interests of a dissenting minority – in effect, a compulsory purchase of their interests.

A second Native Land Settlement Act was enacted in November 1907, following the first reports of the Stout–Ngata commission, to give effect to some of their recommendations

118. Loveridge, *Maori Land Councils and Maori Land Boards*, p 38

119. Māori Land Settlement Act 1905, s2

120. *Ibid*, s 22(1)

121. *Ibid*

and ‘to make further provision for the settlement of the lands belonging to the Native race’.¹²² Under part I of the Act, any land that the commissioners had reported on, and that was not in their estimation required for Māori use, could be vested in a Māori land board for lease or sale. The board was then to divide the land into two portions about equal, one for sale and the other portion for leasing for up to 50 years.¹²³ In a later report, the Stout–Ngata commission described this section as a ‘two-edged sword’ as it would prevent owners from selling all their surplus land should they want to, and compel owners to sell half of any block they might wish to lease, thus depriving owners of their rights. They suggested that ‘the full effect of this provision was not clearly seen by the Legislature, else we feel sure it would not have been enacted into law’, and they hoped that Parliament would amend that provision.¹²⁴

Part II of the 1907 Act dealt with ‘Land for Occupation by Maoris’, including the land the commissioners had recommended designating as reserved for Māori. The consent of the Governor in Council was required for any person to acquire by purchase, lease, license, mortgage, or charge, any interest in any such reserved land.¹²⁵ The Māori land boards were to act as agents for the Māori owners in this regard.

In their final report in 1909, the Stout–Ngata commission stressed the need for ‘prompt and efficient’ administration of land and a consolidation of the ‘more than sixty different statutes’ pertaining to native land.¹²⁶ This consolidation was effected by the Native Land Act 1909 which was drafted by the jurist John William Salmond, with some assistance from Ngata and Carroll. We examine its key provisions in section 2.5.

2.4.2 The administration of alienation

During 1906, the seven existing Māori land councils were converted into Māori land boards. Tauranga Māori land was administered by the Waiariki District Māori Land Board, which was established on 11 August 1906 and sat in Rotorua, and later in Hamilton.¹²⁷ As we noted above, 3277 acres of land had been vested in the Waiariki Māori Land Council in 1903. In 1909 a further 240 acres were vested.¹²⁸

Here we discuss the Stout–Ngata commission’s examination of, and recommendations for, Tauranga Māori land. We note first that their reports did not cover all Tauranga lands in our inquiry district. In their interim report of 28 March 1908 and further report of 11 June 1908 they commented specifically on ‘Native Lands in the County of Tauranga’. The first of

122. Native Land Settlement Act 1907, preamble

123. Ibid, ss 11(1)–28

124. Robert Stout and Apirana Ngata, ‘Native Lands and Native Land Tenure: Report of Native Land Commission on the Operation of Section 11 of “The Native Land Settlement Act, 1907”’, 11 March 1908, AJHR, 1908, G-1F, p 1

125. Native Land Settlement Act 1907, s 54(1)

126. AJHR, 1909, G-1G, p 6

127. Loveridge, *Maori Land Councils and Maori Land Boards*, p 63

128. Ibid, p 37

2.4.2

these reports dealt with the southern part of the county and also included lands outside the inquiry district around Te Puke and Maketū.¹²⁹ The second report focused on the central part of the county, an area of 42,970 acres (about 17,390 hectares). It represented the fruits of an investigation carried out over three days by Stout alone, his fellow commissioner having remained in Auckland to catch up on paperwork.¹³⁰ Stout and Ngata promised to report on the northern part of the county ‘when we have met the Maoris interested, who are connected with the Ngatihaua Maoris resident in or near Waharoa.’¹³¹ But they did not do so. Further, as Stokes noted, their reports completely omitted Rangiwaea and Motuhua islands, and considered only two of the Matakana blocks. Their consideration of reserve lands in the Te Puna–Katikati and confiscated blocks was also limited.¹³² The commission did, however, note the imbalance between Māori and settler landholding in Tauranga County by this time, estimating that – despite similar population figures – Europeans now owned at least three times as much land as Māori. The area left to Māori, they thought, probably amounted to less than 45 acres a head.¹³³ For central Tauranga County, their findings were as follows:¹³⁴

Category	acres	roods	perches
1. Land leased	1444	0	0
2. Land reserved for Māori occupation	26,037	1	36
3. Land to be dealt with under part I of the Act for general settlement			
For leasing	9452	1	8
For sale	6037	0	24
Total	42,970	3	28

Table 2.1: Findings on Māori land in central Tauranga County, Stout–Ngata commission, 1908

If we include the land to be leased as remaining in Māori ownership, Stout and Ngata had thus recommended that over 85 per cent of Māori land remaining in the central part of Tauranga County should be retained in Māori ownership.

We have already noted the legislative provisions relating to sufficiency of land. Commenting on those provisions, the president of the Waiariki Māori Land Board wrote in 1908:

The question of the sufficiency of other lands is often a very difficult matter to decide. It frequently happens that a Lessor, having only a small interest in the Block leased, cannot be

129. Robert Stout and Apirana Ngata, ‘Native Lands and Native-Land Tenure: Interim Report of Native Land Commission, on Native Lands in the County of Tauranga’, 28 March 1908, AJHR, 1908, G-1D, p 1

130. Robert Stout and Apirana Ngata, ‘Native Lands and Native Land Tenure: Interim Report of Native Land Commission, on Native Lands in the County of Tauranga’, 11 June 1908, AJHR, 1908, G-1K, p 1; ‘Native Lands Commission Sitting at Tauranga’, *Bay of Plenty Times*, 6 May 1908, p 2, col 6; doc A38(d), pp 1208–1240

131. AJHR, 1909, G-1G, p 1

132. Evelyn Stokes, ‘The Allocation of Reserves for Māori in the Tauranga Confiscated Lands’, 2 vols (commissioned research report, Wellington: Waitangi Tribunal, 1997) (doc A57), vol 1, pp 290–292

133. AJHR, 1908, G-1K, p 1

134. *Ibid*, p 2. There are 40 perches in a rood, and four roods in an acre.

shown to have sufficient or any other land. The cost of cutting out and surveying his interest would be more than the interest itself is worth. If it were excluded from the lease, the owner would not occupy it and the Lessee would probably have the use of it without paying rent. In such a case the Board generally deals with the matter in the manner which it considers is most advantageous to the owner.¹³⁵

We comment on two examples of land leasing in Tauranga in our case study below.

2.4.3 The quantum of alienation

In view of the tiny amount of Māori land alienated in the period from 1900 to 1909 – 25.17 hectares (just over 62 acres) – we can be very brief. Of this area, 20.92 hectares (a little over 51.5 acres) was purchased privately and the remainder, Whakamarama 1 (4.25 hectares, or around 10.5 acres), was a public works taking.¹³⁶ We have no information on the two private purchases completed in this period.

In addition, two blocks of land, Hikutawatawa and Te Kāramuramu, were leased with the approval of the Waiariki Māori Land Council (later the Waiariki Board). We review them here as case studies of alienation, though they were not finally sold until 1910–12, when this became allowed by the Native Land Act 1909.

2.4.4 Case study – Hikutawatawa and Te Kāramuramu

As far as we are aware, the Hikutawatawa and Te Kāramuramu blocks are the only instances of vesting and leasing of land in Tauranga from 1900 to 1909, but they involved a sizeable area. Together, both blocks total 1386 acres (around 561 hectares). They are located in the Pāpāmoa area, between the even larger Pāpāmoa and Ōtawa–Waitaha blocks previously purchased by the Crown and discussed above.

Crown grants for Hikutawatawa and Te Kāramuramu were issued on 15 December 1888, though validated back to 2 June 1879 when it appears that title was decided by the commissioner, John Wilson. Both blocks had restrictions placed on them when the Crown grants were issued, stipulating that the land was not alienable by sale, mortgage, or lease for a longer period than 21 years except with the consent of the Governor. Nicola Blackburn's research report on Ngā Pōtiki land alienation says that these restrictions were enforced, at least initially.¹³⁷ Although Ngā Pōtiki believe that both blocks lie within their rohe, they say that the list of owners drawn up by the commissioners did not include any members of their hapū. Rather, those named appear to have been primarily Ngāi Tūkairangi. Several

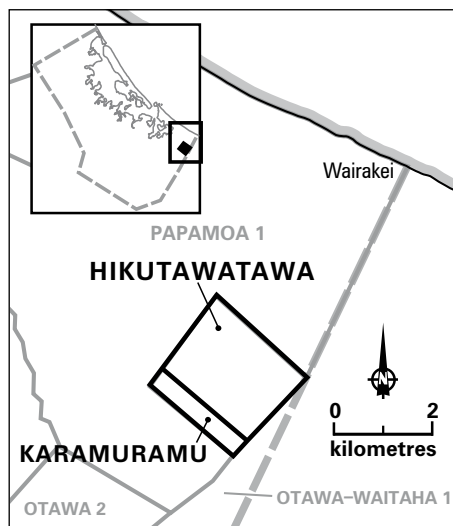
135. James W Browne to native land commissioners, 19 March 1908 (Nicola Blackburn, 'Supporting Documents to Document 11', April 2000 (doc 11(a)), p 156)

136. Document 116(a), pp 30–31

137. Document 11, pp 35, 40; doc A57, pp 87–89

TAURANGA MOANA, 1886–2006

2.4.4



Map 2.5: Hikutawatawa and Kāramuramu blocks

researchers have noted the difficulties in establishing ownership of the area before raupatu, and this is compounded by the tendency of early Government documents to label all Tauranga tangata whenua as ‘Ngaiterangi’.¹³⁸

In 1882, six years before the issue of Crown grants, the owners had leased the land to William Kelly, a Tauranga storekeeper, for 21 years. In 1890, however, Kelly transferred the leases to three Te Puke settlers – two of them farmers and the third a flax manufacturer – and the land was mortgaged. Whether the leases continued until their expiry date in 1903 is uncertain.¹³⁹

Under the 1900 Act the land then became vested in the Waiariki District Māori Land Council and, in 1904, two of the owners in Kāramuramu wrote to the council saying that they did not want to lease their shares but preferred to keep them ‘hei whenua tuturu kainga mo maua’ (to be a true home for the two of us).¹⁴⁰ It is not clear whether they received any response, but in 1905 the council recommended the lease of both blocks to another Te Puke farmer, Daniel McEwen.¹⁴¹ Judge Jackson Palmer, president of the land council, certified that the 19 lessors in each block had other lands for their ‘maintenance and support or for the purposes of a papakainga’, but gave no details.¹⁴² A note on file records that the consent of the Governor was ‘not required in the case of Te Kāramuramu the area being 300 ac[re]s & res[trictio]ns not prohibiting leasing for 21 yrs.’ It was deemed necessary, however, to apply to the Governor for an Order in Council in the case of Hikutawatawa, to exempt the land from section 117 of the Native Land Court Act 1894 – a clause stipulating that, with some few exceptions, Māori land could be alienated only to the Crown. One of those exceptions was where a judge could vouch that there had been a prior *bona fide* lease. The order was granted in November 1905, allowing lease of the block for 21 years.¹⁴³ But McEwen had wanted right of renewal on *both* blocks for a further 21 years, and the Waiariki Council

138. Document 11, pp 32, 36–37; doc A57, pp 93, 131

139. Document 11, pp 39, 41; particulars of the title to Hikutawatawa block, 25 October 1905 (doc 11(a), p 45)

140. Heni Rawiri and Mere Raiha Pakihana, Māori land administration paper memorandum, 19 November 1904 (doc 11(a), p 101)

141. Document 11, pp 41–42; doc 11(a), pp 44–45

142. Document 11, p 42; certificate in the absence of a papakainga certificate, Te Kāramuramu and Hikutawatawa blocks, 26 September 1905 (doc 11(a), pp 37–40)

143. Memorandum from WH Herries, 6 October 1905 (doc 11(a)), pp 26; Alex Willis, ‘Excepting Land from the Operation of Section 117 of “The Native Land Court Act, 1894”’, 27 November 1905, *New Zealand Gazette*, 1905, no 107, p 2820 (doc 11(a), p 28)

had supported this.¹⁴⁴ In December, a second Order in Council was sought and issued for Hikutawatawa, granting the right of extension. A similar order followed for Te Kāramuramu in February 1906.¹⁴⁵ Later that year, three of the owners in Hikutawatawa sought to have their shares cut out, but no partition was made at that time.¹⁴⁶

There were no further developments to 1909, but for the sake of completeness we briefly outline the ensuing fate of these two blocks. Following the lifting of all alienation restrictions under the 1909 Native Land Act, both blocks were partitioned. Hikutawatawa was divided in three, and Te Kāramuramu in two. Preparations were then made to lease Hikutawatawa 1 to Austin Loder of Tauranga in 1910. The lease, administered by the Waiariki Board, also gave Loder right of purchase at £5 per acre. Loder's lease was transferred in 1911 to Michael Stanton of Te Puke, and in 1912 Stanton took up the option to purchase the land, eventually on-selling it to McEwen.¹⁴⁷

Meanwhile, McEwen had learned that an owner who had interests in both Hikutawatawa and Kāramuramu was ill and wanted to travel to Napier. He sought the Waiariki Board's approval to advance her some money to cover the cost, which would then be offset against the value of her interest in the land.¹⁴⁸ McEwen also applied to purchase other land in the blocks. In respect of Hikutawatawa 3, the meeting of owners passed the resolution by a slim majority: the vote was evenly split in terms of numbers, but those in favour had a larger shareholding. Between 1910 and 1912, McEwen eventually acquired all five blocks of land.¹⁴⁹

Although it was the 1909 Act's removal of protective measures that finally permitted the sales, we have no doubt that the prior vesting and leasing of these lands facilitated their alienation.

2.5 CROWN AND PRIVATE PURCHASES, 1909–30

The two decades from 1909 to 1930 saw a considerable increase in alienation of the dwindling remainder of Māori land in the Tauranga district. Compared to the 25.17 hectares (62.2 acres) of the preceding decade, a further 5220 hectares (12,899 acres) of remaining Māori land was alienated between 1910 and 1929. This accelerated alienation was a direct consequence of the enactment of the Native Land Act in 1909. As recommended by the Stout–Ngata commission, the Act was a major consolidation of existing legislation. Its framework for the alienation and administration of Māori land lasted for most of the twentieth century:

144. Document 11, pp 41–42; particulars of proposed lease(s) to Daniel James McEwen, as approved by Waiariki District Māori Land Council, Te Kāramuramu and Hikutawatawa blocks (doc 11(a), pp 24–25)

145. *New Zealand Gazette* excerpts (doc 11(a), pp 7, 12)

146. Document 11, pp 42–43; Maketū Native Land Court minute book (doc 11(a), pp 150–151)

147. Document 11, pp 43–44

148. DJ McEwen to president, Waiariki Māori Land Board, 19 July 1910 (doc 11(a), p 77)

149. Document 11, pp 46–47

while amended frequently, its key provisions remained in force until the enactment of Te Ture Whenua Māori Act in 1993. The acceleration of the alienation rate following the 1909 Act formed a major concern in the claims in the Tauranga Moana inquiry district.

2.5.1 The legislative regime

This section discusses the provisions for alienation and administration of Māori land in the Native Land Act 1909, the Native Land Amendment Act of 1913 and, more briefly, notes the functions of the Native Trustee under the Native Trustee Act 1920.

The Native Land Act of 1909 instituted a blanket removal of all alienation restrictions on titles for Māori land:

All prohibitions or restrictions on the alienation of land by a Native, or on the alienation of Native land, which before the commencement of this Act have been imposed by any Crown grant, certificate of title, order of the Native Land Court, or other instrument of title, or by any Act, are hereby removed, and shall, with respect to any alienation made after the commencement of this Act, be of no force or effect.¹⁵⁰

All Māori land could be alienated ‘in the same manner as if it was European land.’¹⁵¹ This was a particularly significant provision given the already meagre land-base of Tauranga iwi and hapū, and left vulnerable many of the reserves in the confiscated area in Tauranga, lands of special significance, which had previously been protected by alienation restrictions. Those restrictions were now waived for both Crown and private purchases.¹⁵²

Three clauses served to render certain documents valid even where there had been irregularities. At section 37(2), the Act stipulated that no order made by the Native Land Court or the Appellate Court could be deemed invalid on account of irregularities, errors, or defects apparent either in the order itself or in the court process that had given rise to it – ‘even though by reason of that error, irregularity, or defect the order was made without or in excess of jurisdiction.’¹⁵³ A similar clause applied to alienations confirmed by land boards, where the alienation related to land controlled by a body corporate, such as an incorporation.¹⁵⁴ Where an owners’ meeting had passed a resolution to alienate land, and the alienation was then confirmed by a land board, the provision was slightly different: the Act stipulated that the resultant instrument of alienation could not be invalidated by any breach or non-observance before the confirmation, or by ‘any repugnancy between the terms of the resolution and the terms of the instrument of alienation,’ except ‘as against a person guilty of

150. Native Land Act 1909, s 207(1)

151. Ibid, s 207(2)

152. Section 360 of the Act specifically stated that the removal of protections also applied to Crown purchases.

153. Native Land Act 1909, s 37(2)

154. Native Land Act 1909, s 337(4)

fraud.¹⁵⁵ We shall look further at these three surprising provisions, in relation to the Crown's Treaty obligations, in our findings at the end of this chapter.

To facilitate purchase of land by the Crown, the Act constituted a Native Land Purchase Board, empowered to purchase either directly from owners or from the Māori land boards, on condition that it did not pay less than the land's assessed value and did not render any Māori landless by the purchase.¹⁵⁶

It was the 1909 Act, too, that first introduced the concept of native land being formally 'Europeanised'. Section 208 stated:

If any Native freehold land is owned in severalty and beneficially by a Native for a legal estate in fee-simple, the Native Appellate Court may, if it thinks fit, on the application of that Native, make an order that the land shall thereafter be held by him as European land, and thereupon the land shall cease to be Native land, and shall at all times thereafter and for all purposes be deemed to be European land accordingly.¹⁵⁷

Despite the removal of all alienation restrictions on titles, some protective measures were included in the Act. Section 217 stated that 'no alienation of Native land by a Native shall have any force or effect until and unless it has been confirmed by a Maori Land Board or the Native Land Court'.¹⁵⁸ Moreover, application for confirmation had to be made within six months of an instrument of alienation's execution.

In confirming an alienation, the board had to be satisfied that:

- ▶ no owner would become landless if the alienation went ahead – a 'landless Native' being defined in the Act as one who had 'beneficial interests in Native freehold land . . . insufficient for his adequate maintenance';¹⁵⁹
- ▶ an alienation should not be 'contrary to equity or good faith';¹⁶⁰
- ▶ the consideration for the alienation was adequate;¹⁶¹
- ▶ the purchaser, in acquiring the native land, should not thereby exceed a total landholding of 3000 acres, whether solely or jointly with others;¹⁶²
- ▶ the alienation should be not in breach of any trust relating to the land;¹⁶³ and
- ▶ the alienation should not be otherwise prohibited by law.¹⁶⁴

The Native Land Court was also able to prevent landlessness by partitioning the land so that an owner could retain his or her share. Despite the apparent concern to prevent

155. Ibid, s 356(12)

156. Ibid, ss 361–362, 366, 372–373

157. Ibid, s 208

158. Ibid, s 217

159. Ibid, ss 2, 220(1)(c)

160. Ibid, s 220(1)(b)

161. Ibid, s 220(1)(d)

162. Ibid, s 193(1)

163. Ibid, s 220(1)(g)

164. Ibid, s 220(1)(h)

landlessness, however, we note that no guidelines were given about what might constitute a minimum area per head. The 1905 Act had specified the amount of land required for the ‘adequate maintenance’ of Māori, but that Act was officially repealed by the 1909 Act: its provisions no longer applied.¹⁶⁵ The onus was now on the purchaser to provide the board with evidence that the alienating owners would still have sufficient land, but it is not clear what criteria the board used for assessing the information provided.¹⁶⁶ The application of the landlessness provisions by the Waiariki District Māori Land Board to Tauranga Māori land is discussed, with examples, in our next section.

Under the 1909 Act, any land with more than 10 owners could be sold following a resolution by a meeting of the assembled owners. On receiving an application from one party to the proposed alienation, the district land board concerned was to summon an owners’ meeting, though a meeting was not to be invalidated by lack of notification.¹⁶⁷ That said, if it appeared too difficult to call an owners’ meeting and get a resolution, and if the board deemed the alienation to be ‘in the public interest and in the interests of the Native owners,’ it could consent to the alienation merely on its own resolution.¹⁶⁸ Such ‘precedent consent,’ however, did not obviate the need for the alienation to go through the further step of being confirmed by the board.¹⁶⁹ The only difference was that where alienations were by precedent consent of the board, 18 months was allowed for lodging the application for confirmation, as against only six months where the application resulted from a resolution passed by an owners’ meeting.¹⁷⁰

Where an owners’ meeting was called, a minimum of five owners had to be present, or represented by proxy, in order to constitute a quorum¹⁷¹ – even though the succession rules had resulted over the years in a great multiplication of shareholdings in many blocks of land. To carry a resolution, those voting in favour together needed to own more shares in the land, in total, than those voting against.¹⁷² In these circumstances, a small minority of the total number of owners, owning interests in only part of the land, could potentially alienate the whole block. Owners voting against the resolution could sign a memorial of dissent, but this did not provide an effective means of halting proposed alienations. The only power to confirm or disallow resolutions of owners was given to the Māori land boards.

Despite the comprehensive nature of the 1909 Act, and its apparently favourable conditions for the acquisition of Māori land, it was significantly amended in 1913, soon after the election of a Reform government led by William Massey. Massey’s government drew

165. Native Land Act 1909, s 37(2), sch

166. Tom Bennion, *The Maori Land Court and Land Boards, 1909 to 1952*, Rangahaua Whānui Series (Wellington: Waitangi Tribunal, 1997), p 29

167. Native Land Act 1909, s 341(3)

168. *Ibid*, s 209(3)

169. *Ibid*, s 209(6)

170. *Ibid*, ss 209(7), 218(1)

171. *Ibid*, s 342(5)

172. *Ibid*, s 343

much of its support from North Island Pākehā farmers keen to extend their landholdings, and quickly gave effect to their demands for the freehold acquisition of ‘idle’ Māori land.¹⁷³ The Native Minister was William Herries, member of Parliament for the Bay of Plenty and Tauranga, whose views on ‘landlordism’ we cited earlier. According to Stokes, Herries considered that the means of ‘civilising’ Māori was to ‘push for individualised land titles’. Indeed he had already made his opinion on the matter plain in 1903:

History shows us that the individualisation of land is the foundation of every advance in civilisation . . . A white man with no land does not starve . . . I believe it is the communistic system that has destroyed them [Maori], and that is still sapping their vital energies at the present day.¹⁷⁴

It is perhaps not surprising that a Minister with such strong views should introduce an amendment that substantially modified the protective provisions in the 1909 Act, and effectively merged the operation of the Māori land boards with that of the Native Land Court. The 1913 Native Land Amendment Act reduced the members of Māori land boards to just two. One member was to be the land court judge appointed to the corresponding native land district; the other was to be the registrar of the court for the same district.¹⁷⁵ This effectively removed Māori representation: there were then no land court judges or registrars who were Māori. In addition, the registrar was to act as the board’s administrative officer.¹⁷⁶ Furthermore, judges presiding over boards were to inform the Native Minister what native freehold lands fit for settlement or suitable for partition in their districts were not actually being used by their Māori owners.¹⁷⁷ These provisions are significant. They created a potential conflict of interest for judges – a matter we shall discuss further in our analysis and findings at the end of this chapter. Effectively, the judges administered what protections there were for Māori land, and were also required to scout for available Māori land for further European settlement. The duality of this role continued throughout the board’s operation, and was carried over into the administration of the Māori Trustee later in the twentieth century, with a similar potential for conflict of interest.

The 1913 amendment Act further changed the landlessness provisions in the 1909 Act by adding a clause which discounted the need to retain any land that was ‘not, having regard to all the circumstances, likely to be a material means of support’. The clause also required an owner’s other means of support to be taken into account ‘where the Native alienating is qualified to pursue some avocation, trade, or profession, or is otherwise sufficiently

173. Bennion, *The Maori Land Court and Land Boards*, pp 8–10

174. William Herries, 12 November 1903, NZPD, 1903, vol 127, p 539 (Evelyn Stokes, *A History of Tauranga County* (Palmerston North: Dunmore Press, 1980), p 314)

175. Native Land Amendment Act 1913, s 23(1)

176. *Ibid*, s 24

177. *Ibid*, s 44

provided with a means of livelihood.¹⁷⁸ This provision tended to shift the emphasis of the landlessness provisions away from actual land ownership. We investigate the influence of this and other provisions for alienation in our next section.

Finally, in this section, we briefly note the creation, in 1920, of the position of Native Trustee, under legislation that had the stated intention of making ‘Better Provision for the Administration of Native Reserves.’¹⁷⁹ Loveridge comments that it was a move that had become necessary because of shortcomings in the Public Trustee’s performance.¹⁸⁰ The board of the Native Trust Office was to consist of the Native Minister; one other member of the Executive Council ‘being a Native or half-caste’, to be appointed by the Governor-General; the Native Trustee himself; the under-secretary of Native Affairs; the under-secretary of Lands; and one other person to be appointed by the Governor-General.¹⁸¹ All native reserves that had been under the control of the Public Trustee were transferred to and vested in the Native Trustee.¹⁸² A trustee account was also established to hold money in trust for beneficiaries.¹⁸³ The trustee could hold in trust any native land or other property for ‘any person or persons of the Native race’ that may be transferred by the owners, with the consent of the Governor in Council.¹⁸⁴ Loveridge notes that Māori land board funds vested in the trustee became available as loans for Māori landowners.¹⁸⁵ Although initially set up to administer native reserves, the office of the trustee would expand over the course of the twentieth century, eventually supplanting the role of the land boards after 1952.

2.5.2 The administration of alienation

In the years from 1909 to 1930, district Māori land boards were key Crown agencies in terms of administering and alienating Māori lands. Indeed, Tribunal-commissioned researcher Grant Young comments that the land boards, together with the Native Land Court, ‘governed the flow of land out of Maori ownership in this period.’¹⁸⁶ As we noted above, board composition was altered significantly by the Native Land Amendment Act 1913, which brought them under the control of Native Land Court judges and registrars.

In his report on Ngāti Hē lands in the twentieth century, Young argues that the process of alienation administered by the Māori land boards appeared to give the boards a key role in protecting Māori land from alienation. He concludes, however, that in practice it did not,

178. Native Land Amendment Act 1913, s 91

179. Native Trustee Act 1920, long title

180. Loveridge, *Maori Land Councils and Maori Land Boards*, p 137

181. Native Trustee Act 1920, s 10

182. *Ibid*, s 13

183. *Ibid*, s 16

184. *Ibid*, s 24

185. Loveridge, *Maori Land Councils and Maori Land Boards*, p 138

186. Grant Young, ‘The Alienation by Sale of the Hapu Estate of Ngati He at Tauranga Moana, 2 vols (commissioned research report, Wellington: Waitangi Tribunal, 2001), vol 2 (doc M3), pp 6, 13

as ‘a result of a combination of political and administrative factors’.¹⁸⁷ He adds that ‘[i]n procedural terms, few issues arise out of the alienation of these blocks’, but he argues that there are two areas for general concern regarding the lack of hapū involvement: namely, quorum requirements and vendors’ declarations supporting the alienations. These declarations generally comprised statements to the effect that the vendors did not need the land – for example because they had other land, or lived elsewhere, or had employment sufficient to support them, or needed the money from the sale to develop land elsewhere. Such documents were usually signed by a solicitor and submitted on behalf of the vendors. However, Young’s research indicates that the solicitor for the vendor was often also the solicitor for the purchaser, and that it was generally the solicitor who put together the whole application for confirmation.¹⁸⁸

Fiona Hamilton, in a report on Ngāi Te Ahi lands, likewise concludes that the legislation did not protect Māori land from alienation and she raises particular concerns about the application of the landlessness provisions.¹⁸⁹ As we noted earlier, legislative changes to the definition of landlessness had removed reference to any minimum amount of land needed and had introduced a requirement to consider other means of support as well. This left the land boards with considerable scope to approve alienations of increasingly scarce Māori land. Indeed, Hamilton could find no instance, in the period to 1930, of a sale of Ngāi Te Ahi land being blocked for causing landlessness.¹⁹⁰

Taiawa Kuka, speaking on behalf of the Matakana hapū, was similarly doubtful about the effectiveness of the landlessness provisions:

Landlessness was supposed to be an important factor in the determinations of the Maori Land Board. However, in these cases it seems to have been irrelevant or only a minor consideration. It certainly did not prevent alienations. The whole concept of landlessness was flawed though. The Board considered that income from wages elsewhere compensated for the loss of land. This did not take into account the effect of the alienations on the rest of the hapu or future generations.

Therefore, we believe the Maori Land Board process was designed to assist with the alienation of lands rather than protect the interests of the hapu and owners.¹⁹¹

As Ms Kuka points out, the flawed approach to assessing landlessness affected not only the alienating owners, who may have had land elsewhere or an adequate income for their personal maintenance, but it also affected the wider hapū’s ahi kā and tūrangawaewae, both at the time and in generations yet to come. In Hamilton’s words, ‘the individual Maori land owner was the focus of protective legislation, rather than the hapu and its collective land

187. Ibid, p 15

188. Ibid, pp 38–40

189. Document G1, pp 108, 113–114

190. Ibid, p 108

191. Taiawa Kuka, brief of evidence, 25 May 2006 (doc Q48), paras 50–51

2.5.3

base.¹⁹² That said, the observations made by Hamilton and Kuka suggest that, even at the individual level, the landlessness provisions were not particularly effective. Further, it must not be forgotten that with each succeeding generation and a growing Māori population, the number of owners in a block generally increased – with a corresponding decrease in the individual shareholding available to each owner. As years went by, there was thus a growing likelihood that an individual's share would not be regarded as sufficient to offer a viable means of support.

Overall, the rate of alienation – nationwide and in the Tauranga area – increased markedly from 1910 to 1930. In Loveridge's view, that increase was 'due in large measure to the efficient system of alienation presided over [by] the Maori Land Boards.'¹⁹³ We discuss the quantum of alienation in Tauranga in our next section, and we follow that with case studies illustrating the Waiariki Board's administration of such alienations.

2.5.3 The quantum of alienation

Throughout the country, there was increasing pressure on the Government to open up yet more land for settlers. The legislation of 1909, followed by the amending legislation of 1913, was the response. In particular, there was pressure for good farming land. This was certainly true along the Bay of Plenty coast. In neighbouring eastern Bay of Plenty, for example, farmers expressed outrage to William Herries that 'certain of the Natives near Waimana had started to carry out improvements along the river banks with the idea of retaining the land'. They went on: 'the settlers considered it would be an injustice that the only pieces of flat land available should be monopolised [by Māori] and the settlers be driven to the hill tops whereon to establish their homes.'¹⁹⁴

In the Tauranga district, there was a clear jump in alienations following the legislative changes, although Belgrave et al's data, being divided by decades, does not allow us to assess the relative impact of the 1909 Act against its amending legislation in 1913 (see fig 2.5).

From 1910 to 1919, 3096.57 hectares (7652 acres) of Māori land were alienated, and from 1920 to 1929, a further 2123.50 hectares (5247 acres).¹⁹⁵ In those two decades almost two-thirds (3379.53 hectares or 8350 acres) of the total area alienated was purchased privately, compared with 1554.45 hectares (3841 acres) purchased by the Crown. Acquisition of land for public purposes accounted for an additional 252.55 hectares (or 624 acres). The total areas involved may not seem large in comparison with the huge area alienated in the two decades before the turn of the century; but they were large in terms of the remaining Tauranga Māori estate and their now rapidly increasing population.

192. Document G1, p 112

193. Loveridge, *Maori Land Councils and Maori Land Boards*, p 109

194. Notes of a meeting at Waimana, 11 February 1913, MA 28 31/29 (Bennion, *The Maori Land Court and Land Boards*, p 9)

195. Document T16(a), p 31

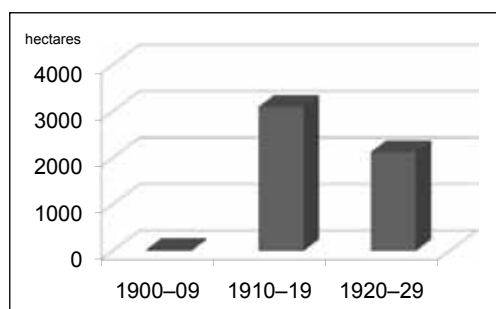


Figure 2.5: Amount of Māori land alienated in the Tauranga district, by decade, 1900–29

Not included in the above figures is 34.40 hectares (85 acres) which Belgrave et al list as having been ‘Europeanised’ from 1910 to 1929.¹⁹⁶ We assume this is a reference to land for which a status declaration had been issued under section 208 of the 1909 Act. Such land may not necessarily have been immediately alienated out of Māori ownership, but it did pass out of the land court’s administration. Europeanisation of

Māori land followed a prevailing Pākehā belief that it was better for land to be in European title as that fitted better with European ways of doing business. Certainly when Māori were seeking finance it was easier to use land as collateral if it was in European title – a matter which has implications for land development, as we discuss in our next chapter. However, it also made the land easier to alienate because it removed the few existing protective provisions on Māori land such as the need for meetings of owners and land board approval.

2.5.4 Case studies of alienation

In this section, we discuss several examples of alienations of Tauranga Māori land to the Crown and private purchasers that illustrate the workings of the Acts of 1909 and 1913 in the period from 1909 to 1930. For instance, the cases of lots 210 and 211 in the parish of Te Puna illustrate the confusion generated by the issue of Crown grants and the Native Land Court’s attempts to confer legitimacy on them retroactively. The alienation of Ōpou, on Matakana Island, highlights the effects of the Waiariki District Māori Land Board’s administration in Tauranga. Finally, the case of the Ngāpeke 1 blocks shows how absentee owners were able to alienate their interests in the land without recourse to the hapū living in Tauranga. The lease of the land in Ngāpeke 1 – which required the owners to lift the alienation restrictions by making a declaration to the effect that they did not need the land – facilitated its eventual sale.

In most of these cases any consideration of the owners’ landlessness was over-ridden by statements relating primarily to their financial circumstances, and no account was taken of the importance of maintaining links to ancestral lands. We note here too that the repeal of the 1905 Māori Land Settlement Act – which had specified exactly how much land each man, woman, and child required for their needs – in favour of the undefined stipulation of sufficiency for their needs in the 1909 and 1913 Acts, enabled the boards to fudge the issue of whether owners were actually being rendered landless.

¹⁹⁶. Ibid

(1) Parish of Te Puna, lots 210 and 211

Lots 210 and 211 were among the reserves awarded to Tauranga Māori following the Te Puna–Katikati purchase. Their reserve status was clearly not respected when they were sold, as we recount below.

Lot 210, of a little over 50 acres (20 ha), was awarded to just one owner – Penetaka Tuaia. In 1896, the Native Land Court made a succession order for lot 210 for eight successors, two of whose interests were succeeded to in turn. In November 1915 five of the then owners signed a deed to sell lot 210 to Thomas Plummer for £250, in line with the Government valuation. While arrangements were being made for the sale, it was discovered that no Crown grant had in fact been awarded to Penetaka and that the land was technically still Crown land. Despite objections from other owners, a court order to issue a Crown grant to be antevested from 1 January 1870 in Penetaka was made in 1917. The Solicitor General then declared this to be *ultra vires*, that is, beyond the legal power or authority of the court.¹⁹⁷ To resolve the matter, the Minister of Māori Affairs, Herries, agreed to a special clause being included in the Native Land Amendment and Native Land Claims Adjustment Act 1918, which would enable the grant to be issued. At the same time, the clause validated the sale to Plummer on condition that he produce a certificate from the Waiariki District Māori Land Board that all purchase money had been paid. As Bassett and Kay point out, validating the sale went beyond what Judge Wilson had determined.¹⁹⁸ In sum, the Crown had decided what the end result should be and passed legislation to ensure it would happen, irrespective of whether correct process had been followed. In this respect, the Crown's actions followed the spirit of section 37(2) of the Native Land Act 1909 which, as its marginal note states, had been designed to ensure that the 'validity of [court] orders' should not be 'affected by irregularities of procedure.' Irrespective of any Treaty considerations, we have to say that such a path seems fraught with moral hazard.

Bassett and Kay maintain that the legislation's passing deprived other would-be successors of the opportunity to argue their case in court:

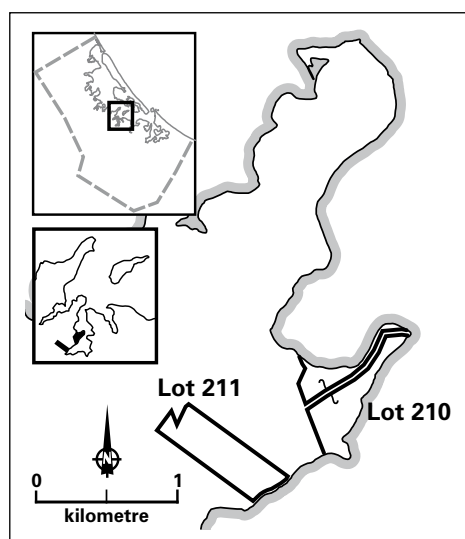
By granting a petition made by the solicitors who acted for the purchaser, the Crown passed legislation which effectively declared who were the rightful successors to Penetaka Tuaia. Those people who had agreed to sell the land were therefore said to be the rightful owners of the land, without the benefit of a full investigation by the Native Land Court, or the opportunity for other claimants to present their case.¹⁹⁹

However, Thomas Henry Wilson, who as the local Native Land Court judge would likely have presided over such an investigation, was already aware of the block's succession his-

197. Heather Bassett and Richard Kay, 'Huharua, Pukewhanake and Nga Kuri a Whare' (commissioned research report, Wellington: Waitangi Tribunal, 1996) (doc A45), pp 12–14

198. Native Land Amendment and Native Land Claims Adjustment Act 1918, s10; doc A45, p 15

199. Document A45, p 15



Map 2.6: Parish of Te Puna, lots 210 and 211

tory, and had recorded that he could see ‘no reason for setting aside the names produced by Mr Tudhope’, Plummer’s solicitor. It seems unlikely, therefore, that a court hearing would have produced a substantially different result. Nevertheless, since he cited one factor influencing his view as ‘the Board believing in the good faith of these persons’, it does perhaps raise issues about what Bennion has termed ‘the fudging of roles’: Wilson, as judge of the Waiariki Land Court, was also president of the Waiariki Board.²⁰⁰

Lot 211, initially estimated at 50 acres, was originally awarded to 22 owners. In 1920, the block was alienated to William Francis, a Tauranga farmer, after a unanimous resolution at an owners’ meeting. However, only three owners were present at the meeting, each of whom had a $\frac{1}{14}$ th share in the block. Three others were represented by proxy, together holding a little over $2\frac{1}{2}$ shares. During the confirmation hearing at the Waiariki District Māori Land Board, interpreter George Moore made a declaration about the landholdings of the owners: 11 had died and no succession orders had been made for them, and another 11 owners would be rendered landless by the sale. He further reported that two others, presumably also about to be made landless, were entitled to succeed in other blocks (implying that they had not yet done so). He did, however, state that ‘none of the said owners ever resided on the said Block and that the said land is never likely to be a material means of support to them.’²⁰¹ The resolution to alienate was confirmed on 20 October 1920.

The failure to order successions for the 11 deceased owners meant there was no inquiry into the landholdings or other income of those who should have succeeded to their shares. Moreover, no evidence seems to have been presented to show that the 11 landless owners had sufficient alternative means of support.

(2) Ōpou

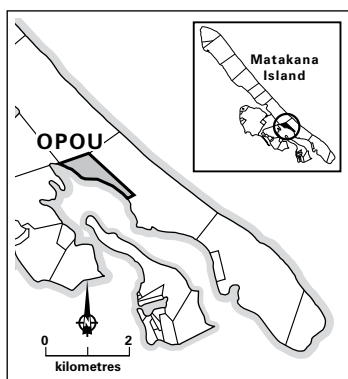
This case study deals with another of the blocks remaining on Matakana Island after the nineteenth-century purchases (examined in the stage 1 raupatu report) and the alienation of Tuingara (discussed earlier, at section 2.3.5). The private purchase of the Ōpou block in the early 1920s further illustrate the workings of the Waiariki District Māori Land Board, notably in relation to meetings of owners and the application of the ‘landlessness’ provisions.

200. Ibid, p13; Bennion, *The Maori Land Court and Land Boards*, p13

201. George Moore, Declaration, 13 October 1920 (doc A45, p16)

2.5.4(2)

Matakana Island had been granted as an inalienable reserve, but by the 1890s some 19,249 acres (7790 ha) had found their way into Crown ownership.²⁰² In the first decade of the twentieth century the island suddenly attracted interest as a potential source of kauri gum,²⁰³ and around 4413 acres (almost 1786 hectares) of Māori land on Matakana was included in a 1906 return of 'Unproductive Native Land in North Island'. The list indicated a total of 595 owners and the land was described as a mix of first- and second-class quality.²⁰⁴ Once restrictions had been lifted under the 1909 and 1913 Acts, that remaining land became vulnerable to acquisition.



Map 2.7: The Ōpou block

The 176-acre (71-ha) Ōpou block, a sandy-soiled piece of land bordering a sheltered bay on the south-eastern part of Matakana, was the subject of a Crown grant issued on 14 August 1886, with alienation restrictions, to 10 owners. In April 1910 it was partitioned into [Katikati] lots 10A and 10B. At the same time as the partition, lot 10A, of 65½ acres (around 26.5 hectares), was awarded to Tutengaehe Hatiwira who had succeeded to two of the original owners, and the 111-acre (45-ha) lot 10B was awarded to eight other owners. On 15 September 1924, the Waiariki District Māori Land Board confirmed

the alienation of lot 10A to Margaret Sinclair, once she had raised her initial offer to match the Government valuation. The application was supported by a statement from interpreter Robert Callaway that Hatiwira had neither lived on nor cultivated the land, and had income from his employment with the Public Works Department. Callaway added that the land was 'too poor in quality to be suitable for farming' and was, therefore, of 'no use' to Hatiwira for his support. Woodley notes that there is no declaration on file about whether Hatiwira owned other land.²⁰⁵ As we pointed out above, however, the provisions of the 1913 amendment Act meant it was no longer necessary to take other landholding into account when assessing the alienation's likely effect on the current owner(s). As to the alleged 'poor' quality of the land, it was presumably part of the same land that had, in 1906, been described as a mix of first- and second-class quality. Further, it was clearly capable of being used for forestry since the Tauranga Harbour Board had been planting trees on adjacent blocks since the early 1920s to prevent sand drift, and by the mid-1920s, when lot 10A was being alienated, private companies had begun planting *Pinus radiata* for commercial purposes.²⁰⁶

202. Stokes, *Matakana and Rangiwaia*, p 20

203. Stokes, *A History of Tauranga County*, p 272

204. 'Unproductive Native Land in North Island', 29 August 1906, *Journal and Appendix of the Legislative Council*, 1906, sess 2, app 5, p 6

205. Document A8, pp 39–42

206. Document A8, p 41; Stokes, *Matakana and Rangiwaia*, p 21; Heeni Murray, brief of evidence, undated (doc J22), pp 8–10



Figure 2.6: Sawmilling on Matakana Island, circa 1940s

Photographer unknown. Reproduced courtesy of Tauranga City Libraries (00-362).

Six months later, in March 1925, the Waiariki District Māori Land Board heard an application to confirm the sale of lot 10B, also to Margaret Sinclair. Some time before that date, three of the original owners had passed away and successions had taken place, meaning that there were now nine owners – but still less than the 10 that, under the 1909 Act, would have necessitated an owners’ meeting to vote on the alienation. Callaway again supplied a declaration about the economic situation of the owners. One, he said, was ‘making good wages’, another was supported by her husband who was ‘in good circumstances’, and a third was farming on land owned by his family and supporting himself and two more of the owners. He reported that ‘none of the [owners] . . . have ever lived on . . . [Opou 10B] nor could they gain any benefit by doing so or attempting to farm or cultivate the same’, stating that the land was too poor for farming. Presumably unaware of the full potential of afforestation, only recently begun on neighbouring land but soon to be a major source of income, he expressed the opinion that the Ōpou lands were ‘not likely to increase in value as the portions that do not consist of sandhills are becoming infested with blackberry and gorse.’²⁰⁷ Another of the owners, it seems, was in prison at the time, and the Native Trustee had assumed responsibility for his shares. This had been allowed under section 171 of the Native Land Act 1909, and Woodley notes that there was no legal requirement for the imprisoned owner to be consulted about the alienation.²⁰⁸

The presiding officer’s minutes of the land board meeting note: ‘Insufficient land in some cases. Land is of no use to N/O [presumably ‘native owners’]’. However, he then

207. Document A8, p 44

208. Ibid, pp 43, 46

2.5.4(2)

wrote: ‘Confirmed under sec 91 subject to usual conditions. All owners excepting Taiaho Kahotea, Kahuwere Kahotea and Kahotea Kahotea.’²⁰⁹ It is not clear from the evidence whether the note about the confirmation was contemporaneous or written at a later date, but six months later the board again met to consider the application. By the time of this second meeting, signatures from all the owners to the memorandum of transfer had been collected, and the Native Trustee had signed on behalf of the owner who was in prison. At the meeting, a further statement was made about owners’ landholdings and economic situation – this time by George Moore, another licensed interpreter – which Woodley says differed little from Callaway’s. The board also had the benefit of a schedule of other lands held by the owners, prepared by the Native Land Court. That schedule made it clear that for four owners (all members of the Kahotea whānau), lot 10B constituted virtually their only landholding, other than two acres each elsewhere.²¹⁰ Although the guidelines from the 1905 Act had been repealed in 1909, we note that a landholding of two acres was considerably less than the 25 acres previously deemed a minimum for the adequate maintenance of every man, woman, and child – let alone the 50 acres per head required by the 1873 Act.²¹¹ The alienation was confirmed.

This case illustrates the ineffectiveness of ‘inalienable’ restrictions on a title. After 1913, ‘landlessness’ was determined more and more on the basis of overall economic circumstance, rather than actual landholding, and a lack of other land does not appear to have deterred the board from confirming alienations. Information about other means of support, where given, seems to have been accepted without question, as far as we can tell. Further, the law was such that there was no need to consider the impact of the alienation on the collective landholding of the hapū concerned: landlessness was now determined on the basis of individual economic circumstances, demonstrating a cultural gap in interpreting ‘landlessness’. After 1909, land that had previously been reserved as necessary to meet future Māori needs could be alienated with relative ease. Indeed, there is no evidence to suggest that the board had to consider why the blocks had been issued with alienation restrictions in the first place.

As to forestry, while it was only in its infancy on the island, there was clearly already interest from commercial companies, and nationally, as the *Tarawera Forest Report* has noted, the Crown began an extensive planting programme in the 1920s.²¹² Such developments do not, however, appear to have been taken into account by the local land board in its assessment of the Matakana land’s value or potential use. In this respect, it is perhaps unfortunate that the alienations occurred when they did, and not, say, just a few years later when the value of forestry could not have been so easily ignored.

209. Waiariki Māori Land Board minute book 12, 2 March 1925, p 262 (doc A8, pp 42–43)

210. Document A8, pp 44–45

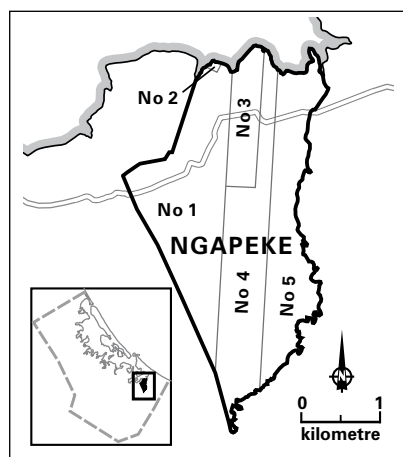
211. Native Land Act 1873, s 24

212. Waitangi Tribunal, *The Tarawera Forest Report* (Wellington: Legislation Direct, 2003), p 44

(3) The Ngāpeke blocks

The following discussion examines how the individualisation of interests, with the associated right of individuals to sell their shares and apply to the Native Land Court for subdivisions to cut out their portions, affected alienation in the Ngāpeke blocks.

The 1496-acre (605-ha) Ngāpeke block, which had been gifted to Ngāti Pūkenga by Ngāti Hē in the 1850s, was awarded to 81 owners by the Tauranga Land Commissioner, John Wilson, in 1880. The list of owners had been prepared by Ngāti Pūkenga and submitted to Wilson, who accepted it. They had deliberately included tribal members living at Maketū, Manaia, and Whāngārei, wanting to keep the land as a tribal endowment in line with the spirit of the *tuku* from Ngāti Hē. Further, they specifically told the commissioner that they wanted the land to be ‘made indivisible, so as to prevent sale.’²¹³ But the block was then partitioned



Map 2.8: The Ngāpeke blocks

in 1896 by the Native Land Court on application of eight owners, although the majority were opposed to it. The application was lodged in the name of Katerina Te Atirau, a daughter of two of the owners named in the original list. Katerina was represented in the court hearing by her husband, David Asher. The court decided to partition the Ngāpeke block into five, awarding Ngāpeke 3, which contained much of the flat land fronting the harbour, to Katerina and her whānau. Other groups claimed to have *kāinga* on the Ngāpeke 3 block. They appealed, but were dismissed.²¹⁴

The subdivision did not lead to any immediate alienation by the Asher whānau or others. Indeed, as Bassett and Kay note, there is no alienation record for any of the Ngāpeke blocks before 1909. However, several of the blocks were further subdivided in the years that followed this initial partitioning.²¹⁵ In 1908, the Stout–Ngata commission included the Ngāpeke block in its list of land in Tauranga that was recommended for Māori retention and occupation, noting the ‘Kaingas; farms; cultivations; maize, oats, wheat, and small dairy farms.’²¹⁶ Then an Order in Council of 14 December 1909 declared that the Ngāpeke blocks were subject to part 2 of the Native Land Settlement Act 1907, and they were thus brought under the

213. Heather Bassett and Richard Kay, ‘Ngati Pukenga and Ngapeke Block’ (commissioned research report, Wellington: Waitangi Tribunal, 1998) (doc D2), pp 14–18

214. *Ibid*, pp 21–25

215. *Ibid*, pp 5–6, 42

216. Robert Stout and Apirana Ngata, ‘Native Lands and Native-Land Tenure: Interim Report of Native Land Commission, on Native Lands in the County of Tauranga’, 11 June 1908, AJHR, 1908, G-1K, p 3

2.5.4(3)

administration of the Waiariki District Māori Land Board.²¹⁷ The board could lease land to owners or, if they so applied, to outsiders. With the consent of the Minister for Native Affairs, the board could even sell the land, provided it was satisfied that the sellers had sufficient other land or income.

Bassett and Kay note that within 20 years of the 1897 partition decision, Ngāpeke 1, 3, 4, and 5 had all been further subdivided, although the land court minutes do not reveal the motivation for this. That said, in each case the partition was arranged by the owners.²¹⁸

The steady alienation of much of the Ngāti Pūkenga land began occurring soon after the First World War and, according to Bassett and Kay, generally involved ‘what appear to be standard declarations by the vendors that they either had other lands or did not need their Ngapeke land for their support.’²¹⁹ Bassett and Kay then go on to stress how individualisation of title, and a focus on individual rather than collective need, was particularly insidious in the case of Ngāti Pūkenga, a tribe whose history, as we have noted above, had resulted in its members living in diverse locations:

By giving individual Ngati Pukenga separate defined interests, it was possible for those who had no personal need of land in Tauranga to sell or lease their share. However, if Ngapeke had been left as one unit controlled collectively by Ngati Pukenga, those Ngati Pukenga living in other places would not have been able to sell their interests. Instead the needs of the iwi as a whole would have been taken into consideration . . . By applying a legal system of ownership which vested shares of the land in each individual, the ownership rights of the collective iwi were undermined.²²⁰

To illustrate how this loss of Ngāti Pūkenga ownership happened, we look at some of the subdivisions of Ngāpeke 1, their alienation being fairly typical of what was happening across the entire block.

Ngāpeke 1B comprised some 37½ acres, or 15 hectares, and at its creation had five owners. Like its parent block, it was classified as ‘inalienable’. By 1920 the number of living owners seems to have dropped to three, two of whom lived on other lands in Whāngārei. That year, an owner – we do not know which one – signed a lease with the Tanner brothers of Tauranga. A request for the land board to approve the lease was subsequently withdrawn, however, and replaced by an application for approval to sell the block to another person, H M Stewart. The reasons the owners gave for requesting removal of the block’s ‘inalienable’ status were that they had adequate lands elsewhere, and they wished to sell Ngāpeke 1B to raise money to develop those lands. We do not know whether the owners’ other land was in the Tauranga area or elsewhere (for example, Whāngārei) but, either way, the 1909 Act

²¹⁷ Richard Kay and Heather Bassett, ‘Case Studies of Crown Administration in Welcome Bay: A Report on the Papakanui Trust Claim’ (commissioned research report, Wellington: Waitangi Tribunal, 1997) (doc A51), p 12

²¹⁸ Document D2, p 40

²¹⁹ Ibid, p 45

²²⁰ Ibid

did not require the board to inquire whether the Ngāpeke land being alienated could be of use to other Ngāti Pūkenga owners living in the area. Following procedure, the board confirmed the sale, thus allowing absentee owners to alienate tribal lands because they were of no direct use to them as individuals.²²¹

Meanwhile, the Tanners, who were Tauranga butchers and required land for holding paddocks, were interested in other Ngāti Pūkenga blocks. They leased Ngāpeke 1G1 and 1G2 – just over 34½ acres (about 14 hectares) in total – from 1920. The owners applied to have restrictions on the blocks lifted, making declarations that they did not require the land for their own use, since they lived elsewhere and they wanted money to develop these other lands.²²² In 1920, the Tanners acquired the freehold of 1G2. The nine owners of that block made a declaration stating that the land was not needed for residential purposes, and was useless for farming because each owner's interest in the 12-acre (5-ha) block was too small.²²³ The Native Minister consented to the sale and it was confirmed in 1923.

In 1922, the Tanner brothers started to acquire the 1G1 block freehold. The board agreed to the sale of the interests of one owner, Haora Peata, but the Native Minister refused his consent because the proposed purchase price was insufficient when compared with the rental paid to other owners. The Tanners made a statement to the Minister that they had made substantial improvements to the land and that Peata was an absentee vendor who had been living at Whāngārei for many years.²²⁴ Peata confirmed this, and added that he thought the purchase price was sufficient. The Minister finally approved, and the purchase was confirmed in August 1924. The Tanners did not acquire the interests of the other two owners until 1953, both of whom declared that they would use the money to finance housing improvements on their land on the Pāpāmoa 2B3C block.²²⁵

In the early 1920s, Charles Fitch began to purchase the interests of the 13 owners of the 25-acre (10-ha) Ngāpeke 1H, beginning with a lease of a minor's interest in 1921. In 1926, Fitch's wife purchased the interests of five other owners: three were described as being adequately supported by wages, another was said to have 'ample lands', and the fifth was deceased.²²⁶ The board thought the price offered was too low and recommended that the sale not be confirmed until it was raised. In 1928, another five owners' interests were purchased. It is noteworthy here that the second group of five owners were all minors at the time of the sale, had no other lands, and were being supported by their stepfather. A declaration on their behalf, however, stated that they were 'not dependent on their interest in the above block as a means of livelihood as their interest therein are too small'.²²⁷ The board

221. Ibid, p 47

222. Ibid, p 50

223. Ibid, p 52

224. Ibid, p 51

225. Ibid, pp 51–52

226. Ibid, pp 52–53

227. JH Ralfe, Declaration, 14 December 1928, BACS acca187, box 228/6465, ArchivesNZ (doc D2, p 53)

confirmed the sale in June 1929, with no consideration apparently being given to what might provide for the now-landless children's livelihood once they had grown up. In subsequent years, the Fitch family gradually bought up further Ngāpeke land, including several blocks purchased from the Asher whānau in subdivisions of Ngāpeke 3 and the Kahotea whānau in Ngāpeke 4, eventually acquiring quite a substantial holding.²²⁸

The Tanner and Fitch cases illustrate how European families, having acquired an initial interest by way of leases, then gradually purchased the freehold, with board approval, of several adjoining blocks. We do not suggest that the transactions were outside the law; rather our concern is that the law allowed them to be completed, with the acquiescence of owners who were often absentees holding individual interests that had in some cases become so small as to be virtually worthless in economic terms. It is in such a manner that, all too often, tribal patrimony was eaten away.

Another aspect of these examples from the Ngāpeke blocks is that they show fundamental problems with the board's administration. Although title to Ngāpeke 1 had been issued with alienation restrictions, and the Stout–Ngata commission had recommended its retention, the lease of the block by individual owners facilitated its eventual sale and removal from tribal control. And the case of Ngāpeke 1H is an example of how the landlessness provisions did not prevent actual landlessness. We do not, however, overlook the many individual owners who willingly alienated their interests. A particular case in point is the initial purchase in 1G, where the alienating owner actively supported the purchasers in their quest to persuade the Minister to withdraw his refusal. In our view, the problem is that the board prioritised what they saw as the immediate economic interests of individual owners over any other considerations.

2.6 CROWN AND PRIVATE PURCHASES, 1931–52

As we outline below, the rate of alienation slowed considerably from 1931 to 1952, partly owing to the effects of the Depression and Second World War. In terms of Crown policy, the major feature of Māori land administration in this period was the shift in emphasis from alienation towards the development of Māori land, largely at the behest of Apirana Ngata, as Native Minister. The policy was continued under Michael Joseph Savage's Labour Government that swept to power in 1935. Four main development schemes were established in the Tauranga area, and these will be examined in detail in chapter 3.

228. Document D2, pp 56–57

2.6.1 The legislative regime

A major consolidation of Māori land legislation occurred in 1931, a notable feature of which was the emphasis on land development and the amount of control given to the Native Minister to establish and oversee the development schemes. After Ngata's resignation in 1934 and the change of government in 1935, this legislative control came to be exercised at the expense of the owners who were marginalised in the management of their lands, as we shall see in the next chapter. The rest of the provisions in the Act did not substantially alter the framework established by the 1909 Act.

In 1932, a review of the Native Department and related bodies was carried out by a National Expenditure Commission, which came to the conclusion that the role of the land boards had so changed over the years that they had become 'in reality branches of the Native Department'.²²⁹ The commission found a number of shortcomings in the workings of the boards, in particular highlighting the dual role of the board president:

The fact that the President [of the board] has jurisdiction over alienations, and that he is also the Judge of the corresponding Native Land Court district, indicates that the line of demarcation between Boards and Courts has in some respects disappeared.²³⁰

It therefore recommended that the courts should take over all board functions that could reasonably be vested in them.

The Native Land Amendment Act 1932 implemented the commission's recommendations, stipulating that that no Māori land alienation was to be binding unless and until it had been confirmed by the Native Land Court. The power to confirm resolutions by assembled owners was also transferred to the land court.²³¹ There was thus a significant shift away from the control of Māori land by the land boards, which paved the way for their eventual dissolution 20 years later. The Native Land Purchase Board – the Crown agency for purchasing Māori land which had been set up under the 1909 Act – was replaced by a Native Land Settlement Board whose focus was, rather, on overseeing expenditure on Māori land development and advising Māori on 'the more efficient and economical development and settlement of the land'.²³² Other changes included the amalgamation of the Native Trust Office with the Native Department, and an expanded role for the registrar of the Native Land Court, who not only became a member of the Native Land Settlement Board, but also joined the Office of the Native Trustee.²³³ We note in passing that the Native Land Settlement Board was itself replaced two years later by a Board of Native Affairs, under

229. AJHR, 1932, B-4A, p 33 (Bennion, *The Maori Land Court and Land Boards*, p 55)

230. Ibid (Loveridge, *Maori Land Councils and Maori Land Boards*, p 143)

231. Native Land Amendment Act 1932, ss 2, 5

232. Ibid, ss 7, 17, 18

233. Ibid, ss 15, 16

legislation which also provided for the setting up of District Native Committees. Again, the focus of these bodies was on land development.²³⁴

Another feature of this period was the increased role of the Native (later Māori) Trustee in the administration of Māori land after 1932, although more particularly in relation to land development, which we discuss in the next chapter. Indeed, by September 1949 the under-secretary of Māori Affairs was of the view that the Māori Trustee and the boards were operating parallel systems in regard to development lands, and that this was leading to confusion.²³⁵ That same year, a royal commission into the role of the land boards in leasing Māori land found that there were many problems with the boards' administration of leases. Among its recommendations, the commission proposed that committees be created to actually consult owners about what they wanted done with the land. Some historians speculate that this report may have convinced Ernest Corbett, the Māori Affairs Minister of the day, to finally abolish the boards.²³⁶ Loveridge points to other factors at play, too, noting that Corbett was conscious of the concerns of the Māori Land Court judges:

He would tell the House in 1952 that they were finding it increasingly difficult to balance their judicial role with the administrative one placed upon them as presidents of the land boards, 'and they and my Government feel that that set-up is inimical to the good, sound administration of Maori Affairs.'²³⁷

The land boards were abolished shortly after this by the Māori Land Amendment Act 1952.²³⁸ Most of the remaining duties of the boards were transferred to the Māori Trustee, and all property held by the boards was also transferred to the trustee. However the administration of certain securities, mortgages, and leases was transferred to the centralised Board of Māori Affairs (formerly the Board of Native Affairs) that had been established in 1934.²³⁹

Lastly, we note that towards the end of this period, the Government passed legislation permitting the compulsory alienation of Māori land that was unoccupied, not properly cleared of weeds, or owing rates, or where the owners had 'neglected to farm or manage the land diligently and that the land is not being used to its best advantage'.²⁴⁰ We shall look more closely at that legislation in chapter 5 when we discuss rating.

234. Board of Native Affairs Act 1934

235. Bennion, *The Maori Land Court and Land Boards*, p 69

236. G V Butterworth and HR Young, *Maori Affairs: A Department And The People Who Made It* (Wellington: Government Print Books, 1990), p 96 (Loveridge, *Maori Land Councils and Maori Land Boards*, p 151)

237. Loveridge, *Maori Land Councils and Maori Land Boards*, p 152

238. Māori Land Amendment Act 1952, s 3

239. *Ibid*, ss 4, 7

240. Māori Purposes Act 1950, s 34

2.6.2 The administration of alienation

The focus from 1931 to 1952 was increasingly on development, and this is reflected in the evidence presented to our inquiry. Where alienation did occur, the money realised was closely controlled by the land boards, usually in a well-meaning attempt to ensure its application to development projects on other land held by the vendors, or to Māori housing improvement. However, the evidence suggests that the administration of landlessness provisions lacked rigour and consistency: the provisions were strictly applied in some instances, but much more loosely in others. Some examples of the work of the boards and the court are discussed in our case studies below.

2.6.3 The quantum of alienation

After 1930, the rate of Māori land alienation in Tauranga declined for the next three decades. In part this was a result of the Depression and the Second World War but, as we shall see in chapter 3, there was also a shift in Crown policy towards assisting Māori to retain and develop land.

Belgrave et al report that just under 311 hectares (or 768 acres) were alienated in the decade from 1930 to 1939, and around 466.5 hectares (or 1153 acres) in 1940 to 1949, making a total of some 777 hectares (or 1921 acres) for the 20-year period. This is a marked decline from the 5220 hectares (12,900 acres) alienated in the preceding two decades (see fig 2.7).

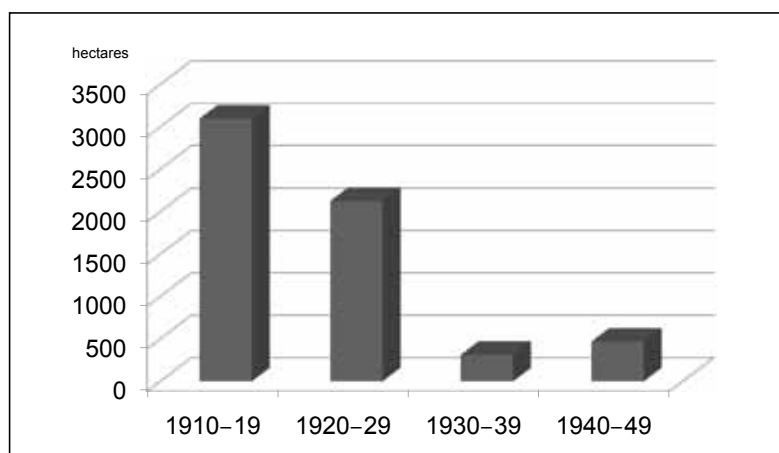
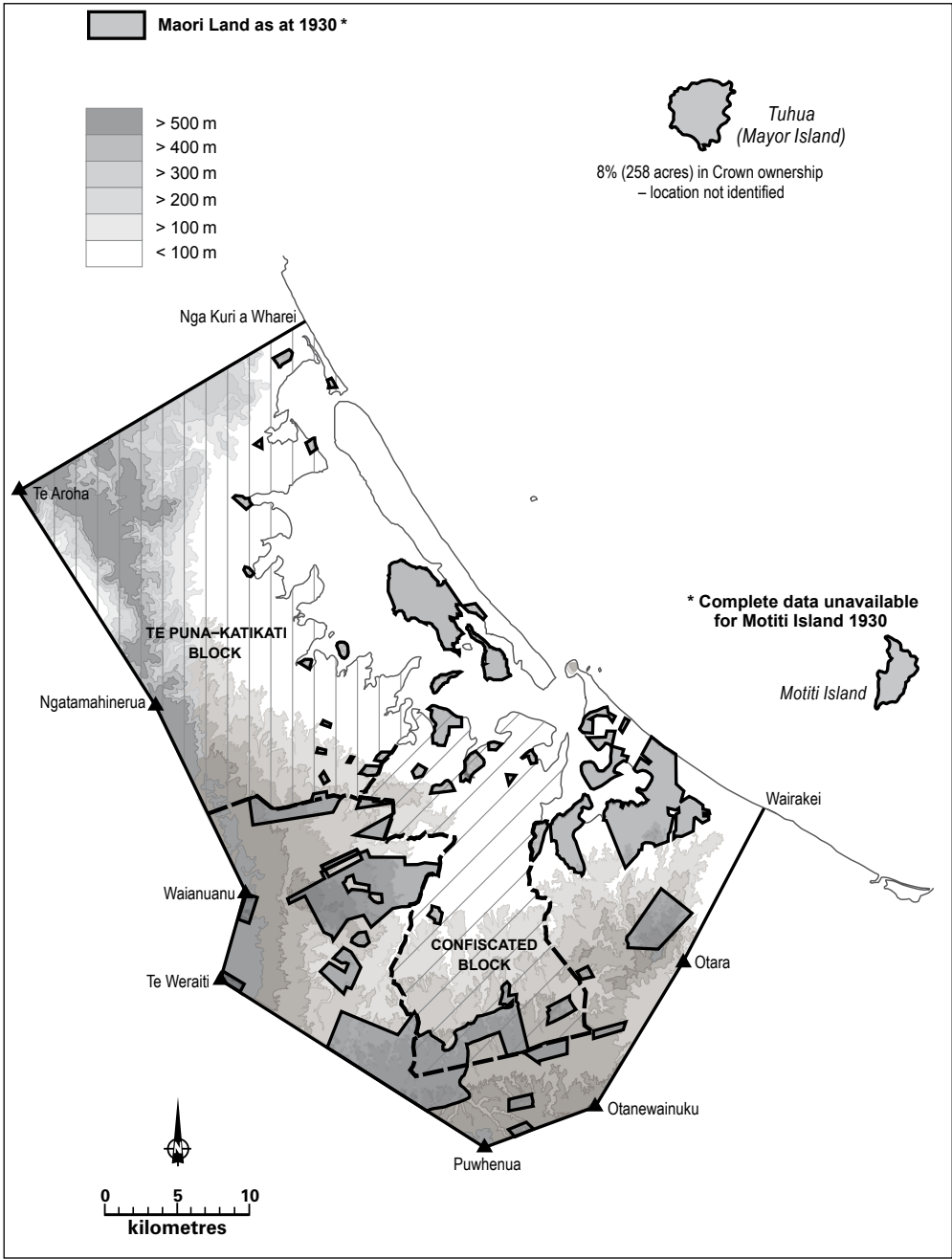


Figure 2.7: Amount of Māori land alienated in the Tauranga district, by decade, 1910–49

In the 1930s, most of the land alienated was by private purchase (around 281 hectares or 694 acres), with just under seven hectares (17 acres) alienated to the Crown and around 22.57 hectares (or 56 acres) acquired for public purposes. These proportions changed in the 1940s: in that decade most of the land alienated (almost 395 hectares or 975 acres) was

TAURANGA MOANA, 1886-2006

2.6.3



Map 2.9: Māori land as at 1930

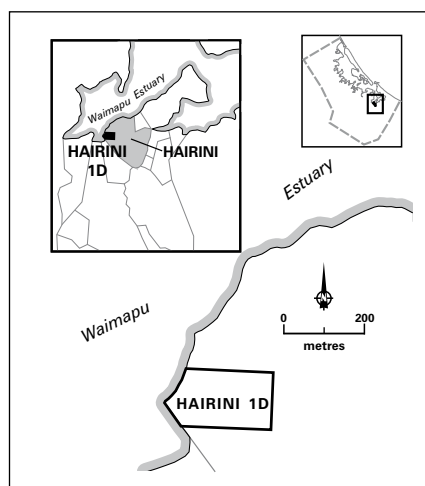
alienated for public purposes, the most significant of which was for the airport. The Crown purchased another 20.94 hectares (52 acres), private purchasers acquired a little over 50 hectares (124 acres), and 0.64 of a hectare was Europeanised.²⁴¹

2.6.4 Case studies

(1) *Hairini 1D*

Under Ngata's land development policies, the Crown did offer some financial assistance to Māori farmers who were developing small unit farms, for which they were required to bring together a workable amount of land. Consolidation 'by way of exchange or otherwise' had been introduced in 1909, to enable owners to rationalise their interests in various pieces of land and bring them together in more usable parcels.²⁴² It does not, however, seem to have been much used in the Tauranga area, local Māori apparently preferring to find other ways of achieving the same or similar results. These included informal use-right arrangements within families, or agreements to lease to a hapū member who was in a position to use the land and generate income. From 1917, for example, Ngāi Te Ahi farmer Mokohiti Reweti tried to establish a workable block of land in Hairini by leasing several small blocks from the owners. Highlighting the unworkability of fractionated land interests, the six owners of the eight-and-a-half acre (3.4 ha) Hairini 1D block applied to the Waiariki District Māori Land Board for the removal of the alienation restrictions 'as we have agreed to lease same to Mokohiti Reweti. Our reason for leasing the land is that the block is too small to be of any use to us.'²⁴³ When his lease was coming to an end in the late 1930s, Reweti applied to purchase Hairini 1D, and the owners seemed willing to let him buy it. In June 1938, Reweti applied to the board for confirmation of the transaction. The board, however, expressed concern that the owners would be left landless, stating the 'correct method' in such situations was consolidation, not 'rendering the owners and fellow members of the Maori race landless.'²⁴⁴ The board did not, therefore, recommend to the Native Minister that the restrictions be lifted in this case, and the sale was not confirmed.

In their closing submissions, the Crown listed Hairini 1D as an example in which the Waiariki



Map 2.10: The Hairini 1D block

241. Document T16(a), p 31

242. Native Land Act 1909, s 130

243. BCAC acc A187 Box 22617/6322 Hairini 1D 1926–38, ArchivesNZ (doc G1, p 98)

244. Tauranga Native Land Court minute book 14, 23 February 1939, fol 57 (doc G1, p 110)

2.6.4(2)

District Māori Land Board did adhere to the landlessness provisions in the legislation. In partial support of that contention, the Crown highlighted that the registrar had mentioned the Native Minister needing to approve the sale ‘as the land was subject to Part XVI of the 1931 Act.’²⁴⁵ However, part xvi relates not to landlessness but to promoting the use of ‘Native Land for Native settlement’. As noted above, this case involved a Māori farmer who was trying to expand his landholdings and establish a more workable farm unit. Although apparently not himself an owner in Hairini 1D, he and the owners were all members of Ngāi Te Ahi.²⁴⁶ But the board, in its advice to the Minister, chose to focus on the legal owners and their potential landlessness rather than the tribal member who was trying to accumulate a viable parcel of land. As claimant counsel point out, ‘there is a certain irony in the fact that this case, where the Board appeared to take [a] far more stringent interpretation of the “landlessness” provisions than it had in other cases, came at the cost of Tauranga Maori trying to overcome the problems of fractionalisation of title by trying to accumulate a workable land unit.’²⁴⁷

We would agree. Further, we note that in most other cases cited in the evidence, where the would-be purchaser was Pākehā, landlessness does not seem to have been regarded as a sufficient reason for stopping the alienation and the purchase went ahead. Here, where the would-be purchaser was Māori, owners were urged to consider the alternative option of consolidation, and the purchase was not allowed to proceed. Whatever the motivations behind the refusal, this would seem to constitute a less than level playing field.

(2) Maungatapu 1F

Maungatapu 1F, amounting to some nine and a quarter acres (just under four hectares), was originally leased to Kathleen Backwell for 21 years in 1934. She then proceeded to negotiate the purchase of the block. As a consequence, seven of the 11 owners applied to the Waiariki District Māori Land Board in 1938 to summon an owners’ meeting. By this stage, under the 1932 Act, all alienations had to be confirmed by the Native Land Court. The board expressed some doubts about the sale, particularly about whether the court would approve it at the current price, and requested a valuation. An owners’ meeting was subsequently set down for 1 May 1940, by which time the purchaser’s offer had increased from £35 to £65 an acre. Seven owners were present at this meeting and voted unanimously in favour of the sale. Under section 271(1) of the 1931 Act (which was still in force), one party to the transaction was then supposed to apply for confirmation within six months. In this instance, the purchaser’s solicitor did not apply for the sale to be confirmed until 12 months after the sale, by which time the owners’ resolution at the May 1940 meeting was deemed by the court to have lapsed. In January 1944, the purchaser’s solicitor advised of an increased offer,

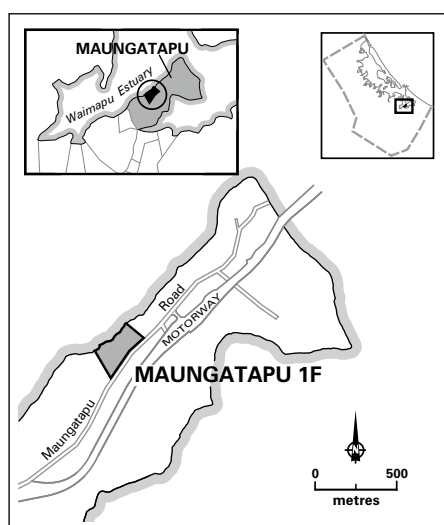
245. Document U26, p 18

246. Document G1, p 98

247. Paper 2.659, p 4

now amounting to £150 an acre. A further meeting of owners was held, and the six owners present again unanimously voted in favour of the sale. The court confirmed their resolution.

In keeping with the legislative provisions, the purchase money of £1406 was paid to the board in trust for the owners, who then each had to apply to the board for their share to be released. The board looked favourably on several requests for money to improve farms, install utilities, and renovate or repair houses. It was, however, reluctant to pay out money to one owner who, in addition to repairs for his house, wanted money to pay for a coffin for his nephew. The deputy registrar stated that ‘all purchase money held for [him] should be expended on something of permanent benefit.’²⁴⁸



Map 2.11: The Maungatapu 1F block

This case illustrates the changing role of the Māori land boards, following the passing of the 1932 Act, and the resultant involvement of the land court in land administration. But although it was now the court that had to confirm alienations, the board continued to control the release of purchase proceeds and could refuse payments if it did not agree about the ways in which owners wanted to spend their money. We note, however, that it was apparently ‘not an uncommon practice’ for land boards to *lend* money. This included lending funds back to the Pākehā purchaser on mortgage.²⁴⁹ Just before the demise of the land boards in 1952, according to Bennion, they held £286,000 in mort-

gages, farms, and the like; and over £393,000 in government and other securities. The total held for beneficiaries was £1,305,500.²⁵⁰ Some of this money was later used to set up a conversion fund to enable ‘uneconomic interests’ to be purchased and compulsorily vested in the Māori Trustee.²⁵¹ We discuss this measure at section 2.7.1 below.

2.7 CROWN AND PRIVATE PURCHASES, 1953–73

Nationally, the Māori Affairs Department in the two decades from the mid-twentieth century was attempting to implement a policy broadly described as ‘integration’ while also trying to foster land-title reform and land development. These various initiatives had a

248. Document M3, p 50

249. Bennion, *The Maori Land Court and Land Boards*, pp 64–65

250. *Ibid*, p 71

251. Michael Belgrave, Anna Deason, and Grant Young, ‘Crown Policy with Respect to Maori Land, 1953–1999’, (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc T36), p 66

significant effect on Tauranga Māori. State policies of rehousing Māori turned some Māori land into residential subdivisions, and there was an attempt to ‘pepper-pot’ Māori through them, as we explain more fully in our chapter on socioeconomic issues. Title reform measures meant Māori land could be compulsorily converted into more economic units, to bring it into production, without the consent or sometimes even the knowledge of the owners. As the report of Belgrave and his colleagues described it, ‘Maori land policy in the second half of the twentieth century was characterised by attempts to deal with the title system inherited from the nineteenth century.’²⁵² That system was blighted by successive attempts to individualise titles, but the proposed solutions that we consider in this section were to result in further land alienation, which, along with the requirements of burgeoning public works, was now more significant than the standard Crown or private purchases of earlier years.

In Tauranga, 1950 was a significant turning point. In that year a decision was made to develop a deep-water port at Mount Maunganui. (See chapter 4 for further details.) This resulted in the Tauranga urban area’s rapid growth and threatened much of the remaining Tauranga Māori landholdings situated on the edges of the urban area. The landholdings became prime targets for expansion. Stokes notes that ‘[t]he Town of Tauranga was transformed from a small, rural, fishing village and agricultural service centre, with a population of less than 5000, into an aggressively expanding urban area.’²⁵³ In April 1963, Tauranga was officially proclaimed a city.²⁵⁴ In the 1950s, a comparatively low 202.08 hectares (499 acres) of Māori land were alienated. The 1960s, however, saw the pace pick up again with the alienation of almost 2516 hectares (6216 acres).²⁵⁵ Far from ameliorating the effects of individualisation, the compulsory measures introduced in legislation, coupled with public works acquisitions (see ch 4), receivership leases resulting from rates arrears (see ch 5), and the continuation of private purchase, meant Tauranga Māori continued to find it difficult to retain, let alone adequately manage and develop, their lands.

2.7.1 The legislative regime

This section will examine the Māori Affairs Act 1953, the reports of the Hunn and Prichard–Waetford inquiries published in 1961 and 1965 respectively, and the Māori Affairs Amendment Act 1967, particularly in relation to the conversion of ‘uneconomic interests’ and compulsory Europeanisation.

The Māori Affairs Act 1953 was another consolidation of the Māori land legislation dating from the 1909 Act. However, Belgrave, Deason, and Young assert that, as well as consolidating past legislation, it was also a ‘significant new policy statement.’²⁵⁶ As the Minister of

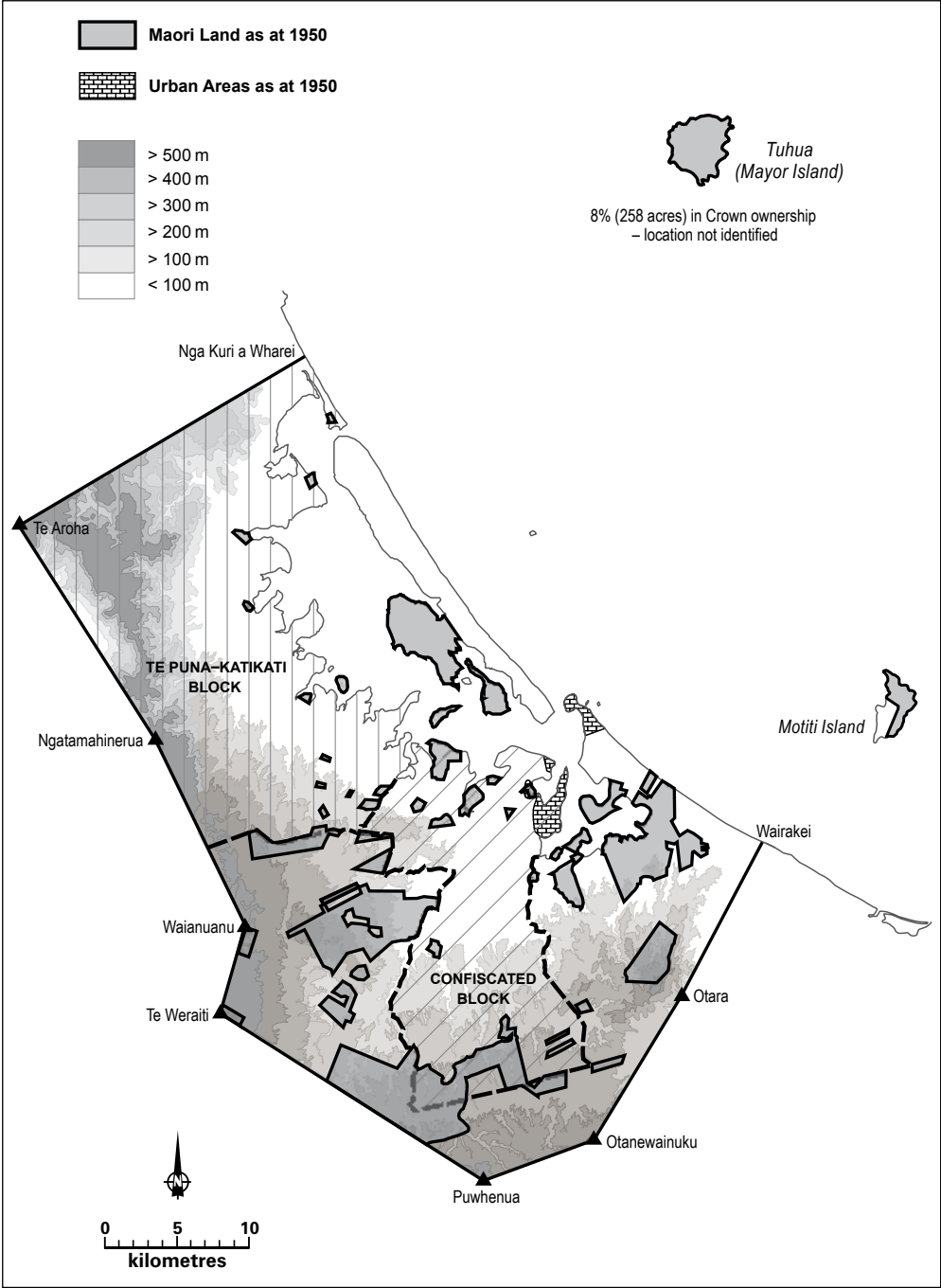
252. Document T36, p 351

253. Document A57, p 294

254. Stokes, *A History of Tauranga County*, p 328

255. Document T16(a), p 30

256. Document T36, p 63



Map 2.12: Māori land as at 1950

Māori Affairs, Ernest Corbett, described it, the three main principles of the initial Bill were to provide for the:

- ▶ retention of land in Māori ownership;
- ▶ continuation of the multiple ownership of land; and
- ▶ gradual limitation of the number of owners to those with substantial interests.²⁵⁷

Belgrave and colleagues argue that the third aim was not fully compatible with the other two in that while Māori, collectively, would continue to own the land, it would be at the expense of those small owners who lost their shareholding.²⁵⁸ Corbett, however, seems to have envisaged that Māori who had small shares in one block would have had larger shares elsewhere. Thus, by divesting themselves of the smaller interests and acquiring, instead, additional shares in blocks where they already held greater interests, each owner of land could have his or her various holdings consolidated into ‘economic farms or substantial parts of economic farms.’²⁵⁹

The third policy strand was most dramatically put into practice by the introduction in 1953 of the Māori Trustee’s ability to compulsorily acquire ‘uneconomic’ interests from deceased estates; a form of alienation that was to prove massively unpopular with Māori in Tauranga (who regarded it as a new form of raupatu) and elsewhere. The Act defined a deceased person’s ‘uneconomic interests’ as being land worth £25 or less. Such interests were now able to be taken and vested in the Māori Trustee.²⁶⁰ Under the Act, a conversion fund was set up, using money from the trustee and some of the profits of the former Māori land boards.²⁶¹ Another section of the Act introduced ‘live buying’, by which the trustee was enabled, with an owner’s consent, to acquire his or her interests (not confined to ‘uneconomic’ interests) using money from the fund. Significantly, the clause specified that ‘No alienation of any land or interest in land to the Maori Trustee for the purposes of this section shall require to be confirmed by the Court.’²⁶² The Māori Trustee was then empowered to sell interests in the Māori land vested in him.²⁶³ The provisions to consider the landlessness of the owners were effectively removed.

Part 23 of the Act reduced the already slim provisions for meetings of assembled owners. The meeting quorum was reduced to just three individuals, irrespective of the total number of owners.²⁶⁴ The Act also retained the provisions of the 1909 and 1931 Acts whereby, to pass a resolution, those who voted in favour, either personally or by proxy, needed to have a larger

257. EB Corbett, ‘Annual Report of the Board of Maori Affairs and of the Secretary, Department of Maori Affairs, for the Year Ended 31 March 1953’, AJHR, 1953, G-9, p 1 (doc T36, p 64)

258. Document T36, p 64

259. Corbett, ‘Annual Report for the Year Ended 31 March 1953’, p 1

260. Māori Affairs Act 1953, ss 136–137

261. Document T36, p 66; Māori Affairs Act 1953, s149

262. Māori Affairs Act 1953, s151; Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 746

263. Māori Affairs Act 1953, s152

264. *Ibid*, s309

shareholding than those who voted against, *but not necessarily a majority shareholding in the land*. In this way, it was theoretically possible for the fate of a block of land to be decided by just the quorum of three – and indeed if one of those three held more shares than the other two combined, then he or she had the individual power to alienate the entire block. Examples of how this legislation affected Tauranga blocks are explored in section 2.7.4.

The Act did, however, contain certain protective provisions that have proved effective in Māori land retention. Under part XXII, powers of incorporation, first mentioned in law in 1894, were expanded. Māori land with more than three owners could be incorporated by the court for farming, forestry, or mining; for alienation by sale or lease; or to carry out any other enterprises. Owners would effectively become members of a ‘body corporate’, and a management committee was to be appointed to manage day-to-day operations.²⁶⁵ We discuss these provisions and their application in Tauranga more fully in our next chapter.

Another protective measure in the 1953 Act was the provision for trusts to administer Māori land blocks on behalf of the owners. A similar provision in the Native Purposes Act 1943 had been rarely used. However, Belgrave, Deason, and Young assert that the trusts created under sections 438 and 439 of the Māori Affairs Act 1953 ‘were to have a significant effect on the administration of Maori land in the following years, as they allowed Maori to be appointed trustees to administer the land. Both sections remained largely unchanged until 1993.’²⁶⁶ These too will be discussed in more detail in our next chapter.

(1) *The Hunn report*

The 1961 Hunn report is perhaps the most important document to have emerged from the Department of Māori Affairs in the twentieth century. A former Secretary of Justice, Jack Hunn was appointed Acting Secretary for Māori Affairs by the Nash Labour Government in 1960 to conduct an extensive review of the Department of Māori Affairs. His report – completed under Labour in 1960, but not released until the following year under National – went far beyond a mere review of the department; indeed it reviewed, with extensive statistics, the Māori socioeconomic state in mid-century New Zealand. Nor was Hunn content with this, since he also expressed strong views on past and future policies on the Māori position in New Zealand society. Having described the assimilation policies of the past, he recommended what he called an integration of Māori and Pākehā for the future. Here we confine our comments on the Hunn report to questions of land titles and alienation. Our discussion of Hunn’s land-development recommendations takes place in chapter 3; and our socioeconomic chapter addresses Hunn’s discussion of housing as a means of achieving an integrated community, though we note here that it involved the sale of Māori sections to Europeans.

265. Ibid, ss 269–270

266. Document T36, p 68

2.7.1(1)

Hunn, along with many others before him, recognised problems with the individualised title system:

Everybody's land is nobody's land . . . [m]ultiple ownership obstructs utilisation, so Maori land quite commonly lies in the rough or grazes a few animals apathetically, while a multitude of absentee owners rest happily on their proprietary rights, small as they are.²⁶⁷

Hunn had no sympathy for the Māori preference to hold onto even small interests in land as a tūrangawaewae. He pointed out that the British system, in which electoral franchise once rested on a property qualification, had 'changed with the times'; in similar vein, he argued, it would be:

a good thing if the Maori people, with customary realism, could come to regard the ownership of a modern home in town . . . as a stronger claim to speak on the marae than ownership of an infinitesimal share in scrub country that one has never seen . . .²⁶⁸

To successfully manage the sprawling land title system, Hunn urged that:

- ▶ the '£10 rule'²⁶⁹ would have to be increased to £50 to realise its full benefits;
- ▶ successions and partitions below £50 would not be allowed;
- ▶ the definition of an uneconomic interest would need to be altered from 'under £25' to 'under £50';
- ▶ the conversion system should be more freely used to eliminate uneconomic interests;
- ▶ 'live buying' by agreement should also be carried out on a larger scale; and
- ▶ some Māori land could be made European land by change of definition.

Hunn advocated these measures as 'forces of integration', lining them up against the opposing forces for 'disintegration' – partition and succession – in a 'ceaseless conflict'. Asserting that the forces of integration were 'fighting a losing battle', he argued that the measures should be implemented urgently.²⁷⁰ He also advocated Crown purchase as an ideal way to purchase multiple interests to be held in trust for Māori. As will be seen, many of Hunn's recommendations became Government policy, and, eventually, law.

In 1961, the Māori Synod of the Presbyterian Church published *A Maori View of the Hunn Report*. While the synod welcomed some aspects of the report, describing it as 'a conscientious and sympathetic endeavour to assist our race to find a firm ground for its future development, and to lessen those conflicts which tend to divide Maori and Pakeha',

267. JK Hunn, *Report on Department of Maori Affairs: With Statistical Supplement*, 24 August 1960 (Wellington: Government Printer, 1961), p 52

268. Ibid

269. The £10 rule enabled the court to vest the whole of the interest of a deceased person in any one or more beneficiaries to the exclusion of any other, without payment, provided the beneficiary's share did not exceed £10: *ibid*, p 55

270. Ibid, p 56

they expressed ‘strong disagreement with some of the recommendations.’²⁷¹ The synod considered that ‘[m]uch depends upon what the Report means by the word “integration”, which is not adequately defined therein’ and that the use of this term, ‘even in the broadest and most liberal interpretation’ was ‘over-optimistic’ and ‘a dangerous assumption.’²⁷² They continued, ‘[t]here is a dangerous risk in the present assumption of many Pakehas that all the “adjusting” must be done by the Maori.’²⁷³ Instead, the synod believed, what was required was a ‘much needed declaration’ (forerunning Tribunal thinking on the Treaty right to development) that ‘the Maori people themselves have a right to decide in what way their future integration with the Pakeha should develop.’²⁷⁴ They felt such a declaration was needed because:

much frustration to and some opposition by the Maoris has resulted from the feeling that our future is being decided for us without our hopes and intentions being considered. However well intentioned such a policy may be, it is in the long run bound to cause more problems than it solves. A race cannot be forced into taking steps towards its own elimination. Any move in that direction is fraught with danger. It is the other extreme to ‘apartheid’, and just as objectionable.²⁷⁵

In response to Hunn’s view that *tūrangawaewae* was sentimental and could be replaced by home ownership, the synod emphatically declared that it was ‘quite unacceptable, and is based upon a misunderstanding of the meaning of the term’. Rather, they saw *tūrangawaewae* as integral to a cultural, as well as a physical, sense of place and belonging:

Turangawaewae is a fundamental concept of Maori life. It represents not mere ownership of a piece of land. For the Maori his whole history and cultural heritage is enshrined in his tribal land in which he has a share, and of which he feels himself to be a part, and which gives him the right of participation in the community life of his people. . . .

The home place, the tribal land, is the shrine of the storied glories of the past and of the culture bequeathed by the fathers to their succeeding race. *Turangawaewae* is bound up too with the fellowship of the community to which by heredity we belong, and in which . . . we live and move and have our being. When we barter or sell our tribal land, we lose our birthright – *our turangawaewae* – ‘the standing place for our feet.’²⁷⁶

The synod accepted the Hunn report’s findings on health, and some of its findings on education. On matters of land, however, the synod considered that retention and

271. Māori Synod of the Presbyterian Church of New Zealand, *A Maori View of the ‘Hunn Report’* (Christchurch: Presbyterian Bookroom, 1961), p 6

272. Ibid

273. Ibid, p 7

274. Ibid, p 8

275. Ibid

276. Ibid, pp 28–29

2.7.1(2)

usage should be paramount. While they saw the value of mechanisms such as trusts and incorporations, they were concerned that this deprived individual owners of their link to the land. Nevertheless, they stated that their ‘firm conviction’ was that ‘no other procedure than that of incorporated tribe preserves the community quality of Maori land ownership as a basis for the community structure of Maori life.’ While they were careful not to directly criticise the Māori Trustee, they also concluded that ‘only the appointed representatives of the beneficial owners should decide the use of which the proceeds from community property should be put.’²⁷⁷

(2) *The Prichard–Waetford report*

In the early 1960s, a new commission of inquiry was established by the National Government to further advance the Hunn recommendations on changes to Māori land tenure. According to Belgrave, Deason, and Young, the commission was set up because of a ‘stalemate’ between Government objectives and the policy of the newly created New Zealand Māori Council. The Government wanted to proceed with the policy of compulsory title measures recommended by Hunn, while the Māori Council remained committed to ‘ensuring that Maori land remained in Maori ownership and if Maori land was to be developed it was developed by Maori for Maori.’²⁷⁸ The commissioners were Ivor Prichard, chief judge of the Māori Land Court, and Hemi Waetford, a departmental officer from Te Tai Tokerau, and they travelled around the country meeting with Māori land owners and other interested parties.

Prichard and Waetford reported in 1965 and reiterated Hunn’s conclusions, namely that:

- ▶ The equal division of land among heirs on intestacy meant that blocks had too many owners with small shares. (Prichard and Waetford referred to this as ‘fragmentation’, but the term ‘fractionation’ has been used by others.)
- ▶ Uneconomic partitions made by the Māori Land Court meant land was unsuitable in size or shape for efficient use.
- ▶ Most of the land remaining to be developed was owned by Māori or the Crown, and the cost of making it productive was high. The economy of New Zealand called for the development of all land which could reasonably be brought into production.
- ▶ ‘In the main, Māori did not live on the land of their tribal ancestors but on a house section near their employment or business.’²⁷⁹

The report identified fragmentation (fractionation) as the major obstacle to developing and using Māori land, stating:

277. Māori Synod of the Presbyterian Church of New Zealand, *A Maori View of the ‘Hunn Report’*, p 30

278. Document T36, pp 114–115

279. Ivor Prichard and Hemi Waetford, *Report to Hon JR Hanan, Minister of Maori Affairs, of Committee of Inquiry into the Laws Affecting Maori Land and the Jurisdiction and Powers of the Maori Land Court*, ([Wellington]:[Government Printer], 1965) pp 17–18

Fragmentation and unsatisfactory partitions are evils which hinder or prevent absolutely the proper use of Maori lands. Fragmentation will become progressively worse unless urgent drastic remedial action is undertaken. These two conditions create others just as unsatisfactory.²⁸⁰

Like Hunn, the Prichard–Waetford commission made recommendations for the rationalisation of title, particularly in relation to conversion, including:

- ▶ Māori widows and widowers should have the same share of estates as their European counterparts;
- ▶ the laws of intestacy for the Māori should be made the same as for the European;
- ▶ the limit for conversion of £25 be increased to £100, and that ‘the tempo be stepped up and that in appropriate cases it be applied to all interests in a block up to such amount’;
- ▶ all sections of Māori land of two roods or less owned by one to four owners be given the status of European land;
- ▶ on the incorporation of more than one block the values brought in by any one owner be assessed and shares issued so that they owned shares in the whole enterprise and not in any one block; and
- ▶ the restrictions on terms for which leases of Māori freehold land may be granted be removed.²⁸¹

Belgrave, Deason, and Young conclude that Prichard remained ‘true to his brief, pick[ing] up Hunn’s recommendations and carry[ing] them to their logical conclusions’. They believe, however, that Māori arguments were manipulated into a consensus to fit with the report’s recommendations and state that the ‘almost complete rejection of these recommendations [by Māori] very soon after the committee completed its report suggests either that it overstated the level of support for it or that Maori opinions changed very dramatically soon after.’²⁸² We cannot accept the proposition that there was manipulation of evidence: it seems clear to us that many Māori, including senior figures, believed that the ideas being put forward held out hope of benefit. However, once those ideas were translated into legislation, and the effects of that legislation began to be felt on the ground, perceptions changed, as we shall see below.

(3) *The Māori Affairs Amendment Act 1967*

We now discuss how the recommendations of both the Hunn and Prichard–Waetford inquiries were implemented in the Māori Affairs Amendment Act 1967. Significantly, the Act established the compulsory Europeanisation of land with four or fewer owners, this being effected by a ‘change of status’ declaration from the Māori Land Court registrar.²⁸³

280. Ibid, p 6

281. Ibid, pp 6, 8–10, 12, 13

282. Document T36, pp 141–142

283. Māori Affairs Amendment Act 1967, ss 3–6

2.7.1(3)

In the immediate, the measure affected the nature of tenure but did not alienate the land out of Māori ownership. It was premised on European title being the solution to many of the problems associated with the system of Māori tenure that the Crown itself had created. As the central North Island Tribunal has noted, the change went beyond what had been recommended by Pritchard and Waetford in that there was no limit on the size of the block that could be Europeanised.²⁸⁴ Nationwide, its effect was to change over 252,000 acres (almost 102,000 hectares) of Māori-owned land into ‘European land’ (later called ‘general land’) before it was repealed in 1974.²⁸⁵ Part I status declarations are examined further below.

Under part VII, the Act also extended the provisions relating to conversion. The Māori Trustee was henceforth empowered to actively request the land court to identify ‘uneconomic interests’ whenever partitions, consolidation schemes, amalgamations, or the issue of a consolidated title were being decided. The trustee could then state which of those interests he wished to compulsorily acquire. Decimal currency having been introduced on 10 July 1967, ‘uneconomic interests’ were now defined as those which, on the basis of the court’s determination, did not exceed \$50 in value.²⁸⁶ In the case of Māori reserved land and Māori vested land, any uneconomic or other interests acquired by the trustee were now to be held in a separate fund known as the reserved and vested land purchase fund (or simply the purchase fund).²⁸⁷

The Māori Trustee was also given authority to sell the interests that had been acquired under the Act to any Māori or descendant of a Māori, an owners’ body corporate, or the Crown for the purposes of the Māori Housing Act 1935. Examples of the Māori Trustee’s acquisition of ‘uneconomic’ interests in Tauranga are examined further at section 2.7.4. The 1967 Act made important changes to succession, aligning succession on intestacy with the law for Europeans, and making estate duty the same as for Europeans, thus implementing recommendations of the Prichard–Waetford report.²⁸⁸

Māori incorporations were also covered in the 1967 Māori Affairs Amendment Act which aligned the organisation of incorporations with public companies. When making the incorporation order, the court was to fix the total number of shares in the body corporate and then allocate to each shareholder the relevant proportion corresponding to their interests in the land.²⁸⁹

284. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 750

285. Document T36, pp 152, 193

286. Māori Affairs Amendment Act 1967, s 124

287. *Ibid*, s 128

288. *Ibid*, ss 76, 78

289. *Ibid*, s 32

2.7.2 The administration of alienation

The direction of the 1967 legislation was clearly to align the law relating to Māori land and its disposal, whether by succession or alienation, as closely as possible with the European law on land. Nowhere was this more obvious than in the provisions for compulsory Europeanisation of title. Such Europeanisation was effected without consultation with or notification of the owners. Many landowners whose lands were affected by the provision did not immediately find out that the status of their lands had been changed. Hone Newman of Ngāti Pūkenga, for example, stated that he only found out that Pāpāmoa 21B block had been Europeanised when he bought a share off one of his nieces. He says:

This has always worried me as I understand that it is easier to lose general land than it is to lose Māori land. Well, I am still on the land and we still own it so that is good. But to me the point is that the land is whānau land and we are Māori. I can't see why it had to change and why we couldn't stop this. I want the land to be Māori Freehold land again.

It annoys me that I will have to go to the Māori Land Court to try to get our whānau lands back into Māori title. I expect this will cost. If the government forced this change on us, why can't it undo it? Why do I have to go to the Court and pay charges to get the land returned to what it originally was?²⁹⁰

As we shall discuss later, at section 2.11.4, owners do indeed have to apply to the Māori Land Court to have the status of their land changed back to Māori freehold land. The power to change general land to Māori freehold land by status order, on application by the owners, was introduced in the Māori Affairs Amendment Act 1974, and is reiterated in Te Ture Whenua Māori Act 1993. We look at those Acts in sections 2.8.1 and 2.9.1 respectively.

Belgrave et al's figures show that almost 2 per cent of all the land 'returned and reserved' in the Tauranga area was affected by part 1 status declarations. This percentage represents just over 1146 hectares (or 2832 acres), involving around 400 parcels of land, which passed out of the jurisdiction of the Māori Land Court.²⁹¹ Not included in those figures are another 202 hectares, in 22 blocks, which were affected by part 1 status declarations but subsequently returned to the status of Māori freehold land.²⁹² Belgrave et al consider that strategies employed to manage and utilise multiply owned Māori land contributed to the amount of land that was affected by this law: '[i]t is very clear that subdivision allowed a very large number of parcels of Maori land to be converted very easily into European land'.²⁹³ Once the status of Māori land was changed to European or general land it was freely alienable under the normal land transfer rules, but there are no statistics on how much of this land was alienated out of Māori ownership in Tauranga. Even if we could get such statistics, we

290. Hone William Newman, brief of evidence, 22 May 2006 (doc Q27), p 6

291. Document T16(a), pp 24, 29

292. Ibid, p 12

293. Ibid, pp 8–9

would have to set them against general land acquired by Tauranga Māori, though that is also unknown, before we could work out any balance sheet of losses and gains.

A related subject is the conversion of ‘uneconomic’ interests – an extremely significant twentieth-century land issue in Tauranga Moana. It is still very much a living issue, as people who suffered because of these provisions are still alive and still affected by it. To prevent interests becoming ‘uneconomic’ and subject to the provisions, the court played a role in redistributing land interests among descendants. This, in turn, has caused further inequalities: some descendants have lost their interests in the land, while others have not.

As already noted, the Māori Affairs Act of 1953 and Amendment Act of 1967 gave the Māori Trustee the right to compulsorily acquire interests in Māori land that were deemed to be ‘uneconomic’. Crown-commissioned researcher Ashley Gould notes that the policy of title improvement pursued since 1953 had three main aims, which were outlined in a departmental circular in 1955:

- ▶ better utilisation, to enable land to be effectively used for the purpose for which it is best fitted and to yield the greatest [economic] return to the owners and the community;
- ▶ better control, to improve the ownership position in such a way that the owners themselves can control or deal with the management of the land and the revenues thereof; and
- ▶ easier administration, to lighten or abolish the work of the Department and the Māori Trustee related to the management of the land and the revenues thereof.²⁹⁴

However, Graham and Susan Butterworth have described the compulsory acquisition policy (also known as the conversion policy) as one of the ‘most controversial and deeply resented of all post-war government attempts to deal with the problems of Maori land.’²⁹⁵ This view is borne out by the evidence of the many tangata whenua witnesses in Tauranga. Speaking of the impact of the Crown policy of compulsory conversion, Parengamihi Gardiner told us:

The practice of selling uneconomic shares to a shareholder who would want them without the knowledge of the ones who owned those uneconomic shares is another example [of] what the Maori Trustee did.

Because you lose your shares in certain places like that it’s like you don’t belong there anymore. You don’t have a connection there anymore. But even if it’s a small share, you still belong. Even if people think it’s nothing, it’s not worth anything; we don’t look at it like that. It lets your own people know that that’s where you also belong.²⁹⁶

294. Document T37, p 291

295. G V Butterworth and SM Butterworth, *The Maori Trustee* (Wellington: Maori Trustee, 1991), p 84 (doc T36, pp 65–66)

296. Parengamihi Gardiner, brief of evidence, undated (doc Q31), p 4

Whaitiri Williams echoed this, and also emphasised the lack of notification or explanation regarding the loss of her ancestral land. She describes how she had had to find out from the local postmaster what the implications were of the notice she had received:

the post-master told me that under the Maori Affairs Amendment Act 1967 I was being paid for my share in the Ngapeke block, 5B2B1, which was too small to be an economic interest. In other words, my share was being ‘converted’ from a legal interest in land into cold, hard cash. What was worse is that this was not only a compulsory acquisition, but also under the Act, the acquisition could be made without giving the shareholder any prior notice and without the shareholder having any right of redress. It wasn’t even as if they were taking my land for some ‘public work’!

She went on to describe her sense of hurt and outrage at the loss, adding:

Without any choice in the matter, not only was the legal connections to part of my Ngapeke turangawaewae extinguished, but more seriously I viewed this as an arrogant snub of my mother’s mana and my own rangatiratanga.

She also commented that, once the legislation had been repealed in 1974, ‘the Crown did nothing to recognise or to reinstate my legal interest in my ancestral land that they took in Ngapeke 5B2B1.’²⁹⁷

Gould reports that development-scheme farmers were among the beneficiaries of the conversion scheme.²⁹⁸ Te Keepa Smallman, one of the two farmers of the former Ngāpeke development scheme lands, recalls that while he was offered ‘uneconomic’ interests to extend his landholdings, he was aware that in accepting them, he was prejudicing other members of his own iwi. He says:

Once I got a call from Maori Affairs about the Ngapeke block. They offered me some of these uneconomic shares in the block that I was farming, I believe the Maori Affairs department gave me first choice when it came to shares in the farm lands. I was able to buy those shares and increase my share in the block. I didn’t feel too good about this, but the way I looked at it if I didn’t buy them then they would be sold to outsiders. That is how I ended up with about 30 acres in the Ngapeke block I was farming. I don’t think the whanau who lost their ‘uneconomic shares’ even knew about it, Maori Affairs just did it.²⁹⁹

Mr Smallman was at least able to retain the land concerned for Ngāti Pūkenga. This was not always the case, however. The conversion of uneconomic interests was a cause of grievance over an extended period, affecting a number of claimants, and in section 2.7.4 below we examine a later instance of the problem, in relation to blocks on Rangiwaea Island.

297. Whaitiri Williams, brief of evidence, 22 May 2006 (doc Q19), pp 5–7

298. Document T37, p 287

299. Te Keepa Smallman, brief of evidence, 22 May 2006 (doc Q24), p 8

2.7.3

Even the voluntary gifting of shares was not ideal, in terms of long-term outcomes, but with individualised title it was sometimes the only solution. To help her brother acquire his own home, Homai Balzer’s whānau gifted him all their shares in Te Papa 59G, so that he could partition out a house site. The result, however, is that, as she says: ‘I am now landless at Bethlehem the place where I was born and where my tupuna lived.’³⁰⁰

2.7.3 The quantum of alienation

Between 1950 and 1959, alienations continued at the lower levels of the previous two decades. According to Belgrave et al, a little over 202 hectares (or 545 acres) of Tauranga Māori land were alienated from 1950 to 1959. Of this area, 151.78 hectares (375 acres) was purchased privately, 1.89 hectares (4.67 acres) by the Crown, and 48.41 hectares (119 acres) were taken for public purposes. But between 1960 and 1969 there was a leap in alienation to almost 2516 hectares (6216 acres) – higher than the alienation figure for the 1920s. Of this amount the largest portion was the 983.88 hectares (2431 acres) taken for public purposes, mainly in relation to the construction of the deep-water port and associated infrastructure, though no other land was purchased by the Crown. Private purchasing also continued, with almost 850 hectares (2100 acres) purchased.

There were two other categories of alienation recorded in the Belgrave et al statistics, reflecting the provisions of the 1967 legislation that we discussed above: 6.61 hectares (16 acres) of voluntarily Europeanised land; and 676.08 hectares (1670 acres) of land compulsorily changed from Māori to European land under part 1 of the Act.³⁰¹ As we noted earlier, however, these changes affected the status rather than the ownership of the land.

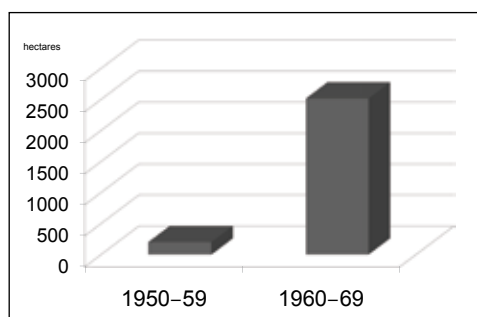


Figure 2.8: Amount of Māori land alienated in the Tauranga district, by decade, 1950–69

From the late 1950s onwards, a new form of alienation emerged. Because of the rapid expansion of the urban centre of Tauranga, coupled with the construction of an extensive new roading network, there was pressure on peri-urban land to be developed for residential housing. As Young notes, the increased value of these desirable lands for suburban development, leading to higher rating charges, ‘severely undermined Maori land ownership on the Maungatapu peninsula and around Welcome Bay.’³⁰²

Following the absorption of the Maungatapu Peninsula into the Tauranga Borough on 1 April 1959, there was great pressure for Māori land to be

300. Homai Balzer, brief of evidence, undated (doc D19), p 6

301. Document T16(a), pp 30–31

302. Document M3, p 112

subdivided and alienated. Some examples of this are discussed below, and the topic is also addressed in chapter 5 where we look at urbanisation, rating, and associated issues.

2.7.4 Case studies

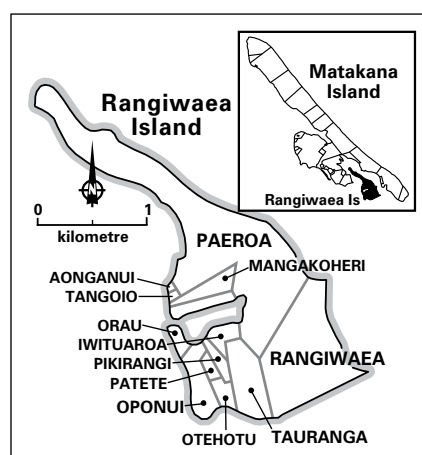
In the second half of the twentieth century, there were still problems and irregularities arising with the alienation process, as well as some mismanagement by administrative agencies in the development of subdivisions. In particular, however, our case studies highlight the effect of the provisions relating to ‘uneconomic’ interests.

(1) *Rangiwaea Island*

The role of the Māori Trustee in acquiring ‘uneconomic’ interests during the late 1960s and early 1970s is an important issue for the Wai 755 claimants, in relation to Rangiwaea Island.

Land on Rangiwaea was returned in individualised title, following the raupatu. A *Gazette* notice published in 1943 under the Native Land Act 1931 prohibited the alienation of land on the island to any person except the Crown. This restriction was revoked, however, in 1957 under section 254 of the Māori Affairs Act 1953.³⁰³

From late 1967 onward, a Māori farmer on Matakana Island, who was not an owner in any of the land on Rangiwaea, applied to the Māori Trustee to purchase ‘uneconomic’ interests in a number of the Rangiwaea blocks. He initiated proceedings by writing to the Māori Trustee with an expression of interest, and the trustee would then compulsorily acquire the uneconomic interests in the block concerned before selling them to him as the prearranged investor. In this way, he acquired over 150 acres on Rangiwaea, being around 21 per cent of the island.³⁰⁴ There were other similar transactions with other buyers. That said, we note that the trustee blocked an attempt by a Māori real estate agent based in Rotorua to acquire uneconomic interests on the island: the trustee told him he had no plans to buy up interests in either of the two blocks mentioned and that, even if he did, he would not sell to the agent ‘unless there were extraordinary circumstances’.³⁰⁵ As Evaan Aramakutu observes in his evidential report, the trustee’s focus in buying



Map 2.13: Rangiwaea Island

303. *New Zealand Gazette*, 19 September 1957, p1675 (Evaan Aramakutu, ‘Wai 755: The Compulsory Acquisition of Uneconomic Rangiwaea Island Interests by the Māori Trustee’ (commissioned research report, Wellington: Waitangi Tribunal, 1999) (doc F1), p 22)

304. Document F1, p 51

305. *Ibid*, p 35

2.7.4(1)

up, and then on-selling, uneconomic shares was above all to maximise the likelihood of the land being put to productive use.³⁰⁶

Prior to the 1970s, there seems to have been a lack of protest about the Māori Trustee's activities. As Aramakutu notes, however, a lack of protest did not necessarily reflect a general disinterest on the owners' part. The two owners of Paeroa 1A3B, for example, were not aware that their interests had been acquired until after they had already been on-sold. They wrote to the Māori Trust Office and the Māori Affairs Department in Hamilton, but the Māori Trustee could do nothing to force the return of the land once it had gone.³⁰⁷

In the adjacent Paeroa 1A3C, shares were valued in 1967 at \$42.73 each. Being below the \$50 (formerly £25) minimum, this immediately resulted in the interest of any owner holding 1.17 shares or less being deemed 'uneconomic' and liable to compulsory conversion – which duly occurred in October of that same year.³⁰⁸ As Puhirake Ihaka of Tauwhao Te Ngare³⁰⁹ explained:

The korero in my family is that none of the owners, in particular my grandfather who was still alive at the time, even knew that the shares had been taken until the orders had been made by the Maori Land Court and the cheques sent out by the Maori Trustee. Even then many did not find out at all. In addition, quite a few of the owners, including all of my grandfather's brothers and sisters, were deceased at the time of the compulsory acquisition by the Maori Trustee. My grandfather was alive at the time but living in Auckland.³¹⁰

Noting that there were some families who lost all their lands, Mr Ihaka also stated:

To add insult to injury many of the affected parties did not even receive their payments from the Maori Trustee as the records of the Maori Land Court of the day were so outdated that they had no idea as to who were the current owners let alone where they lived.³¹¹

Counsel for the Wai 755 claimants noted that the terms of the 1953 Act 'did not provide for any notification or service on owners when the Maori Trustee applied to compulsorily acquire uneconomic shares'.³¹²

Under section 137 of the Māori Affairs Act 1953, 'uneconomic' interests would go to the Māori Trustee unless they had been specifically vested in a beneficiary by virtue of the will of a deceased owner, or unless the beneficiary 'or other person' could combine them with

306. Document F1, pp 37, 51–52

307. Ibid, p 25. Fortunately, in this instance, when the purchaser learned of the situation, he arranged with the Māori Trustee for his money to be reimbursed. The land was subsequently returned to the owners.

308. Albert Puhirake Ihaka, brief of evidence, undated (doc Q49), paras 15–16

309. We note that, in stage 2 of the Tauranga inquiry, the claimants have generally chosen to refer to themselves as 'Tauwhao Te Ngare', rather than the longer 'Te Whanau a Tauwhao me Te Ngare' used in the stage 1 report.

310. Document Q49, para 19

311. Ibid, para 28

312. Counsel for Tauwhao Te Ngare, closing submissions (Wai 755, Wai 809), 24 November 2006 (doc U4), para 23

other existing landholdings to make an area capable of use ‘within a reasonable time’ for ‘occupation or production.’ The latter provision further facilitated the alienation of Māori land by privileging economic considerations over, for example, any hapū wish to retain ancestral patrimony. In this context, we observe that Mahu Smith and Tahere Taingahue, who were already owners in Rangiwaea blocks, were comparatively unsuccessful in their attempts to buy up uneconomic shares.³¹³

More recently, a Tauwhao Te Ngare Trust has been set up to administer around 272 hectares of land on Rangiwaea. However, as a result of activity such as that outlined above, Mr Ihaka, for one, commented that his whānau now only has a minimal interest in the Trust and some family members, having lost all their land, are not able to be beneficiaries at all.³¹⁴

In total, Evaan Aramakutu estimates that about 690 acres of the 700 acres of land on Rangiwaea Island were in some way affected by the Māori Trustee’s dealings, but is not able to ascertain an exact figure of total land alienated by conversion.³¹⁵ Although we reserve our Tribunal discussion for later in the chapter (see sec 2.11), we note here that Crown concessions concerning the practice of compulsory conversions (further detailed below at section 2.10.2) made particular reference to Rangiwaea Island. The Crown admitted that interests compulsorily purchased were intended to be resold by the trustee to other owners within the block, but tacitly admitted that this did not happen on Rangiwaea, noting that ‘the positive benefits were restricted to those who acquired the shares.’³¹⁶ In this instance, the person who acquired most shares, although Māori, was from Matakana Island and had no prior rights in the Rangiwaea blocks.

(2) *The subdivision of Maungatapu B*

Both the Tauranga Borough Council and Department of Māori Affairs were interested in the development of the Maungatapu Peninsula as a residential area: the council as a means of facilitating the payment of rates; the department to rehouse Māori who were living in substandard housing there. The Maungatapu B block, of just under 138 acres (almost 56 hectares), was formed from the amalgamation of 13 Maungatapu blocks and the Te Mara-a-Tatahou block in 1965. The block was bisected by the path of the new Tauranga to Te Maunga motorway.³¹⁷

In May 1965, two proposals for subdivisions were presented to the court at the amalgamation hearing, one by the Māori Trustee and one by Beazley Homes. Turi Te Kani spoke at this hearing to say that he had held discussions with the latter to ensure that the marae

313. Document F1, pp 31, 32–34, 38, 52

314. Document Q49, paras 26–29

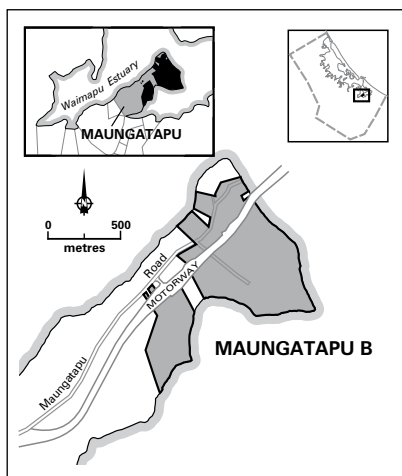
315. Document F1, p 51

316. Document U26, paras 2.86, 2.102

317. Heather Bassett, ‘Aspects of the Urbanisation of Maungatapu and Hairini, Tauranga’ (commissioned research report, Wellington: Waitangi Tribunal, 1996) (doc A26), pp 39–41

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Map 2.14: The Maungatapu B block

would be protected and that owners would be able to settle in the area. However, on the basis of the judge’s comments at this hearing, Heather Bassett is of the opinion that the court favoured the Māori Trustee’s proposal.³¹⁸ An owners’ meeting was called for 16 September 1965 so that the two options could be discussed. Thirty-four of the owners, with five dissenting, passed a resolution accepting the trustee’s proposal, although Bassett suggests that the reading of the judge’s comments at the meeting may have influenced the vote. Further pressure to accept the proposal doubtless came from a rates debt of £1696 9s 9d hanging over the land.³¹⁹ (We shall look further at the issue of rates, particular in

relation to land on the Maungatapu Peninsula, in chapter 5.) A week after the meeting, the court ordered the amalgamation of the 14 blocks into Maungatapu B. An order vesting the block in the Māori Trustee under section 438 of the Māori Affairs Act 1953 was made on the same day.³²⁰ At that time there were already more than 700 owners.³²¹

The terms of the trust allowed the Māori Trustee to borrow money, employ contractors, subdivide for residential purposes, and sell lots on the open market. The trustee moved to subdivide the land quickly. Bassett notes that the owners had little involvement in the subdivision and that the Hamilton-based trustee staff did not keep owners informed of progress and decisions that were being made. She also questions the Māori Trustee’s commitment to resettling the owners on their land, saying that not enough sections were being made available to owners.³²² Where sections were made available to owners they had to exercise their option to purchase within two years, paying with their shares and making up any deficit with cash. Rapata Wepiha, a witness in our inquiry, was one of those who did manage to secure a section, using his grandmother’s shares, but he commented that blocks in the subdivision were more expensive than the owners had first anticipated.³²³

The subdivision scheme was divided into six stages, with 10 sections out of 32 made available to owners in the first two stages. In the third stage – the largest, by far, at 198 sections – only one section was vested in an owner. From the stage-four development of land adjacent to the marae, the owners received 13 of 16 sections, although it should be noted that there

318. Document A26, p 41

319. Ibid, p 41–42; doc M3, p 122

320. Document A26, p 41

321. *Bay of Plenty Times*, 18 January 1968, 12/246, Maori Trust Office, Hamilton (paper 2.547, p 4)

322. Document A26, p 42–44

323. Rapata Wepiha, brief of evidence, undated (doc Q51), p 2



Figure 2.9: Aerial view of Maungatapu (lower left) and Matapihi, 1959. Virtually all the visible part of the Maungatapu Peninsula lay within the boundary of Maungatapu B.

Photograph by Whites Aviation. Reproduced courtesy of the Whites Aviation Collection, Alexander Turnbull Library (WA-49884).

were drainage problems with this land. Stage five was sold as one lot to the Catholic Church, while stage six, again adjacent to the marae, had all 12 sections vested in the owners.³²⁴

In terms of financial return, the total amount raised by the subdivision was \$1,354,491.22, with some \$993,634.78 being distributed to the owners over the life of the project.³²⁵ Another \$20,000 was also used to fund a new wharekai at Maungatapu Marae. But the distribution of income did not start immediately: according to Kay and Bassett, the first disbursements were not made until 1970, which presumably meant there was no income at all for the first five years. After that, sale money came in only as lots were sold. Final payouts were made

324. Document M3, pp 122–123

325. Document A26, p 49

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in 1985 after the trust was wound up. By that time there were more than 1100 owners. Even using a conservative figure of 900 owners (the likely number by around 1975, given the data at our disposition), a simple calculation shows that, had shareholdings been equal, then the payouts per annum between 1970 and 1985 would have averaged only around \$70 per person. Taking into account the first five years with no income at all, that average return drops to around \$55 a year over the life of the trust. That said, of course, some beneficiaries of the trust had a greater shareholding, and therefore a greater income, than others. In terms of using share value to acquire sections, we note that in the late 1960s even a small plot cost at least \$2000. The Māori Trustee's office, meanwhile, earned some \$62,896.15 in commission on the sale of the 259 sections in the subdivision.³²⁶

There are several aspects of this case study that warrant comment. After the initial discussions involving the court, the trustee, and owners, there seems to have been little attempt to keep owners informed of progress with the subdivision plan. Once sections came available, the extreme fractionation of interests meant few owners had sufficient shares, just as they lacked sufficient capital, to buy them: only 14 per cent of the total number of sections went to tangata whenua. As Bassett points out, another way of looking at the data is that less than 3.6 per cent of beneficial owners were able to obtain a section on the land that had formerly been theirs.³²⁷ Hardly any were in a position to buy the valuable cliff-top sections. That said, most who did buy sections got them near the marae, which may have been in keeping with their cultural preferences. We make further comments on Maungatapu subdivisions in the housing section of our socioeconomic chapter. In terms of alienation, however, we close with a remark made by the Māori Trustee's representative at a 1965 Māori Land Court hearing on Maungatapu v. Advocating the benefits of vesting land in the trustee, he observed: 'The sale of sections is easier if title [is] in one name[;] Maori land dealings [are] more intricate than for European land.'³²⁸ Clearly he was aware that the legislation then in place, allowing significant vesting of Māori land in the Māori Trustee and giving wide powers over its use and disposal, effectively facilitated alienation.

(3) Tongaparaoa 2B2B2

We are concerned here with the alienation of most of Tongaparaoa 2B, situated just below the base of the Maungatapu Peninsula (see map 2.15). Previous alienations had involved only small, quarter-acre sections, presumably intended as housing lots.³²⁹ Two applications to purchase the Tongaparaoa 2B2B2 block, measuring some 15 acres (a little over six

³²⁶. Document M3, p 123; *Ibid*, pp 48–50; Heather Bassett, 'Aspects of the Urbanisation of Maungatapu and Hairini, Tauranga: Document Bank', undated (doc A26(a)), p 250; paper 2.547, pp 4–5; doc A51, p 55

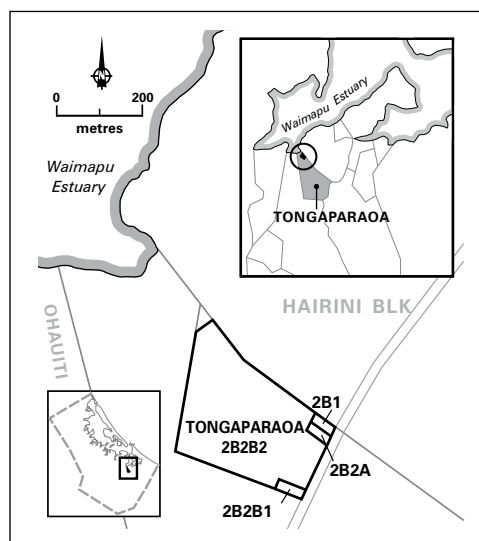
³²⁷. Document A26, p 48; paper 2.547, p 5

³²⁸. Document A26, p 56

³²⁹. Document L2, p 101

hectares), were received by the Māori Land Court in 1965, both of which the court considered were well below the Government valuation.³³⁰

After giving the would-be purchasers some time to consider raising their offers, the court decided to call an owners' meeting to consider an offer for purchase made by Russell Harris. The meeting was held on 4 March 1966, at which 27 owners plus one proxy, out of a total of 105 owners, voted on the resolution. There was some disagreement about the terms of the purchase and whether the block would be sold. Two owners – Puri Taikato and Rangi Hunahuna – wanted the price raised, but Harris explained that he would have to clear the noxious weeds from the land at considerable expense and pay the rates so



Map 2.15: The Tongaparaoa 2B2B2 block

that he could graze his horses. A compromise price of £5000 was suggested. Despite the raised price, only 11 owners were in favour of sale, while 16 owners and the proxy were not. However, the 11 owners held a slightly greater shareholding in the land – 2.97368 shares as opposed to 2.12599 – and the resolution was therefore passed. It should be noted here that the total shareholding in the block was 13.25 shares, meaning that owners representing less than a quarter of the total number of shares (22.44 per cent, to be precise) were able to alienate the whole block.³³¹

A memorial of dissent was added to the resolution, so that the purchaser had to inform the dissenting owners that the court was to hear the application for confirmation. At the court hearing on 18 May 1966, Akuhata Roretana, appearing on behalf of his 80-year old father who opposed the sale, told the court that his father believed that 'land could otherwise be available for housing [our] own people'. During the hearing, however, he conceded that his father did not live in the area, but at Maketū, and had previously taken no interest in the block. Sol Kanapu, the county Māori land officer and rates collector, gave evidence that rates had not been paid on the land for nine years. The sale was confirmed despite the owners' opposition, and the purchaser was to pay all recoverable rates.³³²

In this case a minority of owners, with a minority shareholding, were able to alienate the block despite strong opposition.

330. Document M3, p 80

331. Ibid, pp 80–81

332. Tauranga Māori Land Court alienation minute book 1, 18 May 1966, fol 189 (doc M3, p 81)

2.8 CROWN AND PRIVATE PURCHASES, 1974–92

The tide of national Māori opinion had changed during the late 1960s and early 1970s. There was growing apprehension at the continuing losses of the remnants of Māori land, culminating in the hugely supported land march led by Whina Cooper from Cape Reinga to Wellington in the spring of 1975. The Labour Government later that year repealed some of the most reviled measures of the 1953 and 1967 Acts.

Following the passage of the Treaty of Waitangi Act in 1975 the focus of Māori policy shifted to the implementation of the Treaty in its contemporary setting. With the passing of an amendment in 1985, that focus widened to include historical issues, and particularly loss of land, since the Treaty's signing in 1840. There was also a new emphasis on tribal management as an exercise in tino rangatiratanga, expressed in measures such as section 6 of the Māori Affairs Restructuring Act 1989 which set up the Iwi Transition Agency – a body tasked with helping iwi to 'develop and strengthen iwi authorities to provide services for their members, and for other Maori within the rohe of the iwi'. But it was not until Te Ture Whenua Māori Act was passed in 1993 that there came a sustained reversal of more than a century of attempts, recorded earlier in this chapter, at Europeanising Māori land tenure and administration and of Crown and private attempts to purchase it. We will reserve discussion of that Act for our final chronological period, at section 2.9.1.

2.8.1 The legislative regime

The change to a Labour Government in 1972 heralded a significant change in Government policy towards Māori land. The Minister of Māori Affairs, Matiu Rata, explained that his government looked on land 'as necessary not only for the social advancement of the Maori people, but also for their economic and cultural advancement . . . every encouragement should be given to the Maori people to develop their land'.³³³

In line with this view, the Māori Affairs Amendment Act 1974 sought to give Māori a greater say in the use of land remaining in their ownership, specifically stating in its preamble: 'it is desirable that there be greater involvement and participation in, and identification of the Maori owners with, land development activities'.³³⁴

Importantly, the Act repealed the more controversial aspects of the 1953 and 1967 legislation. It also abolished the Board of Māori Affairs that had been constituted in 1934 and created a Māori land board in its stead to implement Government policy.³³⁵ Regional Māori land advisory committees of 'not more than 7 persons' were to be created to assist in con-

333. Matiu Rata, 2 October 1974, NZPD, 1974, vol 394, p 4781 (doc T36, p 185)

334. Māori Affairs Amendment Act 1974, preamble

335. Ibid, ss 5, 7, 11

sidering proposals both for Māori land-title improvement and for changes in the use of Māori land.³³⁶

For land alienation, the Act repealed the provisions relating to compulsory acquisition of uneconomic interests by the Māori Trustee, and it removed the right of the trustee to sell to the Crown any interests acquired through the conversion fund.³³⁷ The fund itself would finally be abolished, on the recommendation of the trustee, by the Māori Affairs Amendment Act 1987. As Belgrave, Deason, and Young summarise it, that 1987 Act allowed that:

Compulsorily acquired shares still held in the fund would be returned to those persons who would have received the shares . . . The blocks with aggregate share values of less than \$1,000 were to be transferred to present owners without payment and the blocks with aggregate share values of more than \$1,000 were to be sold to the present owners. The Māori Trustee was to make interest-free advances that were to be repaid over a long period by the revenue generated by shares.³³⁸

In the meantime, compulsory Europeanisation of title was halted by the 1974 Act. Further, there was provision for Māori landowners to apply to have the status of European land owned by them changed into Māori freehold land. This applied not only to any land Europeanised by part 1 status declarations, but also to land classed as European yet owned by Māori for more than 10 years. There does not appear to have been any cut-off date for making applications relating to the latter. However, in the case of reconverting land that had been compulsorily Europeanised by part 1 status declarations, the Act stipulated that application had to be made before 1 January 1977 (although that time limit was subsequently removed). The land also had to have remained in the ownership of the same person who held it when the status declaration was first made.³³⁹

There were changes, too, to the succession rules. As the Minister of Māori Affairs explained, this was to ‘restore the principle of hereditary ownership of land’ and to ‘recognise the right of Maori to succeed to and perpetuate ownership in common in accordance with Maori custom.’³⁴⁰ Alongside that, the Act introduced significant changes to the alienation procedures for Māori land, enabling owners to have a greater say in matters affecting their land. The quorum of owners at meetings was required to increase, although it varied depending on the kind of alienation in question.³⁴¹ New criteria were established for the Māori Land Court to consider when confirming alienations, namely that:

336. Ibid, ss 13–14

337. Ibid, ss 52–53

338. Document T36, p 270

339. Māori Affairs Amendment Act 1974, ss 57, 68; Māori Purposes Act 1976, s 1(1)

340. Document T36, p 187

341. Māori Affairs Amendment Act 1974, ss 36–38

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- ▶ the instrument of alienation has been executed and attested in the manner required by this Act;
- ▶ the alienation is not in breach of any trust to which the land is subject;
- ▶ the alienation would not result in any undue aggregation of farm land;
- ▶ the value of any millable timber, minerals, or any other valuable thing on the land has been taken into account when assessing the price to be paid; and
- ▶ the consideration, if any, is adequate, having regard to the relationship of the parties and to any other special circumstances of the case.³⁴²

A change in terminology under the Māori Purposes Act 1975 led to 'European land' becoming known as 'general land'. That Act also restored the status of Māori land held by Māori land incorporations which, under the 1967 Act, had been compulsorily converted to European land.³⁴³

In 1981, the State's powers of compulsory acquisition were further reined in by a Public Works Act which aimed to encourage takings by agreement. We shall discuss that Act in chapter 4, where we examine public works issues.

2.8.2 The administration of alienation

In terms of administering legislation, the attitudes of ministers and officials are important if both the spirit and the letter of the law are to be followed. In the 1970s, there were clear signals that ministers expected departmental officers to take on board changing Crown thinking with respect to Māori land and act accordingly. In 1973, for instance, a circular was sent to officials of the Department of Lands and Survey indicating that departmental staff were no longer to approach Māori owners for the purchase of their lands. That advice was reinforced after the passage of the Māori Affairs Amendment Act 1974, with the Minister of Lands noting that leasing could be put as an alternative.³⁴⁴ Another area of government concern was land held by the Māori Trustee. In a letter to the Secretary of Māori Affairs in 1975, Rata instructed that the trustee should, as far as possible, refrain from selling land interests. Rather, in Rata's opinion, he should 'adopt the role of custodian of land'.³⁴⁵ Gradually, the message of needing to preserve Māori land began to penetrate. Indeed, under the ensuing National Government, the Department of Māori Affairs drew attention to its efforts to actively assist Māori to buy *non*-Māori land where this would enable them acquire title to a home or a farm.³⁴⁶

The reconversion of Māori land back from general land, however, was not widely taken up by Māori. Nationwide, according to Belgrave, Deason, and Young, 'a mere 4,500 hectares

342. Māori Affairs Amendment Act 1974, s 31

343. Māori Purposes Act 1975, ss 16, 17

344. Document T36, pp 194–196

345. Rata to secretary, 16 July 1975 (doc T36, p 196)

346. Document T36, pp 199–200

was all that was reconverted back from general land to Māori freehold.³⁴⁷ In Tauranga, just 202 hectares was changed back to Māori land – only 15 per cent of the the total area affected by compulsory Europeanisation.³⁴⁸ It is not clear why there was such a low uptake but a number of factors may have been involved. Some of the land, for instance, may already have been sold out of Māori ownership. Another important consideration is that it was easier to borrow money against land in European title. Other reasons, however, likely included lack of knowledge about the Europeanisation in the first place, and lack of knowledge of the process to be followed to reconvert the title. As the Assistant Māori Trustee wrote to head office in 1976:

It was recently brought to the notice of the Minister that owners and probably successors to the deceased owners whose lands have changed by Status Declaration prior to the 1974 amendment have not generally been aware of the provisions of section 68 . . .³⁴⁹

To judge from Hone Newman's brief of evidence, quoted earlier, it certainly appears that some Tauranga owners did not know that their land had been Europeanised, or that they could apply to have its status changed back.

2.8.3 The quantum of alienation

As can be seen from figure 2.10, below, the alienation rate in Tauranga dropped during the 1970s, compared with the level that had been reached during the 1960s, and declined still further in the 1980s. The statistics provided by Belgrave et al show that just over 1045 hectares (2583 acres) were alienated between 1970 and 1979, and a much reduced 133.9 hectares (330 acres) during the 1980s.

In the 1970s, the largest alienation category was private purchase, at 415.35 hectares (1026 acres). The Crown purchased only a tiny area – 1.07 hectares (2.64 acres) – though a large amount of land (288.91 hectares, or 713 acres) was taken for public purposes, thus reflecting the continuing infrastructural developments associated with the expansion of the city and port. Finally, we note that, in addition to the area alienated, around 340 hectares (841 acres) was Europeanised, with the great majority of that (335 hectares, or 828 acres) being by compulsory part 1 status declarations under

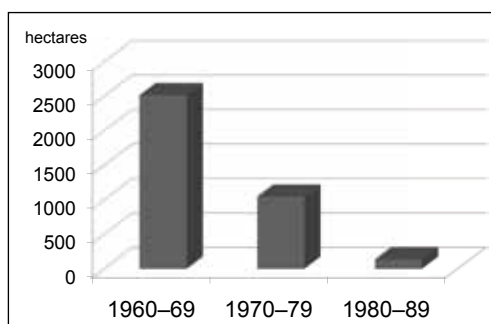


Figure 2.10: Amount of Māori land alienated in the Tauranga district, by decade, 1960–89

347. Ibid, p188

348. Document T16(a), p12

349. Assistant Māori Trustee to head office, 11 August 1976 (doc T36, p189)

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the provisions of the 1967 Act. The latter figure was, however, less than half the amount recorded for the 1960s, doubtless reflecting the change in legislation that came in 1974.³⁵⁰

2.8.4 Case studies

Case studies for this period need to be seen against the background of increasing urbanisation around Tauranga, with an accompanying spread of housing subdivisions and urban infrastructural projects, such as the motorway from Tauranga to Te Maunga. As we shall see in later chapters, this translated into rising land prices and, in turn, rising rates. It also increased the pressure for the diminishing area of non-urban land to be used productively. Although at central government level there was growing awareness of the need to protect Māori land as far as possible, pressures such as these meant Tauranga Māori were still at risk of losing what land remained to them. Alongside that, where they did retain ownership, it was often nominal, with little active control since, for a variety of reasons, administration tended to pass to the Māori Trustee. The following case studies illustrate some aspects of these problems.

(1) Ranginui 6B

Located on the rural outskirts of Tauranga, the 24-acre (9.7-ha) Ranginui 6B block had been placed under the administration of the Māori Trustee in 1952 because of unpaid rates. By 1954 the block had become infested with noxious weeds. The trustee took steps to put the land to use, to control the weeds and comply with the Tauranga County Council's rates requirements. The land was therefore leased to Tio Karora Te Mete (Jock Smith) in 1953, to farm for 21 years. By the time the lease expired in September 1974, Te Mete had died. An inspection of the property in October 1974 described it as 'uneconomic and small', presumably in terms of its suitability for farming.³⁵¹

Smith's estate elected to renew the lease, which entailed a special valuation of the property. The new valuation raised the value of the land significantly – some 3360 per cent over its 1963 value – which doubtless reflected the encroaching urbanisation to the west and the land's potential for subdivision at some future date. Since rental was calculated at 5 per cent of the unimproved value, and since rates were also based on land valuation, the prospective lessee was faced with a huge increase in costs. The lessee's estate notified the Māori Trustee that for them to renew the lease, a better deal would need to be arranged. The trustee, however, took the position that because the estate had decided to lodge its application to renew the lease before the rental increase, the application had to proceed. The estate lodged an objection to the special valuation and proposed to surrender the lease. An owners' meeting was called for 19 September 1975 to discuss the situation. This meeting lapsed because

350. Document T16(a), pp 30–31

351. Document A51, pp 58–59

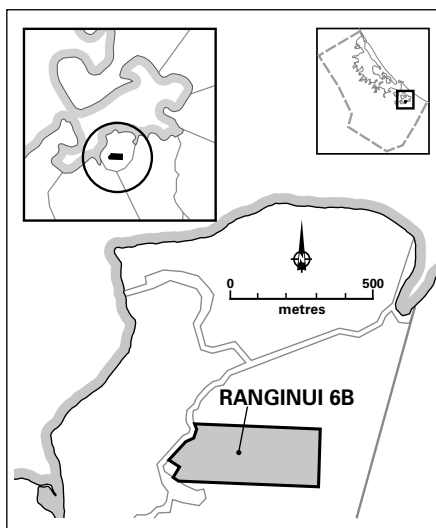
of insufficient numbers to constitute a quorum, but an informal meeting, for which no minutes have been kept, apparently decided to allow the lease to be terminated and a section 438 trust to be established to administer the property. The trust was set up in June 1976, to the strong objection of the Māori Trustee, who asserted that he remained the statutory agent for the owners regarding the lease. The trustee also did not want liability for any improvement compensation. The latter issue was resolved by both the lessee and the trust granting him an indemnity from any such liability.³⁵²

At the hearing that resulted in the trust being set up, the court was told that the background to the application was the same as that for two other Ranginui blocks. In presenting information on those other blocks, the solicitor for Smith's estate said that the owners had complained that the Māori Trustee did not notify them that the lease was coming up for renewal, which thus gave them no opportunity to discuss what they might want to do with the land.³⁵³ As a postscript, we note that in 1993 the land was still held by the trust and the possibility of using it for papakāinga housing was being discussed.³⁵⁴

Our principal concern in this case study is the Māori Trustee's fixation on following a particular line of action and his apparent failure to keep the owners informed of changing circumstances and involve them in decision-making about their land. Although he was following the law of trusts, which required him to get a reasonable market return based on the valuation, this may not have coincided with the way the owners saw their interests. In this case and in others, the trustee (as the law entitled him to do) often made decisions without recourse to the owners. From other evidence presented to us, it seems this sometimes even resulted in sales and leases being embarked on without the owners' knowledge or consent.³⁵⁵

(2) *Maungatapu 1A5*

Another example of a block administered by the Māori Trustee is the roughly two-acre (0.86-ha) residue of the Maungatapu 1A5 block that was left after public works takings for the Tauranga to Te Maunga motorway.³⁵⁶ Before the taking, the block, created in May 1919



Map 2.16: The Ranginui 6B block

352. Document A51, pp 58–64

353. Tauranga Native Land Court minute book 37, fols 288–292, 23 June 1976 (doc A51, p 62)

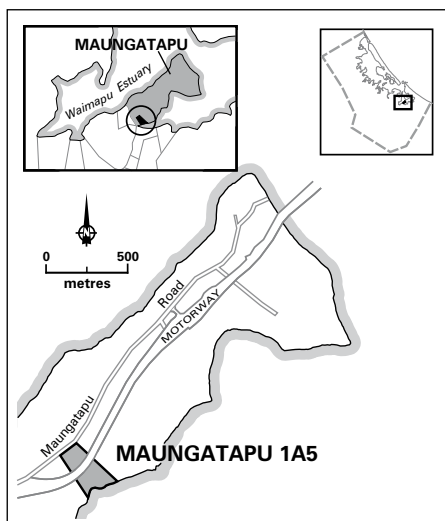
354. Document A51, pp 62–63

355. See, for example, the evidence on Hairini 8 (doc A26, pp 51–53, 58–60; doc G1, pp 180, 214–216)

356. Document A26, pp 31–53; doc M3, p 123

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Map 2.17: The Maungatapu 1A5 block

and vested at that time in 11 owners, had measured a little under 11 acres, or around four hectares.³⁵⁷

Again, rates arrears were an issue. Despite the suggestion in 1972 that the compensation money from the motorway takings could be used to fund a subdivision that would provide housing lots for at least some of the owners, this option was not explored for a further two years. Then, in 1974, the Māori Trustee arranged for the block to be surveyed to assess the viability of the idea. The surveyor concluded that the land could be successfully subdivided into eight lots.³⁵⁸ An owners' meeting was called in October 1974 to consider a plan in which two of

the proposed lots would be sold on the open market to pay the rates debt, and six lots would be vested in the owners. Only 12 owners attended, and Bassett and Kay note that one owner complained that she had not received notification of the meeting.³⁵⁹ We do not, though, have any evidence of more widespread complaint about the notification process.

At the meeting, the owners were advised that the benefits to them were likely to be greater if the Māori Trustee undertook the subdivision rather than a private contractor. However, it was minuted that Turi Te Kani advised the owners against the plan, recalling the trustee's management of Hairini 1G3:

He raised the issue of Hairini 1G3, where he felt the Maori Trustee could be and should be doing more for the owners, but had declined to administer the block and to subdivide, presumably because it was more difficult. He said he was critical of the Maori Trustee's attitude relating to that block.³⁶⁰

The owners were assured that they would have 'a definite say in the proceedings', and therefore voted to vest the land in the Māori Trustee to subdivide, with three advisory trustees – including Te Kani – also to be appointed.³⁶¹

The work on the subdivision was nearly complete by 1976, and a further meeting was called on 3 June of that year to inform the owners of progress and to discuss allocation of the sections. This time 60 people attended, indicating a high level of interest. Nine people

357. Tauranga Native Land Court minute book 10, 28 May 1919, fol 195; doc A51, p 31

358. Document A51, pp 40–41

359. Ibid, p 41, 44. By 1981, there were 112 owners (see p 51) but, allowing for successions, there are likely to have been fewer than that at the time of the meeting.

360. Minutes of a meeting held at Tauranga with the owners of Maungatapu 1A5, 31 October 1974 (doc A51, p 42)

361. Document M3, p 124; doc A51, p 43

indicated they wished to acquire sections. However, the costs involved and the difficulty of raising sufficient shares or cash, or both, proved a seriously limiting factor. Kay and Bassett comment that '[i]n most cases it turned out that the value of their shares was not sufficient to even cover the deposit.' They also note that the process of exchanging or pooling shares was complex and was not sufficiently well explained at the meeting, citing the example of Miringa Watene who wrote to the Māori Trustee the following week, clearly bemused by the welter of information she had received about timeframes, deposits, ballots, applications for vesting orders, and the like.³⁶²

In the event, 10 sections were created (rather than the eight initially envisaged), but only two owners were successful in their quest to retain a piece of land in the subdivision. The remaining eight sections were sold on the open market, six of them under agreements for sale and purchase, which meant the money was received by the trustee and paid out to owners in instalments over five years. Kay and Bassett cite the example of one of the 112 owners, living in Auckland, who was informed that his share of one payment of \$3000, based on his 2.19445 shareholding of the 1508.57013 shares, would be just \$4.36.³⁶³

The basic problem was that through fractionation of title over the years, owners' shares had become virtually worthless as a basis for acquiring sections in the subdivision. Further, although owners were given information at the meeting about the possibility of, for example, pooling shares, they appear to have been given little practical advice on what to do, when, and how, in terms of coping with the administrative procedures involved. As a result, only 1.7 per cent of owners were able to acquire a section on the land they had held, and the financial benefit to the remainder was in some cases questionable.

We note, too, that in some respects, the trustee was being required to act as a real estate agent – not an area in which he would necessarily have any qualifications. Indeed, the need for expertise in a wide range of specialist areas was an issue that was raised in 1979 by a committee of inquiry appointed to review the role of the trustee. In its report, the committee noted that the trustee's work was diverse and specialised, and they recommended an intensive staff training programme so as to provide the trustee with the necessary support.³⁶⁴

2.9 CROWN AND PRIVATE PURCHASES, 1993–2006

2.9.1 The legislative regime

Discussion of the legislative regime for our final period must begin with Te Ture Whenua Māori Act 1993. Aiming to promote retention and owner control, this Act substantially

362. Document A51, pp 47–49

363. Ibid, pp 50–52

364. *The Role of the Maori Trustee: Report of the Committee Appointment to Review the Operations of the Maori Trustee*, May 1979, pp 4–5 (doc T36, p 230)

altered the emphasis of Māori land legislation. Some of the more protective measures of the 1993 Act have since, however, been repealed, as discussed below.

It was not until Te Ture Whenua Māori Act was enacted in 1993 that legislation explicitly acknowledged the significance that land held for Māori owners as a 'taonga tuku iho'. Its preamble stated that:

it is desirable to recognise that land is a taonga tuku iho of special significance to Maori people and, for that reason, to promote the retention of that land in the hands of its owners, their whanau, and their hapu: and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whanau, and their hapu.³⁶⁵

The Act stressed that the Māori Land Court was to promote land retention, rather than administering alienation. Section 2 stated that the powers and duties conferred by the Act were to be exercised in a manner that 'facilitates and promotes the retention, use, development, and control of Maori land as taonga tuku iho by Maori owners, their whanau, their hapu, and their descendants.' This section also stipulated that where there was conflict between the Māori and Pākehā versions of the preamble, the Māori version was to prevail.³⁶⁶

To give effect to the key focus of the Act – land retention – section 17 set out the primary objectives of the Māori Land Court as being to:

promote and assist in—

- (a) The retention of Māori land and general land owned by Maori in the hands of the owners; and
- (b) The effective use, management, and development, by or on behalf of the owners, of Maori land and General land owned by Maori.³⁶⁷

To achieve these objectives, the court was to provide a means of keeping owners informed of any matters relating to their land. The court was also allowed to determine or facilitate the settlement of disputes among owners, and to propose practical solutions to problems arising in the use or management of land.

The provisions governing alienation, to give effect to primary object of land retention, had much stronger protective measures built in. The Act stated, for example, that the court was not to grant an alienation unless it was satisfied of certain matters, namely that:

- ▶ the instrument of alienation had been executed according to court rules;
- ▶ a resolution of assembled owners was passed with the required degree of support;
- ▶ the alienation was not in breach of any trust to which the land is subject;
- ▶ the alienation would not result in the aggregation of farm land;

365. Te Ture Whenua Māori Act 1993

366. Ibid, ss 2(2), 2(3)

367. Ibid, ss 17(a), 17(b)

- ▶ the value of all buildings had been properly taken into account when assessing the consideration payable;
- ▶ the consideration was adequate; and
- ▶ in case of sale, transfer, or lease, the alienating owners have given right of first refusal to the ‘preferred classes of alienee’.³⁶⁸ As described under section 4 of the Act, the latter included in particular those who might have a special association with the land, such as immediate family, other whānau or hapū members, or other beneficial owners of the land.

On the basis of these criteria, the court had general discretion to grant or refuse confirmation, and it could also recall an owners’ meeting.³⁶⁹ In all cases, it was to have regard to:

- ▶ the historical importance of the land to the owners;
- ▶ the nature of the land and suitability for utilisation;
- ▶ whether owners have had opportunity to give the proposed alienation proper consideration;
- ▶ whether owners have demonstrated a proper assessment and understanding of the present value and future potential value of the land; and
- ▶ application by the owners of the principles of ahi kā.

In cases where *some* of the owners were opposed to the sale, grounds for refusal could include:

- ▶ the respective interests of the supporting and opposing owners;
- ▶ the size of the aggregate land share owned by the opposing owners compared to supporting owners; and
- ▶ the number of opposing owners compared to the number supporting.³⁷⁰

Furthermore, while the Act did permit the court to change the status of Māori land owned by not more than 10 persons to general land, the crucial difference between this provision and the compulsory status declarations of the 1967 Act was that the court had to be satisfied that ‘[t]he owners have had adequate opportunity to consider the proposed change of status and a sufficient proportion of the owners agree to it.’³⁷¹ The Act also extended considerably the number of trust mechanisms available to owners to manage their lands. We discuss these in more detail in our next chapter.

Taken together, all these protective provisions gave the Māori Land Court judges much more discretion in the exercise of their duties aimed at land retention than previous Acts. However, some tangata whenua witnesses spoke about their unhappiness at the level of control given to the court, finding it restrictive. Speaking on behalf of Ngāi Te Ahi, Te Poroa Malcolm told us, for example:

368. Ibid, s152

369. Ibid, s153

370. Ibid, s154

371. Ibid, s136

2.9.2

My impressions of the so called progress we are supposed to have made in terms of land development are not positive. In reality, we are dominated by the Maori Land Act – Te Ture Whenua Maori Act 1993 . . . with the consequence that we are dominated by the Maori Land Court. It dictates what we can and cannot do with our own land. There is a constraining and limiting influence over what we can do to our land as trustees and owners for development purposes. We are almost reduced to being babysitters over our own land.³⁷²

Similar views had apparently been expressed by attendees at 18 nationwide hui held before the drafting of a Bill to amend the 1993 Act.³⁷³ In line with such views, Te Ture Whenua Māori Amendment Act 2002 repealed some of the protective measures, while still trying to encourage land retention. Among the clauses repealed were sections 153 and 154 of the 1993 Act, dealing with the grounds on which the Māori Land Court could refuse a confirmation.³⁷⁴ Thus, the court could now ignore such matters as whether the land was of historical importance to the alienating owners, or whether the owners had demonstrated an understanding of the present value and the future potential value of the land. Additionally, while the approach had previously been that alienation should *not* be confirmed unless there was good reason why it should (as assessed against specific criteria), the wording was now that the alienation *must* be confirmed unless one of the technical requirements in section 152 was not met.³⁷⁵ That said, a new protection was that the quorum provisions were tightened, so that 75 per cent of owners or shareholders in multiply owned Māori freehold land were now required to agree to a sale.³⁷⁶

2.9.2 The administration of alienation

During the course of our inquiry we received little comment on the working of Te Ture Whenua Māori Act 1993 and its 2002 amendment. We are therefore not in a position to draw any general conclusions about the administration of the legislation in relation to Tauranga. However, we draw attention to the case study below, concerning land in the Pāpāmoa area.

2.9.3 The quantum of alienation

Though we have no alienation statistics that precisely fit the final period, from 1993 to 2006, we note a decline in the amount of Māori land alienated during the 1990s, as compared with the previous decade. Belgrave et al give a total alienation of just over 49 hectares (121 acres) for the period from 1990 to 1999, compared with around 134 hectares (330 acres) for the

372. Joseph Te Poroa Malcolm, brief of evidence, undated (doc G6), p10

373. Explanatory Note to the Te Ture Whenua Māori Amendment Bill, (doc U26, p28)

374. Te Ture Whenua Māori Amendment Act 2002, s58

375. Ibid, s25

376. Ibid, s24

1980s. Moving into the new millennium, a further 56.91 hectares (140 acres) were alienated in the years to 2006.

No Crown purchases were recorded for the entire period from 1990 to 2006. Of the land alienated in the 1990s, almost 48 hectares were privately purchased and a little over one hectare taken for public purposes. In the period from 2000 to 2006, all alienation involved private purchase.³⁷⁷

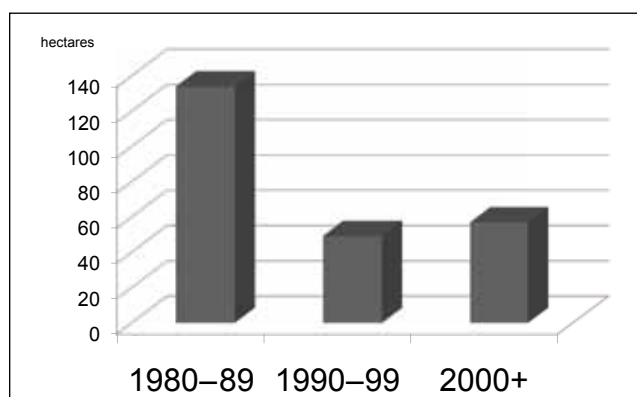


Figure 2.11: Amount of Māori land alienated in the Tauranga district, by decade, 1980–2006

2.9.4 Case studies: Pāpāmoa 4B and 5B

In 1940, land in the Pāpāmoa area had been taken for a rifle range. The taking of the land, and its return in the 1980s, will be further discussed in chapter 4. Here we are concerned with its subsequent alienation.

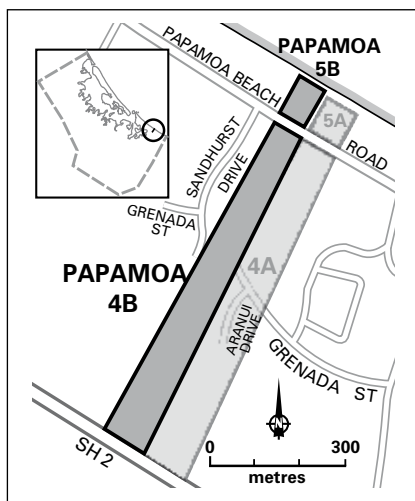
In 1990, the returned land was partitioned into four blocks, to accommodate the wishes of some owners who wished to sell and others who did not. The two groups of owners each received one block of about 2.5 hectares on the beachfront and another of about 25 hectares on the inland side of Pāpāmoa Beach Road.

The sale of Pāpāmoa 4A and 5A did not proceed until 1997, and by this time some of the owners dissented. Basing their stance on the protective provisions in Te Ture Whenua Māori 1993, the dissenters argued that it was important to hold on to traditional whenua. They also argued that other development options, where the land could be retained, had not been properly considered. In the event, the judge agreed to the sale, but only on condition that the purchase price be raised and that a section be partitioned out for the dissenting owners, thus ensuring not only a better financial return to the alienating owners, but also the retention of some tribal land.³⁷⁸

377. Document T16(a), p 31

378. Te Whetu McLeod, brief of evidence, 29 June 2006 (doc R17(a)), pp 5–6

2.9.4



Map 2.18: The Pāpāmoa 4B and 5B blocks

However, as we saw above, Te Ture Whenua Māori Amendment Act 2002 repealed some of the protective measures that had been present in the 1993 legislation. In particular, intangible matters such as *ahi kā* and the land's traditional value to the *tangata whenua* were now given much less weight, and the court no longer had the discretion to refuse confirmation on such considerations alone. The Act now merely required the court to decide whether the price to be paid could be considered 'adequate', having regard to any relationship between the parties or 'other special circumstances of the case'.³⁷⁹ It gave no guidance on how such intangibles are to be valued.

These changes were to have an effect on the fate of the other two Pāpāmoa blocks. By the early 2000s, Pāpāmoa 4B and 5B had become one of the few areas of undeveloped land between Pāpāmoa and Mount Maunganui, and pressure came on the owners to sell. Their preference was to find some means of developing the land themselves, possibly in a joint venture, but this proved difficult: they found they were unable to secure finance on multiply owned Māori land, and potential joint-venture partners invariably wanted to buy the land outright. A developer stepped into the vacuum and began approaching individual owners directly, suggesting that they sell their shares to a third party who would then on-sell to him. The designated third party, being Māori, was more likely to come into the category of 'preferred alienee' under the legislation, which meant fewer hurdles in terms of progressing the deal. The price offered – \$20 million for the two blocks – was tempting, and each owner was promised a deposit on signing an agreement to sell. Many succumbed. A few held out, and one told us: 'Of the owners that I knew who signed the agreements hardly any of them had legal advice or representation'. The result was that the entire area of 4B and 5B went to the developer, with the exception of a 1.8-hectare (4.4-acre) section on Pāpāmoa Beach Road which was partitioned out for the dissenters. As a postscript, we note that, at the time of our hearing, that area, too, was coming under threat: despite their best endeavours, the owners had not succeeded in finding a development proposal that would allow them to get a return from it while still retaining it in their ownership.³⁸⁰ We will look at development issues in detail in chapter 3. Here, our concern is that the modified protections under the 2002 legislation, although perhaps aimed at mitigating what some Māori have seen as over-tight control by the land court, may be resulting in the loss of further Māori land. That said, on the basis of only one case study, it is clearly not possible to come to any firm conclusions.

379. Te Ture Whenua Māori Amendment Act 2002, s25

380. Document R17(a), pp 6–12

2.10 THE SUBMISSIONS OF THE PARTIES**2.10.1 Claimant submissions**

As outlined at the beginning of this chapter, the substance of claimant allegations is broadly that the Crown failed to restrict, or remedy, the widespread alienation of Tauranga Māori lands during the late nineteenth and twentieth centuries and, alongside that, it failed to ensure that Tauranga Māori had sufficient lands for their actual and future needs. We summarise below the main points made by claimant counsel in relation to these allegations. The summary also includes submissions in reply to the Crown's closing submissions.

(1) Failure to restrict or remedy widespread land alienation

The claimants submitted that:

- ▶ The Crown has not produced any evidence that during the late nineteenth and early twentieth century it took any, or any adequate, steps to protect the land remaining to Tauranga Māori.³⁸¹
- ▶ The Crown's assertion that Māori were willing sellers has to be seen in context. In some cases, for instance, Māori were suffering real economic hardship. '[V]olition existed on a continuum,' said counsel for Ngāi Te Rangi and the Matakana hapū.³⁸²
- ▶ The Native Land Act 1909 removed all previous alienation restrictions and provided that Māori land could be disposed of in the same manner 'as if it was European land'. Following the introduction of the Act, there was, over the following decades, a significant increase in the sale of Māori land compared with the preceding decade. The Act facilitated, rather than restricted, alienations.³⁸³
- ▶ Multiple ownership, partitioning, and the fractionation of interests through successions, catalysed the sale of land. Owners decided to sell because their interests were too small to provide a means of support, or because the problems of individualisation hindered their ability to work in a coordinated way to retain and develop their lands. Communal title would have prevented succession problems and fractionation of interests.³⁸⁴
- ▶ Attachment is harder to maintain for an owner who lives away from the land, and who is 'one of maybe a hundred owners' in a block designated only by 'a long string of num-

381. Counsel for Ngāti Ruahine, closing submissions, 24 November 2006 (doc U1), p 50; counsel for Ngāti Kuku, closing submissions (Wai 947), 27 November 2006 (doc U14), p 53

382. Counsel for Waitaha, submissions in reply, 13 March 2007 (paper 2.656), pp 2–3; counsel for Matakana hapū, stage 2 closing submissions (Wai 228 and 266), undated (doc U23), p 12; counsel for Ngāi Te Rangi, stage 2 closing submissions (Wai 540), undated (doc U31), p 19

383. Paper 2.659, pp 5, 7

384. Paper 2.659, pp 6, 12; counsel for Ngāti Hē, closing submissions, 24 November 2006 (doc U7), p 6; counsel for Ngāti Pūkenga, closing submissions, 10 December 2006 (doc U34), pp 20–24; counsel for Ngāti Motai and Ngāti Mahana, closing submissions, 24 November 2006 (doc U11), p 30; doc U14, p 90; counsel for Ngāti Kuku, closing submissions (Wai 489), 4 December 2006 (doc U20(a)), pp 57–59; doc U1, p 132; paper 2.652, pp 3–4; paper 2.660, pp 6–7

2.10.1(1)

bers.³⁸⁵ However, the system of land tenure allowed absentee owners to make decisions on the alienation of land without recourse to the local kāinga.³⁸⁶

- ▶ Of concern in relation to section 220(1)(b) of the Native Land Act 1909 is that, despite reference to equity, good faith, and ‘the interests of the natives’, there is no evidence that the land boards explored these matters except in the most strict economic sense. In particular, there did not seem to be ‘any regard to the relationship of the owners with their traditional lands or traditional uses of the land by the hapu.’³⁸⁷
- ▶ A system where ‘the only real checks on sale of Maori land are to ensure that market value is obtained and [a] significant majority of owners support the sale’ is ‘simply not appropriate.’³⁸⁸
- ▶ Māori land boards were ‘a mechanism for facilitating alienation.’³⁸⁹ They failed to act in the trustee capacity originally envisaged, whereby they would address the wider future interests of the owners. Instead, changes of legislation over time meant land boards ‘moved to becoming an aspect of the Court system which processed alienations.’³⁹⁰ Their focus when confirming alienations was on ‘proper procedure’ and whether value had been paid.³⁹¹ The Crown failed to monitor and rectify the inactions or failures of the Waiariki District Māori Land Board.³⁹² The time from 1910 to 1930, when the board was most active in the region, is one of two significant periods in the twentieth century for the further alienation of Māori land in Tauranga.³⁹³ The board could make its decisions without any recourse to the owners.³⁹⁴
- ▶ Alienation was ‘encouraged by the idea that Maori had to “use it or lose it”’.³⁹⁵
- ▶ Land was alienated in a number of cases by just a small minority of owners under the ‘five owner quorum rule’. Furthermore, ‘the ability of a small number of shareholders to alienate the land without involving the other owners in any way became more of an issue as time went by’. On the other hand, it was much more difficult for a small group of owners to oppose a sale.³⁹⁶

385. Document U1, p 132

386. Paper 2.652, p 3

387. Paper 2.659, pp 5–6

388. Claimant counsel, generic closing submissions in regard to 20th century land alienation, development, and administration (issue 2), 24 November 2006 (doc U13), p 14

389. Counsel for Ngāi Te Ahi, stage 2 closing submissions (Wai 370), undated (doc U33), p 11

390. Document U13, pp 6–10; paper 2.659, pp 6

391. Document U7, p 6

392. Document U34, p 33

393. Counsel for Ngāi Te Rangi, stage 2 closing submissions (Wai 540), undated (doc U31), p 69

394. Paper 2.652, pp 4–5

395. Document U11, p 43

396. Document U13, p 11; paper 2.659, p 8; doc U33, pp 11–12; doc U7, pp 5–7; paper 2.652, p 5; paper 2.657, p 3

- ▶ Section 364 of the Native Land Act 1931 only gave consideration to the needs and rights of the individual Māori vendor. There was no requirement to seek the tribal view on any proposed sale.³⁹⁷
- ▶ Crown attempts to resolve the problems of multiple ownership, from the 1950s, resulted in compulsory measures such as Europeanisation of title and the acquisition of ‘uneconomic’ shares.³⁹⁸ Sale was ‘almost always inevitable’ following Europeanisation.³⁹⁹ The compulsory acquisition of uneconomic interests is a particularly important issue for Tauwhao Te Ngare, in relation to loss of owner interests on Rangiwaea, but was sorely felt by other claimant groups as well.⁴⁰⁰ Compulsory measures such as these were breaches of the Crown’s duty of active protection.⁴⁰¹
- ▶ The Crown is correct to say that the degree to which restrictions should be placed on alienation in opposition to the preferences of individual owners is a complex issue. However, the Crown has ‘fiduciary type obligations to protect Maori beyond the individual wishes of Maori’. The Crown’s Treaty obligations ‘require it to do more than simply facilitate sales of Maori land’. Before selling, owners should be given ‘information and resources to allow them to fully consider how they can collectively utilise the land, including for traditional purposes’. These types of considerations were adequately covered by sections 153 and 154 of Te Ture Whenua Māori 1993, which have since been repealed.⁴⁰²

(2) Failure to ensure sufficient Māori landholding

The claimants submitted that:

- ▶ If the Crown is to discharge its duty of active protection, it must not ‘act in a way that diminishes the land holdings of Hapu beyond that which is as a minimum required for their present and future needs, or fail to intervene if such a situation is apparent.’⁴⁰³ Given the already ‘parlous state’ of the land base as at 1886, any further alienation must be taken to have run contrary to the Crown’s duty of active protection.⁴⁰⁴ It was incumbent on the Crown to ensure that sufficient land was retained and to ensure that the provision of any Māori land legislation was consistent with this duty.⁴⁰⁵

397. Document U34, p 15

398. Document U11, p 30

399. Counsel for Ngā Pōtiki, closing submissions, 24 November 2006 (doc U2), p 47; doc U14, p 93; doc U34, p 29

400. Document U4, paras 17–18. See also, for example, doc U23, pp 16–17; doc U20(a), p 59; doc U14, p 51; doc U1, pp 105–106; doc U34, pp 24–27; doc U31, p 68

401. Document U13, p 21

402. Paper 2.659, pp 10–12; paper 2.652, p 3

403. Document U23, p 9

404. Counsel for Te Whānau a Tauwhao ki Ōtāwhiwhi, stage 2 closing submissions (Wai 398), undated (doc U32), pp 6–7

405. Document U23, p 13

2.10.1(2)

- ▶ In the immediate wake of the raupatu, the Crown undertook no assessment of land and resource use in the Tauranga area in order to be able to evaluate the foreseeable needs of Tauranga Māori.⁴⁰⁶
- ▶ In 1908, the Stout–Ngata commission investigated some, but not all, of the Māori land blocks in the Tauranga area – mostly around the eastern end of the harbour – and made recommendations that ‘most of the land inspected was needed for the future support of local Maori’. In response, lands were reserved for Māori occupation and designated inalienable. Despite this, Māori land boards and the Māori Land Court subsequently recommended to the Minister, on a number of occasions, that exemptions be provided.⁴⁰⁷ Indeed, the focus of the Stout–Ngata commission was not to prevent landlessness for Māori but to open up land for settlement.⁴⁰⁸
- ▶ Māori land boards were provided with a lack of objective criteria to guide them on the amount of land which was sufficient for the ‘adequate maintenance’ of Māori. Under section 220(1)(c) of the Native Lands Act 1909, information about the sufficiency or otherwise of an owner’s other landholding or means of support was ‘typically . . . prepared by the purchaser and there was little independent verification from many of the owners themselves.’⁴⁰⁹ The evidence suggests that any inquiry made by the Waiariki District Māori Land Board was ‘perfunctory and perhaps superficial’.⁴¹⁰ No alienations, as far as can be ascertained, were prevented by the board on the basis of the owners’ prospective landlessness.⁴¹¹ The Crown’s suggestion that Hairini 1B was an example of section 220(1)(c) being applied is refuted: the refusal to approve the alienation related, rather, to the provisions of part 16 of the 1931 Act.⁴¹² The data on land board approvals demonstrate how ineffective the legislative provisions were in preventing landlessness.⁴¹³
- ▶ From 1909 onwards, legislation no longer contained any reference to minimum land requirements per head.⁴¹⁴
- ▶ Even allowing for some discrepancies in figures, less than half the land recommended for retention by Stout and Ngata remained in Māori ownership by 2006.⁴¹⁵
- ▶ There is a need to consider quality and location, as well as quantity, when assessing the sufficiency of land. Some land has less capacity to provide for people’s ‘adequate maintenance’.⁴¹⁶

406. Document U1, p 49

407. Document U13, p 12; paper 2.659, pp 7–8; doc U31, p 67

408. Document U13, pp 7–8; doc U31, p 66

409. Paper 2.659, pp 3–4

410. Document U34, p 32

411. Document U13, p 10

412. Paper 2.659, p 3

413. Ibid, p 5

414. Ibid, p 4

415. Ibid, pp 12–13

416. Document U20(a), p 18; counsel for Waitaha, closing submissions, 12 December 2006 (doc U5(a)), p 7; doc U34, pp 10–12; counsel for Ngāti Hangarau, closing submissions (Wai 42(a)), undated (doc U38), p 5; doc U32,

- ▶ In terms of population increase, under customary tenure the land would have been held by the tribal group. It was the Crown that insisted on a tenure form which had, as an inherent component, the ability to succeed to interests and which emphasised the rights of individuals above communal rights.⁴¹⁷

2.10.2 Crown submissions

Crown counsel agreed with claimant counsel that the system of individualised tenure introduced in the nineteenth century had a major impact on Māori land in the Tauranga Moana inquiry district. However, Crown counsel argued that the Crown had then tried to mitigate the worst of those impacts:

Title reform initiatives and land administration structures in the 20th Century were a reaction to the impact of the 19th Century title system. A number of legislative measures were introduced in the 20th Century to ameliorate these impacts and respond to wider societal changes.⁴¹⁸

That said, the Crown conceded that the legislation relating to the compulsory acquisition of ‘uneconomic shares’ administered by the Māori Trustee:

- ▶ deprived some Tauranga Māori of a direct link to their ancestral lands;
- ▶ deprived many Rangiwaia Island Māori of a direct link to their ancestral lands on Rangiwaia Island; and
- ▶ was a breach of the Treaty of Waitangi and its principles.⁴¹⁹

The Crown argued that there were positive benefits attached to the scheme, but conceded that these were restricted to those who acquired the shares.⁴²⁰

Other Crown submissions on the two issues investigated in this chapter follow below.

(1) *Failure to restrict or remedy widespread land alienation*

Crown counsel submitted that:

- ▶ The fundamental policy of Māori land legislation from the late nineteenth century and early twentieth century was that Māori ought to be free to deal in their lands as they saw fit, subject to certain safeguards designed to provide some protection in dealings. In essence, legislators sought to strike a balance between a right to deal and a protection in dealing.⁴²¹

pp 3–5; doc U1, p 49; doc U14, p 47; counsel for Ngāti Hinerangi and associated hapū, closing submissions, 5 December 2006 (doc U24), pp 27; paper 2.652, pp 3, 8; paper 2.663, p 3

417. Paper 2.652, pp 4, 8; paper 2.660, p 6

418. Document U26, p 35

419. Paper 2.641, [unpaginated], para 2

420. Document U26, pp 43–44

421. Document U26, p 27

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2.10.2(1)

- ▶ Assessing motivation for sale is a very complex area, but in general '[l]and was sold for the economic opportunity it would bring'.⁴²²
- ▶ Fractionation and multiple ownership 'are not, in and of themselves, motivations for sale'. Indeed, there is little evidence in the reports on the record to suggest that alienations are related to problems arising from multiple ownership, and one report even suggests that multiple ownership made the sale of land more difficult. That said, 'sale might arise as a result of the impact of those features'.⁴²³
- ▶ The majority of land alienation in the Tauranga district occurred before the implementation of the Native Land Act 1909.⁴²⁴ Māori land alienations to the Crown in the late nineteenth century were consensual.⁴²⁵ There is no evidence to support allegations of fraud, dishonesty, or irregularities in the Crown's purchases.⁴²⁶
- ▶ There was a steady decline in land purchased or taken by the Crown and private purchasers from 1899 onwards.⁴²⁷
- ▶ The Native Land Act 1909 removed all existing restrictions on alienation but required the alienations to be confirmed by a Māori land board or the Native Land Court. It also provided other safeguards, such as requiring a valuation of the land being alienated.⁴²⁸
- ▶ In relation to meetings of owners, there is insufficient evidence to make findings about quorum provisions. In particular, there is a lack of contextual evidence about notice of meetings; about why owners did not attend meetings; and about whether those who did attend were content with resolutions.⁴²⁹
- ▶ There was 'considerable longevity in the Land Board system' and no evidence has been filed to demonstrate protest by Māori over the way the boards applied the legislative provisions. 'These two factors indicate a level of acceptance'.⁴³⁰ Overall, the evidence does not show that land board administration was so poor that the Crown should have intervened to change the legislation.⁴³¹
- ▶ Sections 153 and 154 of Te Ture Whenua Māori 1993 did not find favour with contemporary Māori.⁴³² Trusts and incorporations have had a role in minimising the impact of

422. Document U26, p 30

423. Document U26, p 30; Crown counsel, addendum to Crown closing submissions: issues 1–2 (summary of Crown closing submissions and response to claimant closing submissions), 15 December 2006 (doc U26(a)), p 12

424. Document U26, p 21

425. Ibid, pp 10–11

426. Document U26(a), p 2

427. Document U26, p 9

428. Ibid, pp 12, 27; doc U26(a), p 4

429. Document U26, pp 24–26

430. Ibid, p 20

431. Document U26(a), p 19

432. Document U26, p 28

multiple ownership and fractionalisation and have also evolved over time ‘to allow an expression of Māori cultural concerns and elements of tikanga.’⁴³³

(2) Failure to ensure sufficient of Māori landholding

Crown counsel submitted that:

- ▶ The question of assessing how much land is required for ‘sufficiency’ is a vexed one, given the significant societal and demographic changes of the twentieth century. ‘Māori could not all be sustained by their land holdings alone. Nor did some Māori intend or wish to be.’⁴³⁴ Between 1909 and 1993, Tauranga Māori landholdings decreased while the Māori population increased. Tauranga Māori landholdings in 1909 stood at around 25,707 hectares (63,523 acres), but had dropped to 13,835.42 hectares (34,187 acres) by 1990. Alongside that, the 1911 census figure for Māori living in Tauranga County was only 1718, but by 1991 there were 6618 ‘NZ Māori’ and 2037 ‘European and Māori.’⁴³⁵
- ▶ No evidence has been provided to suggest that the Stout–Ngata commission’s 1908 recommendations were ignored.⁴³⁶ There is currently more Tauranga land in Māori freehold title than was recommended for retention by Stout and Ngata. That said, it is acknowledged that the figures are not directly comparable, since the ‘lands currently in Maori freehold title . . . are not necessarily a subset’ of the blocks recommended for retention.⁴³⁷
- ▶ The Native Land Act 1909 widened the consideration of ‘adequate maintenance’ by recognising that land holdings were not the only relevant factor.⁴³⁸ Landlessness was one of a number of considerations and ‘it may be inopportune to focus too narrowly on the landlessness criterion.’⁴³⁹
- ▶ There seems to have been no evidence submitted to show what criteria the land board used to assess whether an individual’s total beneficial interests were sufficient for his or her adequate maintenance.⁴⁴⁰
- ▶ The land board and the court both ‘took some care to ensure any alienation was procedurally correct’, and any irregularities in the paperwork ‘often caused the board or the Court to refuse confirmation.’⁴⁴¹ The landlessness provisions were effectively applied. Hairini 1D is an example of that.⁴⁴²

433. Ibid, p 32

434. Document U26(a), p 7

435. Ibid, pp 9–10

436. Document U26, p 23

437. Document U26(a), p 13

438. Ibid, p 6

439. Document U26, p 13

440. Crown counsel, supplementary Crown closing submissions, 12 February 2007 (doc U42), pp 3–4

441. Document U26(a), p 5

442. Document U26, pp 18, 20–21

2.11

- ▶ It would have been wrong for the Crown to ‘superimpose its paternalism’ over Māori wishes to alienate land, in accordance with their Treaty right, unless such alienation would have resulted in the alienors being unable to provide for their maintenance adequately, ‘hence the landless provisions in the 1909 Act.’⁴⁴³
- ▶ It is anachronistic to consider, hypothetically, the extent to which the protective measures built into Te Ture Whenua Māori 1993 might have applied throughout the twentieth century.⁴⁴⁴

2.11 TRIBUNAL DISCUSSION, ANALYSIS, AND FINDINGS

In this section, we look at the parties’ submissions in light of the evidence outlined earlier in the chapter, and draw out some general conclusions. We then look at the implications of those conclusions in Treaty terms, and make findings.

2.11.1 Did the Crown seek to restrict or remedy land alienation in Tauranga Moana in the period from 1886 to 2006?

The Tribunal’s stage 1 report looked at the period up to 1886 and found that the Crown had ‘failed adequately to supervise the alienation of Maori land at Tauranga’ before that date. Further, the Tribunal found, the Crown ‘also failed to ensure that the hapu of Tauranga retained sufficient land for their foreseeable needs.’⁴⁴⁵ The period examined in our present report thus already starts from a base of insufficiency, and for that reason land retention after 1886 is a matter of great importance. Yet, as we have seen, alienation rose rather than fell during the last two decades of the century – and rose significantly. We do not have figures that can isolate out the last few years of the 1880s, but 34,366 acres (13,908 ha) were alienated in the 1890s alone, and land loss in that decade accounted for over half of all alienations between 1890 and 2006 (see fig 2.12).

Tauranga Māori had already been placed in an impoverished position as a result of Crown actions following raupatu, and this rapid alienation of their lands compounded the situation.

While land alienation after 1900 never again reached the heights of the 1880s and 1890s, we cannot agree with the Crown’s submission that there was ‘a steady decline in land purchased or taken by the Crown and private purchasers from 1899 onwards.’⁴⁴⁶ As can be seen from figure 2.13, two clear spikes of alienation occurred during the twentieth century, one

443. Document U26(a), pp 11–12

444. Document U26, p 29

445. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 366

446. Document U26, p 9

LAND ALIENATION, 1886-2006

2.11.1

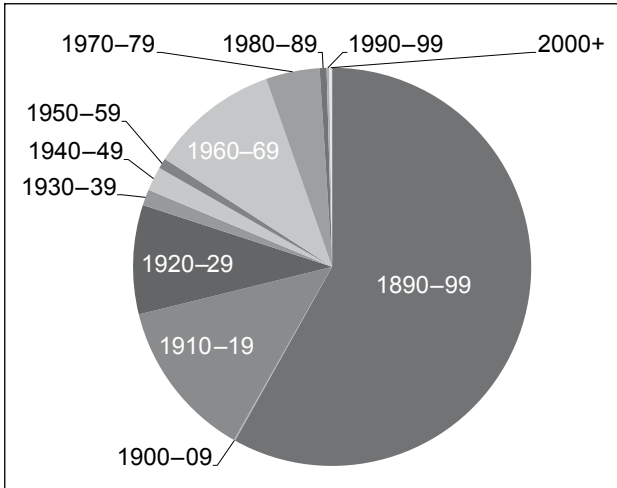


Figure 2.12: Amount of Māori land alienated in the Tauranga district, by decade, 1890-2006

in the years from 1910 to 1929, and another between 1960 and 1979. The amount of land lost during those periods gives cause for concern.

By 2006, Tauranga Māori owned only 13,038.92 hectares of the 61,782 hectares of land returned and reserved after raupatu, or less than a quarter of the returned and reserved area.⁴⁴⁷ The historical fact of significant land loss is thus clearly established. The question is: to what extent is the Crown liable? Could the Crown have restricted or remedied the situation?

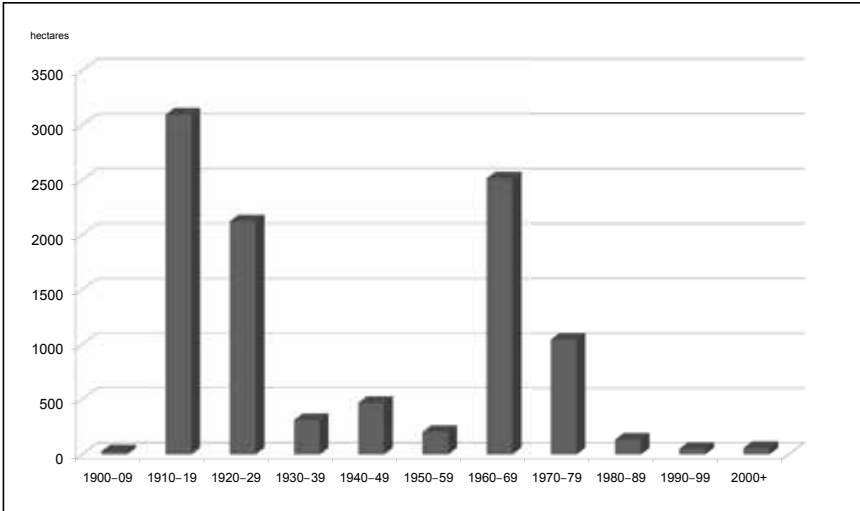


Figure 2.13: Amount of Māori land alienated in the Tauranga district, by decade, 1900-2006

447. Document T16(a), p 24

As we saw in the early sections of this chapter, Tauranga Māori were, in the nineteenth century's last two decades, endeavouring to impress on the Crown their continuing desire to deal with their lands collectively. The Crown, for its part, was under pressure from settlers and was equally firm in its view that individualisation of ownership would encourage greater productivity (whether by Māori themselves or through lease or sale to Pākehā).

The Crown, in its submissions, does not deny that the system of individualised tenure had a major impact on Māori land in the Tauranga inquiry district. It argues, however, that it tried to mitigate the worst of those impacts by various legislative changes introduced during the twentieth century. It also argues that in the case of the late nineteenth century Crown purchases, the alienations had been voluntary.

Claimant counsel, in outlining reasons for sale throughout our whole period (not just the late nineteenth century), referred to pressing financial needs, including raising finance to pay for the development of remaining land or to build or renovate houses elsewhere. We note that an example of this might be Maungatapu 1F, discussed in section 2.6.4, where some of the former owners requested that their share of the proceeds be released to them by the Māori land board to improve farms or repair houses. Counsel also pointed to the need to fulfil personal obligations, cultural and economic. Again we note Maungatapu 1F, where one owner, in addition to wanting to repair his house, needed money for a coffin for a nephew who had died. Another reason, as claimant counsel argued, was that the interests owners were left with were often too small to do anything with, as evidenced with the case studies of the Ngāpeke 1 blocks and Ranginui 6B, discussed in sections 2.5.4 and 2.8.4 respectively. These reasons, however, are by no means the only or most important reasons for sale, especially when we consider the earlier part of our period when most of the alienation took place. In particular, we need to remember that, in that early period, individuals were often pressured into selling their interests to service debts which had, in some cases, been deliberately encouraged by storekeepers or purchase agents. Individuals incurred debts for many reasons, and not merely for being profligate (as was often suggested by Pākehā at the time): because their crops failed; because alternative employment was usually seasonal or temporary at best; and also because of illness and death and the consequential tangihanga obligations – Māori morbidity and mortality being high in the late nineteenth century, as we shall see in chapter 9. There was, too, the collective debt that could arise simply in relation to land administration. Survey charges, for example, could sometimes be more than owners could afford and this tended to result, sooner or later, in land being sold to cover the cost. Another aspect of costs relating to court processes and surveys is that they militated against whānau or individuals applying to formally cut out their share for farming or other business ventures. On the other hand, staying with an informal arrangement made it harder to access development finance because of the lack of separate title to offer as collateral. Lack of finance in turn raised the likelihood of ventures failing, again leading to debt. We discuss land development issues in chapter 3.

In the nineteenth century, debt inducement and sales arranged even before title had been issued enabled the Crown or private purchasers to gain a toehold in various blocks, for which purchase was then completed at a later date. Some of these sales were initiated by the fraudulent behaviour of various Crown or private purchase agents, were investigated by Commissioner Barton in 1886, and were rejected for that reason. Others, where the evidence of fraud was not clear-cut, were allowed to proceed. The latter included some of the Kaimai blocks discussed in section 2.3.5, which a bevy of private speculators were allowed to purchase. The outcome of speculator protest about *disallowed* transactions in certain Kaimai blocks is, however, not clear.

The Crown's purchase of the Pāpāmoa block was not initiated by pre-title negotiations but it did, as we outlined in that same section, show how the individualised titles could be exploited, sometimes through minors or undeclared succession, to facilitate a Crown purchase. It is clear that the Crown purchase agents also took advantage of poverty and hunger to facilitate the Pāpāmoa and Ōtawa purchases. The very fact that the individual interests were no more than shareholdings listed on a title, not tied to any particular part of the physical land block, facilitated alienation. Purchase agents could nibble away at the ownership lists, picking up individual interests as they became available, until they had got the whole block – or at least a sufficient portion to make it worthwhile applying to the Native Land Court for a subdivision. Some purchases, particularly by private buyers, were not completed for many years. In the case of Tuingara, a deed of doubtful validity, alienating land to a private buyer, was confirmed some 17 years later.

We turn now to consider fractionation and multiple ownership and we acknowledge at the outset that there is no easy answer if, as is the case, title has to be based on a system of outright ownership of parcels of land with fixed boundaries and individualised tenure. Although the Native Land Acts Amendment Act 1882, some years after Judge Fenton's *Papakura* judgment, stipulated that in respect of hereditaments the court 'shall decide according to the law of New Zealand *as nearly as it can be reconciled with Native custom*' [emphasis added],⁴⁴⁸ in practice intestate succession has still been based on permanent and equal inheritance by all offspring – male and female, absent and resident. That has resulted over time in ever-expanding ownership lists for each parcel of land. It also means that with each succeeding generation, the inherited share of each new owner becomes smaller and smaller. Further, as the *Hauraki Report* has pointed out, since Māori can pursue succession through the lines of both parents, any given individual might have land interests in a number of widely scattered locations and, for any given block, 'non-resident heirs soon came to outnumber resident heirs.'⁴⁴⁹ Also as noted by the *Hauraki Report*, however, the problem would seem to lie not in the rules of succession *per se* but rather in the permanent

448. Native Land Acts Amendment Act 1882, s 4

449. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 2, p 691

and individualised nature of the title:⁴⁵⁰ customary tenure had been much more flexible, with bundles of rights generally being allocated to particular groups or individuals on a needs basis, sometimes involving the same area of land, and then being redistributed as the situation demanded. To try to balance the needs of the collective against those of the individual, Te Ture Whenua Māori 1993 has introduced the concept of a whānau trust which can be used to hold family shares, but there is still a need for the trustees to keep track of beneficiaries and, again, their number will presumably grow with each successive generation.

In response to claimant submissions, the Crown's contention is that fractionation and multiple ownership 'are not, in and of themselves, motivations for sale', although Crown counsel did acknowledge that 'sale might arise as a result of the impact of those features'. Certainly, with fractionation of title, settlement by individuals on viable holdings became well-nigh impossible for many, and alienation of interests was often seen as the only alternative. For those who tried to retain their interests, multiple ownership meant that neither individuals nor the groups they belonged to could effectively utilise the land they had been awarded – a matter we take up in our next chapter. Even in the instances where individuals sold their interests to raise finance for other endeavours or housing, they found that the payments they received, as for example in some of the Maungatapu subdivisions discussed at sections 2.7.4 and 2.8.4, were often tiny – especially as they were dribbled out to them by the Māori Trustee over several years – and were insufficient to put down a deposit on the sections held back for them.

The case studies in general demonstrate that Tauranga iwi and hapū were structurally disadvantaged by the Crown's system of individualised title, which in turn led to the lack of development of Māori land and the increased likelihood that it would be alienated. Further, hapū lands that were situated in urban and peri-urban areas became ideal candidates for public works takings for the growing infrastructure needs of the Tauranga urban area and port, as we shall investigate further in chapter 4. In addition, the Crown's mid-twentieth-century introduction of administrative measures aimed at rationalising title, such as the conversion of 'uneconomic' interests and compulsory Europeanisation, tended to result in further alienation of Tauranga Māori land, not to mention widespread resentment. In this context, we welcome the Crown's concession that the compulsory acquisition of 'uneconomic' shares deprived some Tauranga Māori of a direct link to their ancestral lands, and that many Māori on Rangiwaea Island, in particular, were affected in this regard. We emphasise that the loss affected not only those whose shares were compulsorily taken: it continues to affect their descendants, and that loss of tūrangawaewae will carry forward into the future.

Subdivision, the ostensible solution to developing Māori land in urban areas, is a topic that we shall examine further in chapters 5 and 6. In the context of land alienation, we note

450. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 690

that although the Crown's stated aim was to ensure that Māori could retain an interest in their land in these areas, the evidence demonstrated that few Māori were in fact successful in obtaining sections. Owing to the fractionation of title, owners found it difficult to gather together enough shares to fund the purchase of a section in the subdivision, as was evident in the various Maungatapu subdivisions (see secs 2.7.4, 2.8.4). The situation was exacerbated by the rising costs of land in Tauranga, and the scheme effectively became another form of alienation: those who missed out on a section lost their traditional interest in the land, while those who were successful got a housing plot under a general, rather than Māori, title. Both outcomes affected the Māori owner's relationship to his or her land to a lesser or greater degree.

In terms of the Crown's suggestion that multiple ownership might make the alienation of land more difficult, we acknowledge that getting consent from a large number of owners may have been a hurdle for a would-be purchaser. That said, multiple ownership tended to facilitate at least getting a toehold in a block, through the purchase of small interests, which could then be used as leverage to acquire more. Further, we note that following the introduction of the Native Land Act 1909 there appear to be a number of cases where a minority of owners holding a minority of the shares was able to alienate a whole block via the 'meeting of owners' mechanism. Particular examples studied in this chapter include Te Puna lot 211, in the period from 1909 to 1930 (see sec 2.5.4) and, later in the twentieth century, Tongaparaoa 2B2B2, discussed at section 2.7.4, but others were identified in the evidence filed. Further, from the mid-twentieth century onwards in particular, we note the use of the Māori Trustee to circumvent the problem of multiple ownership when alienating land, as evidenced by the case of Maungatapu B (see sec 2.7.4).

We recall how the 1909 Act contained clauses which served to validate certain documents such as court orders and board alienation confirmations, even where there had been irregularities, and note Te Puna lot 210 as an example of such a situation (see sec 2.5.4). Also in this context, we draw attention to several cases discussed, continuing through to the mid-twentieth century, where despite the 1909 Act's stipulation that alienations normally had to be confirmed within six months, a failure to observe this constraint did not invalidate the transaction.

Of concern in relation to the Native Land Amendment Act 1913 is that, as we discussed at section 2.5.1, there was the potential for a conflict of interest for Māori Land Court judges. They were required both to administer Māori land dealings and, as president of their local land board, to report to the Native Minister any Māori land in the district that might be available for settlement or partition. We also noted that a similar situation was to pertain in relation to the office of the Māori Trustee, later in the century.

So far as rural land was concerned, the administration of Māori land, particularly by the land boards, reveals a desire for greater productivity as one of the principal driving forces.

This often resulted in either sale or leasing, despite the Stout–Ngata commission's constructive recommendations about assisting Māori to develop their own land, a matter we take up in our next chapter.

As was observed in the Tribunal's stage 1 report, in relation to the period leading up to 1886:

Sales were often made by a minority of those with customary rights to the blocks being sold. This minority was able to conduct transactions outside of normal community sanctions owing to the way in which the commissioners awarded reserves and returned land. These transactions were often made without the consent of the leading chiefs of the local hapu and led to widespread protest from those who were left out of the sales. Numerous land transactions were also made, by the admission of the commissioners themselves, because of lack of food, medicine, or other necessities amongst Maori. Some sales were made after the Maori sellers had been enticed into debt by Crown or private land purchase agents, and shares in some blocks were sold without the willing consent of the 'vendors'. Given these circumstances, it is impossible to conclude that Tauranga Maori in general were free and willing sellers of land in the period before 1886.⁴⁵¹

On the basis of the evidence presented to us, particularly for the earlier parts of this chapter, we are forced to conclude that the situation was little different after 1886. The Crown has argued that underpinning its Māori land policy during the late nineteenth and early twentieth centuries was the idea that Māori should be free to deal in their land 'as they saw fit', subject to 'certain safeguards designed to provide some protection in dealings'. 'As they saw fit' implies volition, but there are clearly cases where sales were forced on owners by circumstance. Further, any 'safeguards' were aimed at protecting the individual – for example in terms of land sufficiency – and, even there, the legislation was often ineffectual as we shall see below. However, many Māori wished to act communally, and that avenue was not readily available to them. Where there was provision for collective action, its effectiveness was often subverted by measures such as a low quorum requirement or a countervailing force such as the powers of the Māori Trustee. In our view, it is not coincidental that the twentieth-century spikes in land alienation came first after the 1909 Native Land Act and then after 1950s and 1960s legislation such as the Māori Affairs Act 1953 and the 1967 Māori Affairs Amendment Act. We do not discount measures such as incorporations and development schemes, where the intention (if not always the effect) was to provide for a more communal approach, and we shall discuss those in the next chapter, but not till Te Ture Whenua Māori Act 1993 was there any real attempt to re-think how legislation might better accommodate a Māori view of landholding.

451. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 351

The administration of land alienation for most of the late nineteenth and twentieth centuries, considered *within* the Crown-introduced tenurial system, can be shown in many cases to have worked against the owners' aims and wishes and to have been prejudicial to their interests. Considering it in the larger context demanded by the Treaty shows it be largely monocultural, and prejudicial to the collective self-determination or tino rangatiratanga of the whānau, hapū, and iwi in this inquiry district.

2.11.2 Did the Crown try to ensure that Tauranga Māori retained a sufficient endowment of lands?

We accept that the Crown in the nineteenth century demonstrated at least some concern that Tauranga Māori should have a sufficient endowment of land in that, despite having taken a large area through the raupatu and the Te Puna–Katikati 'purchase', it designated a number of the returned and reserved blocks as 'inalienable'. Further, the Native Land Act 1873 specifically provided for a roll of all Māori land to be prepared: 'showing as accurately as possible the extent and ownership thereof, with a view of assuring to the Natives without any doubt whatever a sufficiency of their land for their support and maintenance'.⁴⁵²

However, the roll was intended to show 'the different tracts of country in possession of the various tribes or hapus . . . at the date of the signing of the Treaty of Waitangi', presumably as a yardstick against which to measure subsequent alienation, and it was to define 'intertribal boundaries'.⁴⁵³ The usefulness of this exercise in a Tauranga context appears limited – even supposing such a roll was drawn up (on which point we received no evidence). As we have seen, traditional landholding in the Tauranga area had already been hugely disturbed by Crown intervention, and the reference to 'intertribal boundaries' anyway took no account of the intersecting use-rights that had been a common feature of traditional landholding in Tauranga. Nor is it clear that the Act's injunction to the district officer to set apart 'a sufficient quantity of land in as many blocks as he shall deem necessary for the benefit of the Natives of the district'⁴⁵⁴ resulted in any additional land being reserved in Tauranga, perhaps because the Crown considered that sufficient provision had already been made for Tauranga reserves. In any case, the 1873 Act clearly did little to stem Crown and private purchasing in the last two decades of the nineteenth century, and a significant amount of land was alienated during that period.

In the Hauraki inquiry, the Crown conceded that the:

rapid Crown purchasing of Hauraki Maori land in the latter part of the 19th century . . . contributed to the overall landlessness of Hauraki Maori and this failure to ensure retention

452. Native Land Act 1873, preamble (doc U34, p8)

453. Native Land Act 1873, s21

454. Native Land Act 1873, s24

of sufficient land holding by Hauraki Maori constituted a breach of the principles of the Treaty of Waitangi . . .⁴⁵⁵

Since the Crown's purchase of Māori land in Tauranga in the 1880s and 1890s reached a similar magnitude, we would have expected a similar concession from the Crown in our inquiry but none was forthcoming.

'Sufficiency' can be discussed either at the individual or at the communal level. The initial designation of some land as inalienable could be regarded as demonstrating some Crown concern about landholding at the group, as well as the individual, level. That said, we reiterate the view expressed in the stage 1 report that the Crown 'did not ensure that any of the large hapu groupings of Tauranga maintained a sufficient endowment of quality land after 1886 that was capable of providing them with an economic base.'⁴⁵⁶ Then, in 1900, came the Māori Land Administration Act which, as its preamble acknowledged, was a response to petitions from 'the chiefs and other leading Maoris of New Zealand' about the potential for general Māori landlessness. Against the background of a now-rising Māori population, this was followed a few years later by the work of the Stout–Ngata commission which tried to ascertain how much land, and which particular areas, might be needed 'for the future support of local Māori.' Their investigations, as we have discussed, included part of the Tauranga area. Thereafter, however, there seem to have been no further official moves to monitor Māori land sufficiency at any kind of group level. We also note that the 'inalienable' lands frequently had their protections removed so that they could be sold.

As we noted in our discussion of legislation during various periods, there was a progressive shift in what was considered a sufficient endowment of land for Māori, at a per capita level. The Native Land Act 1873 had set the amount required to be reserved for each Māori man, woman, and child at 50 acres. Although of course much smaller than the average amount of land available to each Tauranga Māori pre-raupatu, we would observe that the figure compared favourably with areas allocated to the first Ulster settlers brought out by George Vesey Stewart in 1875. For the Katikati 1 settlement, where the land had been described as being of first-class quality, each adult over 18 years was allowed to select around 40 acres (16 ha), plus an additional 20 acres (eight ha) for each adolescent child, to a 300 acre (121 ha) maximum per family. In the case of the Katikati 2 settlement, however, the allowance increased significantly: the limit for a single person was raised to 500 acres (202 ha), and to 1000 acres (405 ha) for a family.⁴⁵⁷ Around three decades later, the Māori Land Settlement Act 1905 revised the assessment of what was deemed sufficient for Māori: 25 acres per head of first-class land, 50 acres of second-class land or 100 acres of third-class land. More importantly, the 1905 Act introduced another consideration – sufficient

455. Waitangi Tribunal, *The Hauraki Report*, vol 2, pp 790–791

456. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 405

457. Stokes, *A History of Tauranga County*, pp 137–139

income from other sources – that could be an alternative to the amounts of land that were required for each individual as a prerequisite for alienation. That alternative consideration was spelled out more specifically in the Native Land Amendment Act 1913 to include ‘some other avocation, trade or profession’ sufficiently providing a means of livelihood.

We acknowledge that demography alone dictates that, sooner or later, not all Māori would be able to derive a living directly from working their land, even supposing they wished to do so. But that is to look at ‘sufficiency’ only in terms of economics and the individual. Once so much land was lost, many Tauranga Māori were keen to retain even the tiniest, most uneconomic portion of land as a *tūrangawaewae* – a place of belonging – and they wanted to retain access to and preserve their *wāhi tapu* even on alienated land, an issue we take up more fully in chapter 8. Hapū, too, generally wanted to ensure that some part of their traditional land remained under their collective control.

In our sections dealing with the administration of alienation, we have examined how the provisions about sufficient endowment of land, or sufficient other means of livelihood, were operated in Tauranga Moana, both in general terms and in relation to case studies of alienation. In some respects, fuller evidence would have been helpful. We acknowledge, for instance, the Crown’s point that we have been provided with no *comprehensive* study of how the land boards applied the landlessness provisions. However, our general view is in line with those of other Tribunal inquiries on the same matter, including the Hauraki report, and with Tribunal Rangahaua Whānui reports by Hutton, Bennion, and Ward, cited in the Hauraki report:⁴⁵⁸ we believe that the provisions of the legislation were operated in Tauranga in a perfunctory manner. Officials responsible for certifying that sellers had sufficient land elsewhere did so without inspection of that land on the ground and usually from hearsay, sometimes provided by the purchasers or their agents. Even the prospective near-landlessness of a seller did not necessarily constitute a barrier to confirmation: as we have noted, the president of the Waiariki Land Board commented in 1908 that where an interest was small, the cost of cutting it out and surveying it would likely be more than the interest was worth. In such cases, he said, the board generally dealt with the matter ‘in the manner which it considers is most advantageous to the owner.’⁴⁵⁹ We take that to mean that the alienation was usually confirmed. Nor was there much assessment of whether the owners might have options other than selling their interests. On Matakana Island, for instance, the assumption was that the land, being covered with sand, was of ‘no use’ to its owners. Yet nearby land was being planted in pines and, although that project was still in its infancy, some of the planting was for commercial purposes. It was clearly assumed that Māori would not be able to use the land in that way. Further, they were effectively denied any say in how best to develop and utilise their lands.

458. Waitangi Tribunal, *The Hauraki Report*, vol 2, pp 860–862

459. James W Browne, president Waiariki Māori Land Board, to the native land commissioners, Auckland, 19 March 1908, (doc 11(a), p 156)

We note from the Crown's submissions that it did not accept that it was obliged to ensure that all Māori had a sufficient endowment of land, since some would wish to earn a sufficient living by other means. This submission from the Crown was at variance with the acceptance by the Crown in the Hauraki inquiry that:

from 1909 the issue of ensuring sufficient land for the maintenance of current and future Maori needs was known to the Crown. There appears to be a serious case for the Crown to answer with respect to claims made under this head.⁴⁶⁰

While we agree with the Crown that individuals should have had the right to seek an alternative living, of their own free will, we would regard it as a breach of the Treaty if they were forced to do so because Crown policy or practice had made it difficult or impossible for them to hold on to their land. Nor was it just a matter of individual choice, since we believe that the promise to retain a sufficient endowment of land applied to Māori in a collective sense – to an iwi, hapū, or whānau. Moreover, we believe that a 'sufficient endowment' applied to land not merely in an economic sense but for cultural purposes as well. The Crown appears to have been unaware of that extra cultural dimension until the last few years of the long period discussed in this chapter. For most of the period from 1886 to Te Ture Whenua Māori Act's enactment in 1993, the kaitiaki relationship with the land as a 'taonga tuku iho', held in trust for future generations, received no legislative or administrative recognition: it was not, for instance, a factor in determining whether a lease or sale would render an owner landless. Indeed, the landlessness provisions are illustrative of the prevailing monocultural view of land ownership, which took no account of what landlessness meant in Māori terms. In many of the cases cited in evidence, owners involved in alienating land were not regarded as being landless if they had lands elsewhere, lived elsewhere, or had gainful employment. In none of the cases, as far as we can see, was any weight given to the maintenance of tūrangawaewae. Further, there does not appear to have been much official concern over whether that other land, by virtue of multiple ownership or other factors, would provide a satisfactory living for the applicant – and where there *was* concern, the practical remedies offered were inadequate.

With regard to the Waiariki District Māori Land Board, we agree to a certain extent with the argument of claimant counsel that land boards were provided with a 'lack of objective criteria to guide [them] on the amount of land which [was] sufficient for the "adequate maintenance" of Maori'.⁴⁶¹ Nevertheless, we note that criteria had been set out in the earlier Māori Land Settlement Act of 1905 which, although repealed in 1909, could, in later years, have been used for an unofficial guideline where owners were wishing to make a living from the land. The evidence shows that, in many cases, listings of 'other land held' gave areas that were miniscule by comparison, yet the board saw no reason to decline the alienation being

460. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 891

461. Paper 2.659, p 4

considered. Where the owner was gainfully employed and was *not* seeking to make a living off the land, there was no requirement to consider how the alienation might affect the overall landholding of the hapū, or even to consult other owners in the same or neighbouring blocks.

2.11.3 General conclusions

During the first stage of the Tauranga Moana inquiry, Huia Barnett of Ngāti Hangarau told the Tribunal about her elderly mother and the pleasure she had derived from working in her garden, even when she was nearly blind:

The look on her face, the intense pleasure she showed in doing this, was a sight I'll never forget. That was when I realised, her life wasn't just about work.

- ▶ She was part of that dirt, not just any dirt, but the dirt of her ancestors.
- ▶ The dirt that she had been born and raised on.
- ▶ The dirt in which her pito and ours was buried.
- ▶ It was then that it dawned on me that she saw this land as a close and intimate friend.⁴⁶²

Since the mid-nineteenth century, the Crown has implemented an individualised tenure system, supplanting the customary ownership and management of land by Māori, and in the process marginalising a Māori view of the land as exemplified by Huia Barnett's evidence. In Tauranga, title individualisation did not happen in a piecemeal fashion as Māori took their land before the Native Land Court, as was the case elsewhere. Instead, land was confiscated by the Crown, and subsequently parts of it were 'returned' or 'reserved' by the Tauranga Lands Commissioners in undivided individual interests. By 1886, a large amount of this returned land had been already been alienated, leaving iwi and hapū in Tauranga with a meagre base from which to draw economic and cultural sustenance.

We agree with counsel for the Crown that the Crown did make some attempts to manage the title situation in the second half of the twentieth century. Such attempts, however, came too late for many Māori and included measures that were clumsy and ill-conceived. Seeking to improve management of multiply owned Māori land, for example by the conversion of 'uneconomic' interests and the compulsory Europeanisation of land with four owners or less, failed to recognise the cultural and spiritual value of the land to Māori. The Crown viewed land solely in economic terms, and its policy imperative was to bring 'unproductive' land into production. Māori attachment to the land was viewed as 'sentimental' and responsible for the problems besetting ownership of Māori land:

these old customs which are completely outmoded . . . have now resulted in a confusion of titles and in the breaking up of interests to such a degree that practically no use is being

462. Huia Barnett, brief of evidence, undated (doc D32), pp 2–3. Note: emphasis in original.

made of the land – let me say that to those few Maoris that it is inevitable that sentiment in that direction will destroy the right of ownership.⁴⁶³

Iwi and hapū in Tauranga had already suffered the impact of raupatu in the nineteenth century, and lost much of the land ‘returned’ to them after raupatu by the beginning of the twentieth century. Crown land administration and attempts at title reform, particularly that of compulsory conversion, continued to perpetuate the effects of raupatu for much of the second half of the twentieth century.

The claimants submitted that it was not appropriate for the Crown to have put in place a system in which the only protections on Māori land were the obtaining of market value and a majority-by-shareholding vote at an owners’ meeting. We agree with the claimants that, for most of the period before 1993, there were simply not enough protective measures built into the legislation to prevent further serious land loss. The measures that there were, such as the landlessness provisions, were selectively applied, without reference to the cultural needs of the owners. Moreover, the supposed check of a majority vote often, in practice – as several case studies in this chapter illustrate – caused land to be alienated by minority groups of owners.

While we agree with the Crown that it is anachronistic to consider what may or may not have happened if the protective measures of the 1993 Te Ture Whenua Māori Act had applied throughout the twentieth century, we do note that there were attempts, admittedly short-lived, to involve Māori in the management of their land. Had such attempts been persisted with, they would have enabled iwi and hapū to exercise tino rangatiratanga over their own lands rather than have them controlled by external agencies. The attempts were largely confined to the beginning of the period discussed in this report and included, most notably, the Ballance committees of 1886 and the Carroll Acts of 1900. But, owing to settler pressure and Crown acquiescence, they soon gave way to renewed bouts of individualisation and alienation, whereby the Crown and private purchasers acquired the bulk of land remaining – and at the expense of communal land ownership and management. Over most of the period, however, the Crown has assumed that it knew better than Māori themselves how to deal with Māori land, and its attitude permeated through to the administrative agencies that it statutorily established – from the Māori land boards to the Māori Trustee – and to the Native Land Court. Trusts and incorporations, supposedly intended to provide for communal management of land, often failed to achieve that aim in any tangible sense. We shall look in more detail at their advantages and disadvantages when we discuss land development in the next chapter, but here we note that, in terms of governance, for a long time they mostly accorded only an advisory role to Māori. Not until more recent years, and more especially with Te Ture Whenua Māori Act, has there been a return towards the pol-

463. Ernest Corbett, Minister of Māori Affairs, 18 November 1953, NZPD, 1953, vol 301, p 2309 (doc T36, p 65)

icies promoted by Ballance and Carroll, with more involvement of Māori in the hands-on management of their land.

Throughout the period from 1886 to 2006, various official inquiries, from the Native Land Laws Commission of 1891 to the Hunn and Prichard–Waetford inquiries of the 1960s, have reported on the difficulties caused by the individualisation of tenure enforced by the Crown, and more particularly the problems caused by multiple title. Even the Hunn report recognised that multiple title restricted development and the full participation of Māori in the economy. The fate of Māori land after 1886 was determined by the Crown's determination to enforce individualisation and facilitate the alienation of much of the land that remained in 1886. Belated attempts at tenure reform in the mid-twentieth century had the unwanted effect of facilitating further alienation.

By the time of our hearing, alienations had resulted in the loss of more than 75 per cent of the lands returned to Tauranga Māori after the raupatu and the Crown's purchase of the Te Puna–Katikati blocks. On the basis of the evidence presented to us, we conclude that:

- ▶ alienation of Māori land was allowed to continue long after it had become evident that Tauranga Māori, either as individuals or communities, no longer possessed a sufficient endowment of land for their current and future needs (taken in the cultural as well as the economic sense);
- ▶ alienation was facilitated by the introduction of an individualised tenure system that marginalised Tauranga Māori collective rangatiratanga and kaitiaki obligations of iwi and hapū; and
- ▶ the existence of alienation restrictions failed to halt land loss and had mixed success in even slowing it.

2.11.4 Treaty analysis and findings

We focus here on findings of Treaty breach in relation to land alienation (including the issue of land sufficiency) in Tauranga Moana. Our discussion and findings on the administration and development of land that was retained will come in chapter 3.

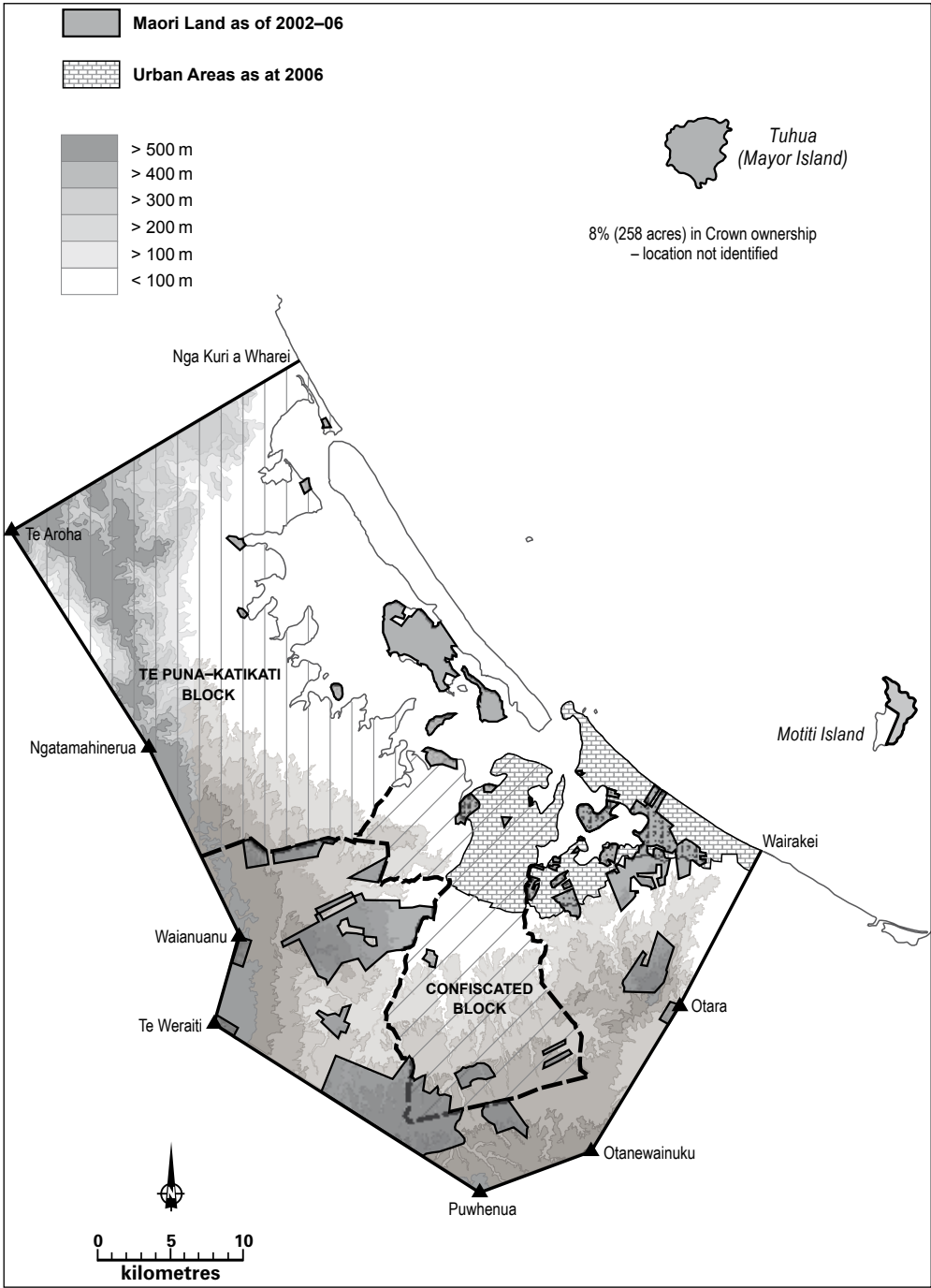
(1) Land alienation

Any analysis of the land issues facing Tauranga iwi and hapū from 1886 must begin by taking account of the stage 1 findings that Tauranga Māori 'were prejudicially affected by having their customary tenure over the whole district destroyed instantly and by being denied the opportunity to seek compensation for the confiscation of their lands in the Compensation Court'.⁴⁶⁴ As a consequence of this fundamental Treaty breach, Tauranga iwi and hapū were prejudiced by, first, the loss of their lands as a result of the raupatu and, second, the subse-

464. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 403

TAURANGA MOANA, 1886-2006

2.11.4(1)



Map 2.19: Māori land as at the time of the Tauranga stage 2 hearings

quent blanket implementation of individualised tenure on their remaining lands.⁴⁶⁵ The land that was returned had to pass through hearings held by the Tauranga Lands Commission, who determined who the landowners were and ‘returned’ the land to individuals. In relation to the imposition of individualised tenure throughout the district, which affected all iwi and hapū, not just those within the confiscated area, the Tribunal found:

This amounted to a radical reordering of society that gravely diminished tino rangatira-tanga or chiefly authority, which was guaranteed to Maori by article 2 of the Maori text of the Treaty. The fact that tenure individualisation was thought to be to the benefit of Maori by some Europeans in the mid-nineteenth century does not alter the fact that, without Maori consent, it was clearly in breach of the Treaty and caused significant prejudice to the hapu of Tauranga.⁴⁶⁶

Furthermore, in implementing such a tenurial revolution, the Crown’s efforts:

led inevitably to the inter- and intra-tribal divisions, tribal dispersal, curtailment of traditional leadership, unequal wealth distribution, title fragmentation, and land alienation that have been found to have occurred following tenure individualisation in other districts. Because of this, the prejudice suffered by Tauranga Maori was not confined to those hapu that lost land in the confiscated block.⁴⁶⁷

By 1886 and the end of the Tauranga Lands Commission hearings, then, Tauranga iwi and hapū were wholly within the system of individualised tenure. No customary land remained. In the context of the Treaty, the Crown then had an obligation to ensure that Tauranga iwi and hapū who had already suffered from raupatu and extensive purchasing were not systematically prejudiced by the introduction of the new system. As the Tūranga (Gisborne) Tribunal put it, the Crown should have used its kawanatanga powers to ‘protect Maori title and facilitate Maori control’.⁴⁶⁸

We re-emphasise the findings from the Tauranga raupatu report, because they provide the immediate and important context for the post-1886 claims. The Crown’s unilateral approach that had characterised the return of lands in individual title under the direction of the Tauranga Lands Commissioners also characterised its subsequent handling of land, as we have outlined above. It was an axiom of Crown policy towards Māori in much of the twentieth century that their land should be brought into the general land system, that ‘idle’ land should be brought into production, and that Māori should be absorbed into Pākehā society. Illustrative of the more extreme end of that assimilationist view are the words of William Herries, who told the House in 1903: ‘I look forward for the next hundred years or

465. Ibid, pp 403–404

466. Ibid, p 404

467. Ibid

468. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 534

2.11.4(1)

so to the time when we shall have no Maoris at all, but a white race with a slight dash of the finest coloured race in the world.⁴⁶⁹ Herries was member for the Bay of Plenty (and hence Tauranga) and later became Minister of Native Affairs.

The central North Island Tribunal has reviewed the key principles governing twentieth-century land issues, particularly in relation to the problems caused by the imposition of individualised tenure:

we must consider what Treaty principles are applicable to a system which may in essence have been based on attempts to mitigate nineteenth-century breaches. In part, governments tried to provide Maori land owners with management options to overcome their disintegrating titles, and with mechanisms for recreating usable titles.⁴⁷⁰

In practice, however, as we have illustrated in this chapter, the measures imposed worked to remove even the tenuous protections afforded by the Native Land Act 1909 and its successors. This was most drastically shown by the forced title conversion measures of the Māori Affairs Act 1953 and Māori Affairs Amendment Act 1967. While we accept that the Crown's efforts, particularly in the second half of the twentieth century, may have been *aimed* at assisting Māori to manage their land titles, the results on the ground often show a different outcome. There is evidence that meetings of owners, meant for ensuring majority decisions, were carried by minorities of owners (and sometimes of shareholdings), and forced conversion measures deprived the owners of their land, or changed its status without notification and consent. Both the Hauraki and central North Island Tribunals have found that, rather than imposing its own solutions, the Crown should have been guided by the Treaty principle of partnership.⁴⁷¹ We concur. The relationship between the Crown and Tauranga Māori cannot be said to be one of partnership when one partner was frequently deciding for the other what it should do with its own land.

The claimants submitted that the Crown had a positive obligation to assist in the administration of lands because of the title system that it had introduced. The Crown submitted that there was no self-evident 'best course' for managing the title situation, and any title system would have faced difficulties. In making findings on this issue, we must assess whether attempts on the Crown's part to alter or ameliorate the title system gave effect to Treaty principles, as well as meeting the general requirements of good governance, or whether they compounded already existing breaches. We accept the Crown's point that there would have been difficulties in implementing and managing a new title system. Knowing that such was the case, this could have been an opportunity to engage Māori as partners to consider ways of best managing the situation. Instead, Māori suffered the imposition of a range of

469. William Herries, 12 November 1903, NZPD, 1903, vol 127, p 538

470. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 423

471. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 671; *ibid*, pp 419, 423

measures that varied widely in their efficacy and, in some cases, overrode not only their Treaty rights but their property rights as well.

From 1886 to the end of the nineteenth century, in particular, when the bulk of the alienation took place, the Crown breached the principle of active protection in that, with one or two exceptions, it was expressly driven by opening up land for settlement, rather than protecting the interests of Māori and enabling them to exercise tino rangatiratanga over their lands and resources. Although the findings of the Barton Commission in Tauranga – which found serious problems with transactions in Māori land – and then the Native Land Laws Commission – which drew attention to the failures of Crown policy and legislation – offered positive ways for the Crown to enact protective provisions, it almost entirely failed to do so until 1900 and then only briefly. In Tauranga, this particularly compounded existing breaches concerning the raupatu and Crown purchases of the nineteenth century.

Then there was a pause in alienation, brought about by the Māori Lands Administration Act 1900 that halted all purchase of Māori land, and established Māori land councils with Māori representation to manage land. In Tauranga, the high rate of alienation dropped sharply in this period. A second positive development was the appointment of the Stout–Ngata commission, to make recommendations on the retention and development required for Māori settlement and the alienation of any surplus. In the case of Tauranga, as we have seen, the commission recommended that much of the land remaining to Māori be retained for their use. Those recommendations could have been implemented, giving effect to the principle of active protection, by positively legislating to retain the Tauranga lands specified in the commission's report. Yet, as we pointed out above, the Land Settlement Act 1907 provided for the removal of restrictions on the alienation of Māori land and thereafter there was resumption of alienation on a considerable scale. The inconsistent application of the landlessness provisions in the Māori land board processes facilitated alienation, in further breach of the principle of active protection.

The subsequent Native Land Act 1909, while introducing some protections that general land did not have, also removed all alienation restrictions that had been placed on individual titles. We are particularly concerned at the Act's provisions stipulating that certain court and board documents, such as court orders and confirmations of alienation, could not be deemed invalid, even where it could be shown there had been irregularities. Likewise, we are concerned that Māori Land Court judges, and later the Māori Trustee, should have been placed in a situation where there was potential for a conflict of interest. In our view, both these pieces of policy demonstrate a clear failure to observe even the basic requirements of good governance, irrespective of any Treaty breach. In addition, however, we find that they breach the Crown's Treaty obligation to act reasonably and in good faith. Measures which allowed restrictions to be removed at the request of a minority of owners (if not of shareholders) breached the duty of active protection. As the Ōrākei Tribunal found,

2.11.4(1)

‘this unwilling and involuntary disposition of shareholders’ interests in their land is clearly inconsistent with the protection afforded by Article 2 of the Treaty’.⁴⁷² The finding is equally applicable to Tauranga Moana and we endorse it for this inquiry.

Then, in 1913, the Native Land Amendment Act replaced Māori representation on the Māori land boards by a Native Land Court judge and registrar. It is difficult to see how this Crown policy provided for rangatiratanga or gave effect to the principle of partnership.

For most of the second half of the twentieth century, the Crown’s attempts to solve the problems caused by individualisation of tenure created further Treaty breaches. Unlike earlier commissions of inquiry, such as the Stout–Ngata commission, which emphasised land retention and development, the post Second World War reports that shaped Crown policy – the Hunn and Prichard–Waetford reports – were more concerned to promote economic production and cultural assimilation. Hunn, in particular, dismissed Māori views, especially regarding tūrangawaewae, as ‘sentimental’, and proposed measures that would extend the conversion of uneconomic interests and introduce compulsory Europeanisation. By contrast, in *A Maori View of the Hunn Report*, published in 1961, the Māori Synod of the Presbyterian Church warned against the dangers of pursuing paternalistic policies in relation to rectifying the title system, and of pursuing assimilation and urbanisation. They stressed that ‘integration . . . should be clearly defined so as to distinguish it from assimilation’ and they commented:

Maori people themselves have a right to decide in what way their future integration with the Pakeha should develop. It is needed because much frustration to and some opposition by the Maoris has resulted from the feeling that our future is being decided for us without our hopes and intentions being considered. However well intentioned such a policy may be, it is in the long run bound to cause more problems than it solves.⁴⁷³

The synod here formulates a clear expression of the principle of autonomy consonant with the Treaty guarantee of tino rangatiratanga, long before the Treaty of Waitangi Act 1975 created the Waitangi Tribunal and tasked it with looking at Treaty principles. Their warning, however, did not prevent the strengthening of compulsory legislative measures. We note that the conversion of ‘uneconomic interests’ – which, in breach of the principle of equity, only applied to Māori – is still a living issue, even though the legislation has since been repealed. The Crown has, in our inquiry, conceded that such conversion was a breach of the Treaty. Nonetheless the effects of the provisions are still being worked through: ‘uneconomic’ interests have not necessarily been returned to the people affected, and the loss suffered by affected people is still being felt today, as several tangata whenua witnesses attested.

472. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 3rd ed (Wellington: GP Publications, 1996), p 235

473. Māori Synod of the Presbyterian Church, *A Maori View of the ‘Hunn Report’*, pp 4, 8

As to land that was compulsorily Europeanised, we note that while it had been a simple matter for the courts to change the title in the first place, the process to reverse the status can be less straightforward. Māori owners seeking to change the status back to Māori land have to apply to the court, and pay an application fee (currently set at \$61). The court may then need to notify other interested parties, such as mortgagees or the local council, whose rights would be affected by any change. Or again, if the matrimonial home is on the land, then the spouse will also have a say as to the change of status. While there is provision for the application fee to be waived, the rights of other parties can constitute a barrier to achieving the change being sought. We are not of course suggesting that the rights of others should be ignored, but we note the irony that the Māori owners did not benefit from such safeguards when the title was converted to general land.

In the Tauranga Moana stage 2 inquiry, the Crown has argued that its approach has been to not unfairly constrain individual Māori who wished to deal in their lands as they saw fit. Implicit in this laissez-faire argument is that if Māori were free to do what they wanted with their lands, this could be seen as an assertion of tino rangatiratanga. We reject this argument. The illusion of free agency in individual land transactions ignores the economic pressures to which Māori often found themselves subjected, not infrequently as a result of Crown policy measures. It also ignores the wider cultural and political context of Māori as a tribal people with collective obligations of kaitiakitanga, maintaining ahi kā, and preserving tūrangawaewae. The Crown, as a responsible Treaty partner, was and is under an obligation to consult with Māori, to consider their views seriously when passing and administering legislation, and not to impose on them policies devised unilaterally. All too often, however, Crown policy makers were fixated on land as an economic commodity that needed to be developed. It was not until 1993 that the Crown enacted legislation that recognised a more Māori approach to holding land and we welcome the fact that the Māori Land Court is now charged with promoting land retention. For Tauranga iwi and hapū, who have already lost a substantial amount of their land and resource base, this is, unfortunately, largely too late.

From the evidence presented to us, including the statistical analyses presented by Belgrave et al, it is evident that a large portion of the Māori land held at 1886 was subsequently lost; and that this loss was facilitated by the Crown's policy of individualisation of tenure and authority, freed of communal controls, to alienate land. While article 2 of the Treaty, in the English text, guaranteed 'to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof' ongoing ownership of all properties they 'collectively or individually' possessed, there is no mention of individuals in the Māori text; rather, the Māori text mentions only 'nga Rangatira me nga Hapu o Nu Tirenī' (the chiefs and hapū of New Zealand). Section 5(2) of the Treaty of Waitangi Act 1975 gives the Tribunal 'authority to determine the meaning and effect of the Treaty as embodied in the 2 texts and to decide issues raised by the differences between them'. We are of the view that the variance between the English and Māori texts in this instance is significant. On the basis

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of the English text alone, it could perhaps be argued that there was no *prima facie* Treaty breach in the Crown individualising tenure (although the unilateral nature of the Crown's decision to do so would still raise concern). However, the same cannot be said for the Māori text, which reflects the interlinked responsibilities of chiefs and their communities in terms of allocating use rights over land and resources. In line with the *contra proferentem* rule, where any ambiguity in a contract is to be interpreted against the interests of the drafter, we are of the view that the Māori version of article 2 should take precedence. As a result of the Crown's actions in individualising tenure, Tauranga iwi and hapū were no longer able to exercise collective tino rangatiratanga over their remaining land, and we find this to be in breach of article 2 of the Treaty.

Treaty breach also attaches to specific policies and practices. For example, the landlessness provisions were inconsistently applied and, in one case, ironically worked to thwart the development plans of Māori owners. In the second half of the twentieth century, compulsory title conversion measures, though attempting to rationalise the title situation, often worked instead to deprive people of their last remaining ancestral ties and deepened a profound sense of grievance. Until 1993, there were few *effective* protective mechanisms in place, and the examples in this chapter illustrate the way in which a very small percentage of a large number of owners could sometimes alienate the land. This failure to implement effective protections in the administration of alienation constitutes a further breach of the duty of active protection.

(2) Land sufficiency

The question of the Crown's role in alienation is not solely limited to the administration of alienation. As several Tribunal reports have found, including the Taranaki, Ōrākei, and Muriwhenua reports, the Treaty also places a positive obligation on the Crown to ensure that Māori have sufficient land available for their present and anticipated future needs and, furthermore, that the Crown should only acquire what is surplus to those needs.⁴⁷⁴ That is not to say that land requirements remain constant over time. One would not expect an entire population to remain permanently agrarian, for example. Nevertheless, the principle of options should apply. Article 2 of the Treaty included the Māori right to retain their land and their rangatiratanga over that land for as long as they wished. Traditionally, the exercise of rangatiratanga involved consideration of the needs of the collective, providing for the needs of whānau and individuals within that wider context, as was reflected in traditional management of the land and resources. The Crown had a fiduciary duty to monitor the impact of its policies and legislation and, as part of that monitoring, to consult with Tauranga hapū and iwi leadership, to ensure that Tauranga Māori were able to

474. Waitangi Tribunal, *Report on the Orakei Claim*, pp202, 206; Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), p189; Waitangi Tribunal, *Muriwhenua Land Report*, 1997 (Wellington: GP Publications, 1997), pp327–328

retain as much land as they wanted and participate in the local economy. As the central North Island report has recorded, the Tribunal ‘has long accepted that the Treaty envisaged that Maori would alienate some land and resources’, but the report also pointed to the Tūranga Tribunal’s comment that ‘no community would choose to sell land to the point of self-destruction.’⁴⁷⁵ Viewed as a potential exercise of tino rangatiratanga, it is the issue of what ‘choice’ means in a post-1886 Tauranga context that concerns us.

In terms of the settlement period, the Ngāi Tahu Tribunal stated that, in acquiring Māori land, the Crown had a ‘correlative duty’ to:

ensure that adequate land of good quality was left in [the tangata whenua’s] possession so that they would, as Lord Normanby contemplated, later enjoy the added-value accruing from British settlement. Sufficient land would need to be left with [the tangata whenua] to enable them to engage on an equal basis with European settlers in pastoral and other farming activities.⁴⁷⁶

This seems particularly apposite in the Tauranga situation where there was so much pressure from settlers. In keeping with the right to development, the Crown ought to have ensured that Tauranga iwi and hapū had a sufficient land and resource base for their foreseeable needs. Instead, as the Hauraki Tribunal has observed, the Crown’s land laws ‘constantly tended towards the alienation of Maori land . . . rather than to the retention and development of land by the owners.’⁴⁷⁷

It was not as if the Crown was unaware of the situation facing Māori as they entered the twentieth century. Not only did iwi and hapū petition Parliament, but a number of different government-sponsored commissions repeatedly found that Māori needed to retain land, and, not least, the Stout–Ngata commission. In Tribunal inquiries, the Crown has sometimes warned of the dangers of ‘presentism’ – that is, of interpreting past events in terms of modern values and concepts – but it is surely not presentist to maintain that the Crown should have heeded the findings of its own commissions of inquiry. Instead, from the early twentieth century the Crown placed increasing emphasis on income from employment as a mitigating factor when landlessness threatened and, by the 1960s, Pritchard and Waetford were able to report that ‘in the main’ Māori had moved away from their tribal land to live near their employment or business.⁴⁷⁸ The Māori Synod of the Presbyterian Church, however, had already highlighted ‘the inadequacy of the land available to the people for sustenance’ as one of the factors involved in the trend towards increasing urbanisation.⁴⁷⁹

475. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 511 (Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 433)

476. Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend, 1991), vol 2, p 239

477. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 760

478. Ivor Prichard and Hemi Waetford, *Report of Committee of Inquiry into the Laws Affecting Maori Land and the Jurisdiction and Powers of the Maori Land Court*, pp 17–18

479. Māori Synod of the Presbyterian Church of New Zealand, *A Maori View of the ‘Hunn Report’*, p 7

In Tauranga, as we shall see in later chapters, the situation was complicated by the town expanding and encroaching on Māori land, rather than Māori actively seeking to move to the town. Either way, though, the Crown did not ensure protection of the land identified by Stout and Ngata as recommended to be reserved for Tauranga Māori occupation: by 2006 over half the area recommended for retention had been alienated out of Māori tenure and, for the most part, out of Māori ownership.⁴⁸⁰

We accept that many tangata whenua no longer wish to rely on land ownership to support themselves, and similarly we acknowledge that there are doubtless Tauranga Māori who hold other land under general title. Nevertheless, the 50 per cent loss of core lands represents a significant reduction given the now much-expanded tangata whenua population, and it has serious implications for Tauranga Māori aspirations of kaitiakitanga, rangatiratanga, and tūrangawaewae.

The principles of the Treaty should have set the pattern for the way in which the Crown interacted with Tauranga Māori and managed settlement in the area. Instead, through its Treaty breaches in the period before 1886, the Crown had established an ongoing pattern of disempowerment for tangata whenua in Tauranga into the twentieth century. In particular, as the stage 1 report said, the Crown had failed ‘to ensure that [Tauranga iwi and hapū] both retained enough land of sufficient quality for their foreseeable needs and possessed the means to develop it’, thereby breaching its article 2 obligations of active protection.⁴⁸¹ From our analysis, it is clear that in the period since 1886 the Crown has continued in its failure to ensure land and resource sufficiency for Tauranga Māori. We therefore reiterate the findings and recommendations of the stage 1 report on this issue.

The socioeconomic impact of this loss is discussed in chapter 9, including its effect on individual hapū.

2.12 MAIN CONCLUSIONS AND FINDINGS IN THIS CHAPTER

The main conclusions and findings in this chapter are as follows:

- ▶ By 2006, Tauranga Māori had lost over 75 per cent of the land returned and reserved after the raupatu, and more than 50 per cent of the amount recommended for their retention by Stout and Ngata in 1908.
- ▶ The individualisation of tenure, freed of communal controls, meant that Tauranga iwi and hapū were not able to exercise collective tino rangatiratanga over their remaining land, in breach of article 2 of the Treaty.

480. ‘Appendix 1, Comparison of Land Remaining in Maori Ownership in the Tauranga Inquiry District with Land Recommended to be Reserved by Stout and Ngata under Part II of the Native Land Settlement Act 1907’ (doc u26), pp 75–86; see also paper 2.659, p 8

481. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 366

- ▶ From 1886 to the end of the nineteenth century in particular, when the bulk of the alienation took place, the Crown breached the principle of active protection in that its overriding concern was to open up land for settlement, to the detriment of Māori interests and their tino rangatiratanga over their lands and resources.
- ▶ The 1909 Native Land Act's provisions to permit the validation of documents such as court orders and confirmations of alienation, even where it could be shown there had been irregularities, failed to observe even the basic requirements of good governance and breached the Crown's Treaty obligation to act reasonably and in good faith.
- ▶ Likewise, legislative provisions that placed Māori Land Court judges, and later the Māori Trustee, in a position where there was potential for a conflict of interest also failed to observe the basic requirements of good governance and breached the Crown's Treaty obligation to act reasonably and in good faith.
- ▶ Measures which allowed alienation restrictions to be removed at the request of a minority of owners breached the duty of active protection.
- ▶ A number of different Government-sponsored commissions repeatedly found that Māori needed to retain land and, irrespective of any Treaty argument, it is reasonable to expect that the Crown should heed the findings of its own commissions of inquiry.
- ▶ In keeping with the Crown's duty of active protection and the Treaty right of development, the Crown ought to have ensured that Tauranga iwi and hapū retained a sufficient land and resource base for their foreseeable needs.
- ▶ We welcome the Crown's concession that the compulsory acquisition of 'uneconomic' shares by the Māori Trustee breached the Treaty and its principles.

Annex 1: Main Acts referred to in this chapter

Title of Act	Significant provisions
Native Land Administration Act 1886	Elected block committees can decide on leases and sales, but sales are to be effected by the district commissioner.
Native Land Act 1888	The Governor in Council can remove existing restrictions on alienation if requested to do so by a majority of the owners.
Native Land Court Act 1886 Amendment Act 1888	Where an alienation would leave an individual owner with insufficient land, the land court can declare part of the land inalienable for the support of that person.
Native Land Court Act 1894	When title is being decided, the land court must determine the relative weight of interest of each owner and award shares accordingly.
Native Land Court Act 1894	With the consent of the majority of the owners, the Native Land Court can make an order for incorporation.
Native Land Court Act 1894	Any incorporation so created is to be run by a committee of three to seven people, who do not have to be owners, to administer the land.
Māori Lands Administration Act 1900	District Māori land councils are to be created, comprising five to seven members (Māori and Pākehā, in roughly equal proportions). Where authorised by the chief judge of the Native Land Court, such councils can have the power to determine ownership, define relative interests, and decide on partitions.
Māori Lands Administration Act 1900	All Crown purchasing of Māori land is to be suspended.
Māori Lands Administration Act 1900	Papākāinga certificates are to be issued for land deemed essential to Māori support. Such land is to be inalienable unless exchanged for more suitable land. Other land is alienable by lease for up to 50 years.
Māori Land Settlement Act 1905	District Māori land councils are replaced by three-member district Māori land boards. At least one member of the board has to be Māori.
Māori Land Settlement Act 1905	The Native Minister can compulsorily vest any surplus land, or land unsuitable for Māori occupation, in the Māori land board of the district concerned, for administration on behalf of the owners.
Māori Land Settlement Act 1905	All restrictions on lease are removed except for retaining a maximum 50-year term.
Māori Land Settlement Act 1905	The Crown can again purchase land, although with stringent conditions to prevent landlessness.
Māori Land Settlement Act 1905	'Sufficient' land is defined as 25 acres per head of first-class land, 50 acres of second-class land, or 100 acres of third-class land. However, income from other sources such as paid employment can now be taken into account.
Māori Land Settlement Act 1905	Where agreement to sell is not unanimous, the Crown can acquire the interests of the dissenting minority by making payment to the Receiver-General.

Native Land Settlement Act 1907

Māori land identified as 'surplus' by the Stout-Ngata Commission is to be vested in a Māori Land Board. The board is then to divide that land into two roughly equal portions, one half being for sale and the other for lease for up to 50 years. Land identified as necessary for Māori occupation is to be reserved, and the consent of the Governor in Council will be required for any alienation whatsoever (including by lease or mortgage).

Native Land Act 1909

All alienation restrictions are removed and Māori land can now be alienated 'in the same manner as if it was European land'. No order made by the Native Land Court or the Appellate Court can be deemed invalid by reason of irregularities, errors, or defects, either in the order itself or in the court's procedures. Similarly, there can be no invalidation of any deed of alienation confirmed by a land board in relation to land controlled by a body corporate.

Where a deed of alienation results from a resolution passed by a meeting of owners that has then been confirmed by a land board, it cannot be invalidated by reason of irregularity of process, or by reason of any lack of accord between the terms of the resolution and those of the deed, unless there has been fraud.

The Native Land Purchase Board is established, and empowered to purchase Māori land directly from the owners, or from a Māori land board. However, it must not pay less than the land's assessed value, and it must not render any Māori landless by the purchase.

Māori can apply to have their land 'Europeanised'.

Alienations have to be confirmed by a Māori land board or by the Native Land Court, normally within six months of an agreement being drawn up.

In confirming alienations, potential landlessness is to be taken into account. (However, since the Act repeals the 1905 legislation, there are no longer any guidelines about minimum acreage.)

Any land with more than 10 owners can be alienated if a quorum of five or more owners passes a resolution to that effect.

To pass the resolution, those voting in favour need to hold more shares than those voting against. The alienation then has to be confirmed by the land board within six months.

If it appears too difficult to call an owners' meeting, and if the alienation is deemed 'in the public interest and in the interest of the owners', the land board can consent to the alienation on its own resolution. The alienation must then be confirmed by the land board within 18 months.

Native Land Amendment Act 1913

Māori land board membership is reduced to two, one being the land court judge for the district and the other being the court registrar. This effectively removes Māori representation on the board. Judges are to inform the Native Minister when Māori freehold land suitable for settlement or partition is not being used by its Māori owners.

Annex

Title of Act	Significant provisions
Native Land Amendment Act 1913— <i>continued</i>	Landlessness provisions now include a clause discounting the need to retain any land 'not, having regard to all the circumstances, likely to be a material means of support'. The need to consider other means of support is retained.
Native Trustee Act 1920	<p>The Office of the Native Trustee is created. All native reserves formerly under the control of the Public Trustee are now to be transferred to the Native Trustee.</p> <p>At the request of the owners and with the consent of the Governor in Council, other lands can also be transferred to the trustee, to be held in trust for the owners.</p> <p>A trust account is to be established to hold monies on behalf of beneficiaries.</p>
Native Land Amendment Act 1932	<p>No Māori land alienation is to be binding unless and until confirmed by the Native Land Court.</p> <p>The Native Land Purchase Board is replaced by the Native Land Settlement Board. It is tasked with overseeing expenditure on Māori land development and advising Māori on the more efficient and economical development and settlement of the land.</p>
Board of Native Affairs Act 1934	The Native Land Settlement Board is replaced by the Board of Native Affairs.
Māori Purposes Act 1950	Māori land that is unoccupied, not properly cleared of weeds, owing rates, or otherwise 'not being used to its best advantage', can be compulsorily alienated.
Māori Land Amendment Act 1952	The district Māori Land Boards, created in 1905, are abolished and most of their remaining duties transferred to the Māori Trustee. Property assets held by the boards are also transferred to the Māori Trustee, but the administration of mortgages, leases, and the like is transferred to the Board of Māori (formerly Native) Affairs.
Māori Affairs Act 1953	<p>Where a Māori landowner dies intestate, any of his or her land interests worth less than £25 are to be compulsorily vested in the Māori Trustee.</p> <p>The Māori Trustee may also buy interests from living owners, if they wish to sell, using money from the trust fund. (This becomes known as 'live buying'.) Such alienations do not have to be confirmed by the land court.</p> <p>The Māori Trustee can sell any Māori land interests vested in him.</p>

<p>Irrespective of the total number of owners in a land block, the quorum for an owners' meeting is reduced to three. To pass a resolution at the meeting, those voting in favour (including proxy votes) only need to hold more shares than those voting against.</p> <p>Powers of incorporation are expanded: Māori land with more than three owners can be incorporated by the Māori Land Court for the purposes of sale or lease, or for farming, forestry, mining, or other enterprise. The Māori owners become members of a body corporate.</p> <p>Under sections 438 and 439, trusts can be created to administer Māori land blocks on behalf of the owners.</p>	<p>Māori Affairs Amendment Act 1967</p>
<p>Māori land with not more than four owners can be compulsorily 'Europeanised' by the Māori land registrar issuing a 'change of status' declaration (although the land remains in Māori ownership).</p> <p>Land held by Māori incorporations is to be compulsorily Europeanised.</p> <p>The Māori Trustee can compulsorily acquire 'uneconomic interests' worth less than \$50, and can request the land court actively to identify such interests when it is considering partitions, consolidations, and amalgamations. Such interests are held in the conversion fund, along with other interests purchased through, for example, 'live buying'.</p> <p>Interests thus acquired can be sold to any Māori, or to an owners' body corporate, or to the Crown for the purposes of the Māori Housing Act 1935.</p> <p>In the case of Māori reserved land and Māori vested land, any uneconomic or other interests acquired by the trustee are now to be held in a separate fund known as the reserved and vested land purchase fund (or simply the purchase fund).</p> <p>Where a Māori dies intestate, the provisions relating to succession and estate duty are to align with those for Europeans.</p> <p>Shares in Māori incorporations are to reflect shareholders' interests in the land held by the incorporation.</p>	<p>Māori Affairs Amendment Act 1974</p>
<p>The compulsory Europeanisation of Māori land is to cease. Those who have had their land Europeanised can apply to have it converted back to Māori freehold land (as long as it has not changed hands in the interim).</p> <p>The compulsory acquisition of 'uneconomic interests' is to cease.</p> <p>The Māori Trustee is no longer to sell to the Crown any interests acquired through the Conversion Fund.</p> <p>The Board of Māori Affairs is abolished and, in its stead, a Māori Land Board is created. Regional Māori land advisory committees are also established, to assist in considering proposals for Māori title improvement and land use.</p> <p>The quorum for owners' meetings is increased. (Numbers vary depending on circumstance.)</p> <p>More stringent criteria are introduced in relation to the confirmation of alienations by the Māori Land Court.</p> <p>Land held by Māori land incorporations and Europeanised under the 1967 Act is to revert to being Māori land.</p>	<p>Māori Purposes Act 1975</p>

Title of Act	Significant provisions
Māori Affairs Amendment Act 1987	The conversion fund is abolished. Shares are to be returned either to those persons who would have received them had they not been compulsorily acquired by the Māori Trustee, or alternatively to the present block owners.
Te Ture Whenua Māori Act 1993	Land is recognised as a taonga tuku iho of special significance to Māori. The Māori Land Court is to focus on promoting land retention, use, development, and control by its Māori owners. Numerous provisions are introduced to assist this. Provisions governing alienation are further tightened.
Te Ture Whenua Māori Amendment Act 2002	Quorum provisions are tightened so that 75 per cent of owners or shareholders in multiply owned land must agree before land can be alienated Provisions around the confirmation of alienations by the land court are, however, relaxed slightly.

CHAPTER 3

LAND DEVELOPMENT, 1886–2006

Multiple ownership has always hindered the ability of the owners to raise finance for development purposes. Private institutions will not lend to the owners of multiply owned Maori land. Small landholdings compound the problems. In order to develop our lands people have to partition the lands to obtain their own individual title to raise finance. This means that lands are further fragmented . . . In many instances, because of these difficulties, our people frequently give up trying to build on their ancestral lands.

Te Pio Kawe, Ngāi Te Ahi¹

3.1 INTRODUCTION

In this chapter, we explore the experience of Tauranga Māori in trying to retain and develop their lands in the period from 1886 to 2006. Tauranga Māori faced obstacles in bringing their land into production which Pākehā settlers did not. This was because of the Crown's administrative regime, and the system of multiply owned land. Difficulty in raising finance against multiply owned land was a particular problem. We also note the changed distribution of Māori landholding following raupatu and the Te Puna–Katikati 'purchase'. As discussed in chapter 2, some tribes, in taking stock of their new position clearly sought to rationalise their landholding, so as to take advantage of the opportunities offered by new economy, but did not always meet with the assistance they had hoped for from the Crown. We note at the outset, however, that we had less evidence to draw on in writing this chapter than we would have liked. This is particularly so for the periods before and after the land development schemes of the 1930s to the 1970s. Our conclusions and findings, therefore, will at times be limited to matters of a general nature.

Broadly, the claimants argue that since the Crown has imposed on Tauranga Māori a system of tenure which poses them many problems in trying to develop their lands, the Crown consequently has a particular and positive obligation, over and above its general

1. Ronald Te Pio Kawe, brief of evidence, undated (doc G23), p 3

Treaty obligations, to help them overcome these problems so as to successfully develop their lands.² The principal problem they cite is the ever-increasing numbers of individual owners with fractionated interests to multiply owned Māori land, which makes land administration time-consuming and complicated, and arranging security for development loans very difficult.³

The claimants allege that, between 1886 and the present, the Crown has not adequately addressed this problem. Specifically, they claim that, before the 1930s, the Crown provided no land-development assistance; indeed they allege that Crown legislation tended to detract from the development of Māori land.⁴ They acknowledge that the Crown did provide some assistance between the 1930s and the early 1980s through various land development schemes and the provision of development finance. But they claim that this never resolved the underlying issues with title.⁵ The claimants acknowledge that the Crown did help some few Tauranga Māori to become established on their lands, primarily as a result of development finance offered in the 1970s. However, the claimants argue that these are isolated instances, and moreover assert that since the 1980s the Crown has ceased providing assistance, and is again in breach of its Treaty obligations.⁶ In sum, the claimants allege that the Crown has provided, at best, sporadic and limited assistance. Overall, this assistance has not enabled Tauranga Māori to solve the problems posed by their fragmented and fractionated landholdings; nor has it enabled them to successfully develop their remaining lands.⁷ Indeed, the Crown has placed undue restrictions on the use and development of Māori land. As a prejudicial consequence of being unable to develop their lands, many owners have resorted to land alienation by long-term lease, or sale.

The claimants' position regarding the specific development schemes set up in Tauranga from the 1930s – in particular, the Kaitimako and Ngāpeke schemes – is that the Crown's limited initial consultation with tangata whenua misrepresented to them the extent and duration of intended Crown control. The schemes lasted far longer than owners had been led to believe, and very few owners were able to occupy their lands under the schemes. Therefore, most owners were effectively alienated from their lands for the schemes' duration.⁸ The schemes also failed to establish any long-term farming units.⁹

Overall, the claimants allege that the assistance which was provided in the early and mid-twentieth century was sporadic and insufficient. Subsequent development schemes in the

2. Claimant counsel, closing submissions in regard to twentieth-century land alienation, development, and administration (issue 2), 24 November 2006 (doc U13), pp 29, 51

3. Ibid, p 29

4. Ibid, p 30

5. Ibid, p 36

6. Counsel for Ngāi Tūkairangi, closing submissions, undated (doc U12), p 88; doc U13, p 43

7. Document U13, p 29

8. Counsel for Ngāti Hē, closing submissions, 24 November 2006 (doc U7), p 34; doc U13, p 41; counsel for Ngāti Pūkenga, closing submissions, 10 December 2006 (doc U34), p 40

9. Document U13, p 39

1970s were much more successful, though not all those who requested assistance received it. Given ongoing need, and continued difficulties in accessing private sources of development finance, the claimants ask why the Crown has more recently ceased to offer development assistance.

The Crown has accepted that Māori have a right to develop their lands. However, it submitted that, 'the Government has discharged any obligation it may have in that regard by facilitating land development through various legislative mechanisms as well as by providing financial support'.¹⁰ The Crown acknowledged that difficulties in gaining finance hampered Māori land development before the development schemes of the 1930s, but noted that this was true of customary title and Māori freehold title. In both cases, private institutions were reluctant to lend.¹¹ For its part, the Government assisted Māori 'by providing financial support'.¹²

The Crown's submissions focused, however, both on subsequent State assistance in the form of land development schemes, and on legislative mechanisms, such as trusts and incorporations, that, it argued, had provided means to overcome title difficulties. The Crown argued that the land development schemes successfully developed the land so that it could be used by owners.¹³ More recently, trusts and incorporations have enabled Tauranga Māori to undertake that development themselves.¹⁴ In essence, the Crown argued it has discharged all obligations by enabling Tauranga Māori to successfully develop their lands.

In sum, the claimants and the Crown have taken very different positions on the overall question of whether the Crown has met its obligations to assist Tauranga Māori to develop their lands. There are no substantial points of agreement. The claimants argue that, prior to and following the land development schemes of the 1930s to the 1970s, the Crown provided no assistance. Further, the land development schemes did not succeed in enabling Tauranga Māori to develop and occupy their lands. The Crown simply argues that it has provided adequate assistance at all times.

We divide our initial discussions of these positions into three sections, corresponding to the periods before, during, and after the commencement of the land development schemes in the 1930s. The key question that we examine throughout in this chapter is:

Has the Crown provided Tauranga Māori with adequate levels of assistance in terms of legislation, policy, finance, and training, to enable them to develop their lands?

We answer this question with reference to the Treaty principles of equity and options, and the duty of active protection as it applies to the right of Tauranga Māori to develop their lands and resources. A right of development is inherent in the rights of property guaranteed

10. Crown counsel, closing submissions: introduction and issues 1–2, 8 December 2006 (doc U26), p 51

11. Ibid, pp 49–51

12. Ibid, p 51

13. Ibid, p 61

14. Ibid, pp 64–65

to Māori in article 2 of the Treaty. The central North Island Tribunal commented at length on the Treaty right of development. It found that, according to this right, Māori have:

- ▶ the rights as property owners to develop their properties in accordance with new technology and uses, and to equal access to opportunities to develop them;
- ▶ the right to positive assistance, where appropriate to the circumstances, including assistance to overcome unfair barriers to participation in development (especially barriers created by the Crown);
- ▶ the right to retain a sufficient land and resource base to develop in the new economy, and of their communities to decide how and when that base would be developed; and
- ▶ the right to develop as a people, in cultural, economic, and political senses.¹⁵

In particular, the central North Island Tribunal found that the Crown was required to take reasonable steps in the circumstances of the time to actively protect Māori in their property and development rights. This right was not simply aspirational. It was ‘part of the full property rights guaranteed by the Treaty’. It is fundamental to the Treaty bargain that Māori should share in the benefits brought by colonisation.¹⁶ That included, as part of the principle of options, their freedom to explore a range of possibilities in terms of how they wished to use their land in the new economy.¹⁷ Moreover, Māori were entitled to participate in that economy as tribal peoples, according to their own preferences.¹⁸ The Crown was obliged to facilitate Māori economic participation, just as it actively assisted other sectors of the community and, while it was not compelled to ensure success, it was required to establish a legislative and policy framework within which Māori could prosper.¹⁹ The Crown was obliged to take reasonable steps to actively protect the ability of Māori to access development opportunities, as iwi and hapū, on an equal basis with other sectors of society.²⁰ This might require more than providing simple legal equality for, as the Hauraki Tribunal noted, it was accepted from the outset of British colonisation that specific efforts would be required at times to help Māori become ‘equal in the field’ with European settlers.²¹ In practical terms, therefore, the Crown was obliged to provide Māori with a comparable level of assistance to that provided to settlers, and to make efforts to overcome unfair barriers to Māori land development, especially where those barriers were of the Crown’s making.²² We draw on these findings of previous Tribunals to assess whether the Crown met its Treaty obligations in Tauranga Moana.

15. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 3, pp 912–914

16. *Ibid*, p 912

17. *Ibid*, p 589

18. *Ibid*, pp 912–913

19. *Ibid*, p 913

20. *Ibid*, pp 896, 948

21. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 3, p 1211

22. Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 896

We begin by briefly reviewing Māori efforts to farm land in the Tauranga inquiry district in the late nineteenth and early twentieth centuries. These efforts occurred within the context of Crown and private attempts to purchase Māori land, and they ran into difficulties caused by the imposed system of tenure that created multiply owned land, as discussed in chapter 2. We discuss whether the Crown made reasonable efforts to assist Māori to farm their land in the period from 1886 to 1929. We then analyse the adequacy of the Crown's attempts to assist Māori to develop their remaining land that began when Apirana Ngata became Native Minister in 1928. To do this, we focus on the four land development schemes started in Tauranga. Finally, we examine various initiatives by the Crown and Māori to develop new forms of management, such as incorporations and trusts from the 1950s; and discuss some contemporary problems of development. We note that some aspects of these topics are examined in other chapters. For instance, local government planning provisions relating to the development of Māori land are discussed in chapter 5, while schemes for rehousing Māori in residential subdivisions are examined in chapter 9. After providing the claimant and Crown submissions on these matters, we conclude with our discussion, analysis, and findings.

3.2 MĀORI LAND DEVELOPMENT, 1886–1929

The Tribunal's stage 1 report found that, as a direct result of the raupatu, Tauranga Māori no longer had enough land of sufficient quality to allow for their economic advancement, still less 'a relative degree of prosperity'.²³ And here we note that the raupatu area had included a significant quantity of the region's better agricultural land – the productive capacity of which not only conferred on the holder the prospect of a good financial return in the short-term, but would also ensure its later protection from twentieth-century urbanisation (see the town and country planning discussion in chapter 5). Also lost was that part of the Te Puna–Katikati 'purchase' (perhaps better described by William Fox as 'a forced acquisition of Native Lands under colour of a voluntary sale'²⁴) that was later to become the Athenree Forest. The loss of these areas alone represents a significant opportunity cost to Tauranga iwi and hapū in terms of their future land development options.

There is no question that the economy of Tauranga Māori remained marginal and vulnerable throughout the late nineteenth and early twentieth centuries. Ongoing loss of land, the redistribution of population onto remaining lands, and the increasing fragmentation of what land remained, meant that it was unlikely Tauranga Māori could succeed in

23. Waitangi Tribunal, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims* (Wellington: Legislation Direct, 2004), pp 355–359, 363–366

24. Fox to Grey, 24 September 1864, G17/3, no 15 'Natives claim to Katikati' (Hazel Riseborough, 'The Crown and Tauranga Moana, 1864–1868' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc A23), p 32)

reproducing the scale of their pre-raupatu agricultural production. Further, while Māori land continued to be lost, the local Māori population started to expand from around the beginning of the twentieth century, which meant that either larger land areas or more intensive farming techniques – or both – were required to form economic units capable of supporting that population. It thus became ever more difficult for Tauranga Māori to maintain, or in some cases recreate, an economy founded solely on land usage.

It must be stressed, however, that Tauranga Māori hapū made persistent efforts to develop their lands. During the early 1880s Tauranga Māori focused on growing crops – in particular, wheat – and on running sheep. Their endeavours were spearheaded by leaders such as Hori Ngatai, who in 1885 had shorn 500 sheep and sent eight bales of wool to England, and in 1887 had repaired the Wairoa mill, stimulating wheat production.²⁵ This represented the produce of Ngatai's wider hapū holdings.²⁶ Few other hapū had equivalent resources, and during the 1880s and 1890s there were never more than four of what the *Bay of Plenty Times* described as 'communal sheep-farming operations'.²⁷

These determined efforts at land development were periodically punctured by economic depression, crop failures, recurrent disease epidemics, and land alienation.²⁸ Tauranga Māori were especially hard hit by the prolonged economic downturn of the later 1880s and 1890s. In 1886, the commissioner of Tauranga lands, Brabant, reported that Tauranga Māori had ceased growing cash crops and were not even growing enough food to sustain themselves.²⁹ The Tauranga Māori population was in continued decline in the late nineteenth century, reaching its nadir at 1301 in 1901. Declining too was the Tauranga Māori land base and economy: cumulative cultivations dropped from almost 3000 acres in 1891 to under 2000 acres by 1901, and stock numbers of all kinds also fell significantly.³⁰ Meanwhile, between 1891 and 1901 the European population increased from 1156 to 2665,³¹ and, despite the economic depression, their land use increased markedly: 28,102 acres of improved pasture had

25. Kathryn Rose, 'The Impact of Confiscation: Socio-Economic Conditions of Tauranga Maori, 1865–1965' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1997) (doc A38), pp 40–41; *Bay of Plenty Times*, 26 November 1885, p 2

26. *Bay of Plenty Times*, 26 November 1885, p 2

27. *Bay of Plenty Times*, 2 December 1901, p 2; doc A38, p 40

28. Document A38, pp 38–39

29. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 356

30. 'Summary of Maori Census 1896', AJHR, 1896, H-13B, p 13 (doc A38, p 44); 'Summary of Maori Census 1891', AJHR, 1891, G-2, p 10 (doc A38, p 44); 'Summary of Maori Census for 1901', AJHR, 1901, H-26B, p 21 (doc A38, p 44); *Results of a Census of the Colony of New Zealand, taken for the night of the 5th April 1891* (Wellington: Government Printer, 1892), plx

31. *Statistics of the Colony of New Zealand for the Year 1891 with abstracts from the Agricultural Statistics of 1892* (Wellington: Government Printer, 1892), p 394; *Results of Census of the Colony of New Zealand, taken for the night of the 31st March 1901* (Wellington: Government Printer, 1902), p 29

increased to 45,372 acres, and 3214 acres in crops to 8067 acres.³² Total European stock numbers actually fell – from 31,509 to 19,874 – but this was due to widespread conversion from pastoral sheep farming to dairy farming.³³ The position of Tauranga Māori at the turn of the century was therefore significantly worse – in both relative and absolute terms – than prior to the raupatu.³⁴ As noted in chapter 2, this was particularly true of some hapū, such as Ngāti Hangarau, who had been left with very little arable land.

Several factors stimulated land development in Tauranga around the turn of the century, as elsewhere in New Zealand. The long depression of the 1880s and 1890s had eased, and refrigeration now allowed meat and dairy products that could be produced on smaller holdings to reach much larger markets. Those Māori who had retained some substantial landholdings, especially those suitable for dairy farming, could therefore have expected to participate in this economic renewal. Māori efforts to farm their land at this time also benefited from the cessation of land alienation at the turn of the century, which freed them from the uncertainty and disruption that accompanied land purchases. In addition, the Māori population of Tauranga grew from 1301 people in 1901 to reach 2190 by 1921.³⁵ This rebirth must have renewed hopes for economic development, while making the need for that development all the more pressing.

Tauranga Māori leaders around the turn of the century, such as Hori Ngatai, Hone Makarauri Taipari, Henare Werohia, and Edward Bidois, married farming ability with traditional authority.³⁶ Ngatai, in particular, continued to make impressive efforts to further land development. In addition to cropping land at Pāpāmoa and Matapihi, he helped lead Tauranga Māori in a rapid transition towards dairy farming. In June 1902, it was reported that:

There is a very marked movement amongst some sections of the Natives around here to go in largely for the dairy industry; those in the fertile and extensive area between Hairini and . . . beyond Maungatawa [*sic*] are especially eager to embark in this new line and they reckon that if a creamery be established anywhere within reach of their farms that they will be able to milk a total of about 400.³⁷

In 1905, a creamery was established on land controlled by Ngatai at Pāpāmoa, and 21 dairy farmers supplied it that year with milk. By 1907, Māori ran some 440 cows on the

32. *Results of a Census of the Colony of New Zealand taken for the night of the 28th March 1886* (Wellington: Government Printer, 1887), p 322; *Census 1891*, app, p iv; *Statistics of the Colony of New Zealand, 1891*, p 308; *Statistics of the Colony of New Zealand for the Year 1901, with Statistics of Local Governing Bodies for the Year Ended 31st March, 1902* (Wellington: Government Printer, 1903), p 383

33. *Statistics of the Colony of New Zealand, 1891*, p 296; *Statistics of the Colony of New Zealand, 1901*, p 495

34. Document A38, p 38

35. *Ibid*, p 175

36. W Ohia and T Te Kani, 'Tauranga from European Times: A Maori Viewpoint', in A C Bellamy, ed, *Tauranga, 1882–1982* (Tauranga: Tauranga City Council, 1982), p 10

37. *Bay of Plenty Times*, 20 June 1902, p 2

Pāpāmoa subdivisions alone.³⁸ At this point, therefore, Tauranga Māori were clearly making vigorous and concerted efforts to develop and use their remaining lands.

As we noted in our previous chapter, the chief justice, Sir Robert Stout, visited Tauranga in 1907 in the course of the Stout–Ngata inquiry into native lands. This inquiry came in the wake of the 1905 decision to resume Crown purchasing. It was charged with taking detailed stock of Māori land, primarily with a view to identifying which lands were ‘unoccupied’ or ‘not profitably occupied’, and could therefore be ‘made available for settlement by Europeans.’³⁹ The explicit expectation was that ‘large areas of Native lands’ would be identified as suitable for sale or lease. Indeed, the Department of Native Affairs and the Department of Lands had conducted a nominally similar investigation for the Legislative Council just the previous year, aimed at quantifying exactly which areas of Māori land were ‘unoccupied’ or ‘unproductive.’⁴⁰ As map 3.1 reveals, these departments regarded most of the land of Tauranga Māori as falling into these categories. Altogether, 37,911 acres of Māori land was deemed to be unproductive or unoccupied, including over 12,000 acres of prime coastal land.⁴¹

It is not clear whether Tauranga Māori were aware of these Government department opinions that their best lands were empty or unused, but they were well aware that pressure was growing to use their lands or face the prospect of losing them. For example, a number of Tauranga Māori leaders attended a large hui at Waharoa in the Waikato in early 1908. There, James Carroll offered assurances that, far from wishing to alienate Māori lands, the Government wanted Māori to have every opportunity to cultivate and improve them. However, for that to occur, he said, the Government needed evidence that Māori wished to do so. He therefore called on Māori to make the most of the Stout–Ngata commission when it came.⁴² The warning could not have been clearer: to retain their lands, Tauranga Māori needed to demonstrate to the commission that they could and would develop them.

Stout (but not Ngata) arrived in Tauranga on the morning of 5 May 1908. He heard evidence throughout that and the following two days.⁴³ Tauranga Māori greatly impressed Stout with their commitment to developing their lands. Stout’s on-the-ground impressions formed the basis for the commissioners’ subsequent reports, which recorded a very different picture of the development of Tauranga Māori lands from that provided by the Native

38. Four hundred cows were run on lands described by Ngatai, and another 40 on lands described by Asher: see Native Land Commission minutes, 6 May 1908 (doc A38(d), pp 1213, 1218).

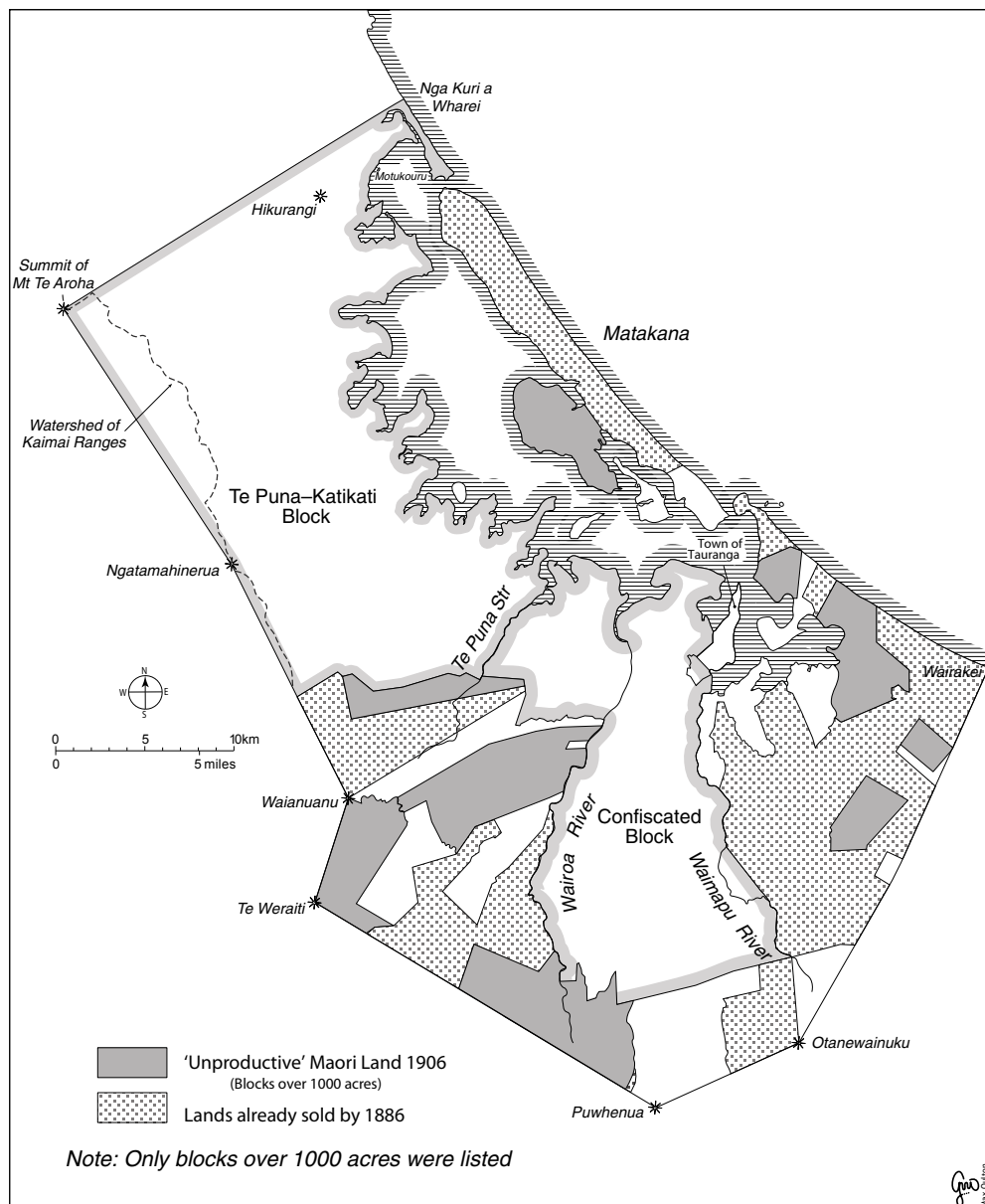
39. ‘Native Lands and Native Land Tenure: General Report on Lands Already Dealt with and Covered by Interim Reports’, 11 July 1907, AJHR, 1907, G-1C, p 1

40. ‘Unproductive Native Land in North Island’, 1906, AJLC, 1906, sess 2, no 5, p 1

41. Evelyn Stokes, ‘The Allocation of Reserves for Maori in the Tauranga Confiscated Lands’, 2 vols (commissioned research report, Wellington: Waitangi Tribunal, 1997) (doc A57), vol 1, p 290

42. ‘Maoris in Protest: The Native Land Question’, *Star*, 20 March 1908, p 4; ‘Natives in Protest: Petition to the King’, *Otago Witness*, 25 March 1908

43. Document A38(d), pp 1208–1240



Map 3.1: Māori land deemed 'unproductive' as at 1906

Affairs and Lands departments. Tauranga Māori were described as 'active and energetic', and 'exceedingly industrious'.⁴⁴

The reports noted that they provided most of the farm labour for Europeans in the district, but also stressed the extent to which Tauranga Māori were also employed in agriculture

44. 'Native Lands and Native-Land Tenure: Interim Report of Native Land Commission, on Native Lands in the County of Tauranga', 11 June 1908, AJHR, 1908, G-1K, p 1; 'Native Land Commission', *Otago Witness*, 20 May 1908, p 3



Figure 3.1: Tauranga Māori were prominent in the flax industry, as shown in this photograph of a flax mill at Pāpāmoa (undated)

Photographer unknown. Reproduced courtesy of Tauranga Heritage Collection (0248/08).

for themselves, producing maize, wheat, oats, and root crops. They recorded dairying on the Pāpāmoa and Ngāpeke blocks, and noted that Tauranga Māori proposed to mill timber from their Kaimai blocks.⁴⁵ Stout observed that this successful land development had occurred despite underlying difficulties with title, and without using mechanisms such as incorporations:

There is, however, little attempt to carry on farming on individualistic lines, and the incorporation system has not yet been tried. They have, however, come to amicable arrangements amongst themselves, so that there is some security of title to the occupants.⁴⁶

In fact, by this time the Native Land Court had partitioned much of the Mangatawa, Pāpāmoa, and Ngāpeke blocks – all areas that Stout noted were being farmed.⁴⁷ Yet elsewhere, as Stout stressed, Tauranga Māori were also clearly forming effective farming units by ignoring the individualisation of interests and continuing to allocate land for cultivation

45. 'Native Lands and Native-Land Tenure', 11 June 1908, AJHR, 1908, G-1K, pp 3–5

46. Ibid, p 1

47. *Bay of Plenty Times*, 28 October 1901, p 2; 'The Opening Up of Native Land', *Bay of Plenty Times*, 24 February 1904, p 2

by customary means, farming it communally.⁴⁸ For this reason they did not yet need to attempt State-sponsored innovations, such as incorporations, meant to overcome difficulties with title to Māori land. We can conclude that Māori land development in Tauranga to this date had occurred despite the confusion caused by the pseudo-individualisation of titles, and despite the lack of Government assistance for their farming endeavours.

On the basis of what Stout had seen and heard from Tauranga Māori, the commissioners concluded not only that Tauranga Māori required the great majority of their remaining lands for their use and occupation, but also that they were quite capable of developing them further. As discussed in chapter 2, the commissioners reported on some 42,970 acres of the Māori lands in the central part of Tauranga County. Although they did not complete a report on the northern part of the Tauranga district, they estimated that, if it had been included with the central part of the county, the amount of land left to Tauranga Māori (including that already leased to Europeans) would not have amounted to 90,000 acres, 'or less than 45 acres each'. Stout and Ngata noted that European landholding per head in Tauranga was 'at least three times as great as that left to the Maoris'.⁴⁹ They then recommended that Tauranga Māori retain 26,037 acres of their best lands for their own occupation and settlement.

Significantly, the commission's recommendations regarding specific blocks directly reflected what local Māori leaders had said they wanted. Leaders such as Hori Ngatai, for example, dictated precisely which lands he wished to retain, and which lands he was willing to lease or sell, and the commission followed his wishes to the letter.⁵⁰ As shown in map 3.2 (see over), the specific lands Māori selected for their occupation were clustered around the eastern fringe of Tauranga Moana. All significant blocks at Hairini, Maungatapu, Matapihi, Ngāpeke, Mangatawa, Pāpāmoa, and Whareroa were chosen, in addition to some forested lands in the hills.

Tauranga Māori thus consistently sought to retain their best remaining lands around the harbour for continued development as agricultural and dairy farming land. They also sought to retain some forest lands for timber and birding areas. These were eminently sensible choices, given that dairying and timber processing were consistently the strongest industries of the early twentieth century.⁵¹ By maintaining a hapū presence on the coast, and in inland forested areas, they reflected aspects of the traditional economy. A comparison of maps 3.1 and 3.2 reveals that Government departments had regarded much of this land as unproductive, and therefore suitable for sale. Yet Tauranga Māori regarded development of this land as essential to their future.

48. Document A38, p 86

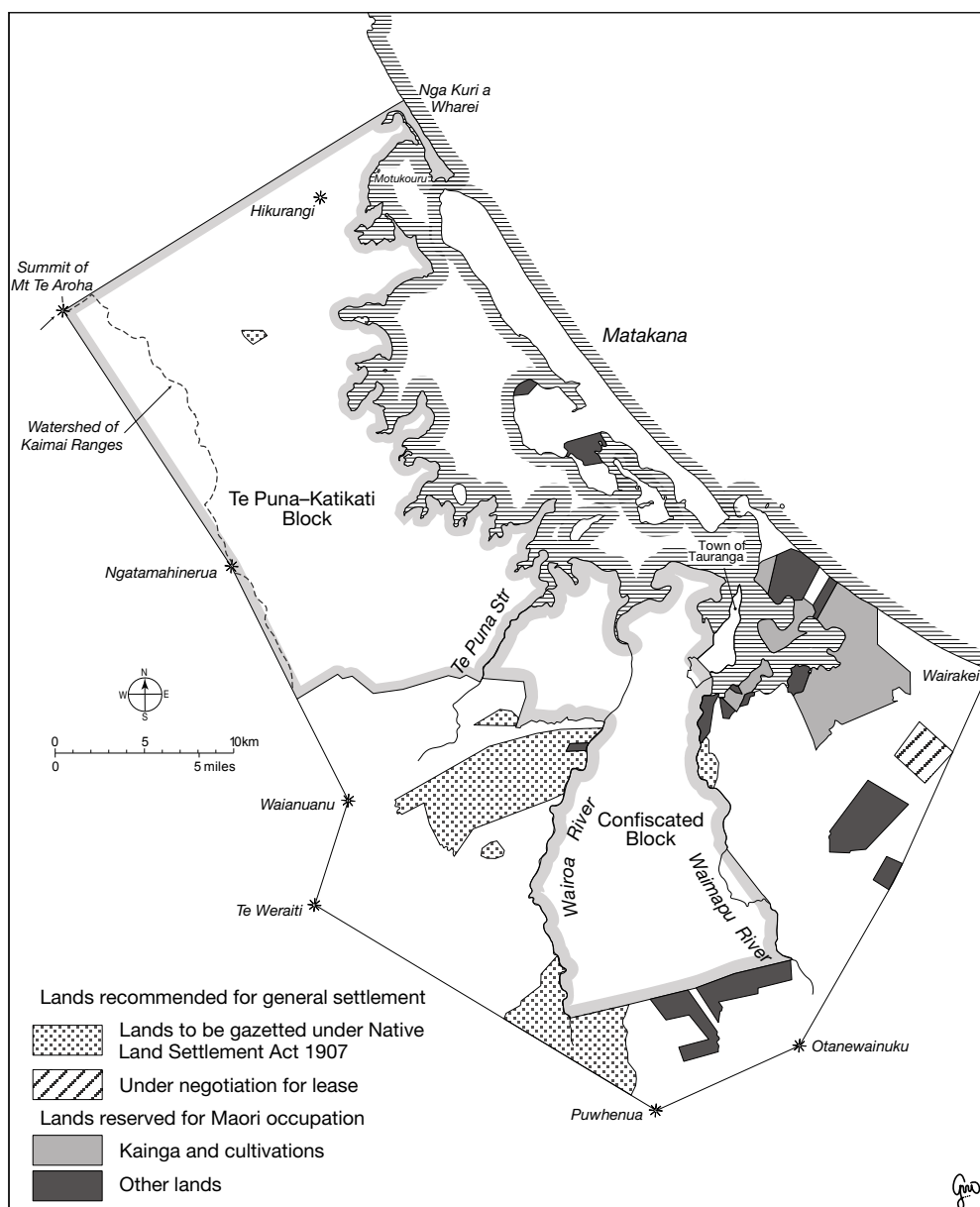
49. 'Native Lands and Native-Land Tenure', 11 June 1908, AJHR, 1908, G-1K, p 1

50. Ibid

51. Evelyn Stokes, *A History of Tauranga County* (Palmerston North: Dunmore Press, 1980), pp 257–281 (doc A38, p 74)

TAURANGA MOANA, 1886–2006

3.2



Map 3.2: Lands reported on by the Stout–Ngata commission

However, Tauranga Māori already had to contend with an inescapable problem: too few viable farms could be developed from their remaining land to support them. This problem became ever more pressing during the twentieth century as their land base diminished through alienation, their population grew, and the size of an economic farming unit gradually increased. Just how few farms might have been viable on remaining Māori land around the turn of the century is suggested by figures provided in the Māori Land Settlement Act 1905, which intended to help Europeans gain access to Māori land. It allowed for first-class

land to be allocated in blocks up to 640 acres, second-class land up to 2000 acres, third-class land up to 5000 acres, and fourth-class land up to 15,000 acres.⁵² Though these were maximums, it is nevertheless instructive to compare these figures with the legislative minimums proposed for Māori subsistence: 25 acres of first-class land, 50 acres of second-class land, or 100 acres of third-class land per person (bearing in mind also, as noted in chapter 2, that this legislation also allowed for employment income to substitute for land ownership).⁵³ Thus, while Tauranga Māori continued to maintain traditional small-scale farming between 1910 and 1930 under customary and largely informal communal arrangements, the long-term viability of such arrangements became increasingly doubtful. The prospect of hapū losing authority over their lands, and control passing to but a portion of the people (at best), or all too often to Pākehā, loomed ever larger.

It is difficult to establish the extent to which traditional forms of hapū authority over economic organisation changed during this period. This is because, in large part, the Pākehā press treated any sign of land development as evidence of individual enterprise. A report accompanying the Māori census of 1916, for example, noted that the condition of Māori on the Bay of Plenty coast had ‘improved very considerably’ since the 1911 census, and felt that the outlook was ‘very hopeful indeed’. Tauranga Māori were ‘large suppliers’ of milk, and were growing much more maize, building ‘comfortable houses’, and fencing and grassing what were now, apparently, individual holdings.⁵⁴ This, the report adduced, was because Māori had ‘availed themselves largely of any opportunities that have arisen of partitioning the blocks on which they are living’, to the extent that ‘[t]he old communal system’ was ‘practically dead’ on most parts of the Bay of Plenty coast.⁵⁵

Evelyn Stokes has described this claim as ‘an exaggeration in some respects’, though she acknowledged that farming was ‘becoming [a] . . . family enterprise.’⁵⁶ Indeed, it is important to recognise that the settler press’s intense dislike of Māori ‘communism’ rested on a fundamental misconception about traditional Māori land tenure and use. That is, while mana over the land was indeed vested in hapū – in the sense that only hapū could decide, for example, whether outsiders might be allowed access or use of land – many rights of use within hapū were actually allocated to specific whānau and individuals.⁵⁷ And, while many of the new economic uses that Tauranga Māori had first adopted were best suited to being organised at the wider hapū level, such as sheep farming, and flour milling, others were not.

52. Māori Land Settlement Act 1905, s8(e). The Act’s operation was restricted to only two Māori land districts, ‘Tai-rawhiti’ (the East Coast), and ‘Tokerau’ (Northland).

53. Māori Land Settlement Act 1905, s 22(1); see also ‘Native Lands and Native Land Tenure’, 11 July 1907, AJHR, 1907, G-1C, p16

54. *Results of a Census of the Dominion of New Zealand taken for the night of the 15th October 1916* (Wellington: Government Printer, 1920), p xi

55. Ibid

56. Stokes, *A History of Tauranga County*, p 309

57. Angela Ballara, *Iwi: The Dynamics of Māori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), pp 194–197



Figure 3.2: Tauranga wharf provided many Māori with employment (undated)

Photographer unknown. Reproduced courtesy of Tauranga Heritage Collection (dr 4, fld 4, no 10).

Dairy farming, in particular, promoted family farming, though milk processing was organised at a hapū level. That Tauranga Māori increasingly turned to dairy farming organised at a whānau level should not be seen as necessarily requiring a revolution in the nature of their land tenure. The revolution was that individuals and whānau were now able to sell land, not that individuals and whānau were able to use it. Claimants also reminded us that there always remained a great deal of wider community cooperation in how whānau farmed. Maaka Harawira, for example, recalled that in his youth Mangatawa was considered the ‘food bowl’ of Ngā Pōtiki, where ‘[t]he many whanau of our hapu, worked together planting kaanga (maize), riwai (potatoes), kumara (sweet potato) etc. Harvesting time too, was a collective effort. The food and vegetables were shared amongst the whanau.’⁵⁸ The important point for our purposes, however, is that as particular whānau were forced to abandon farming, or to alienate land, these customary but informal communal arrangements were disrupted. In this way, the underlying formal system of individual title to land gradually undermined the efforts of Tauranga Māori to maintain traditional communal arrangements.

Another key reason why many Tauranga Māori abandoned farming over these decades is that their operations were often part-time, at best. Māori enterprises were considerably smaller in terms of acreage, areas cultivated, and numbers of livestock, than those of neighbouring Pākehā farmers. Such farming, alone, could neither sustain Tauranga Māori, nor provide them with sufficient cash income. Tauranga Māori therefore continued to harvest

58. Maaka Harawira, brief of evidence, undated (doc E9), p1

quantities of traditional foods, and most men were also compelled to supplement their family's income with labouring jobs, often leaving their own farms to be worked by the women and children.

This was generally not their preferred option, as the census reporter of 1916 noted: though parts of the district were then 'wholly dependent' on Māori labour, this was not always available, since 'the Maoris in many cases prefer to work on their own farms'.⁵⁹

Though their patchwork form of economy was fairly flexible, this fact should not obscure its vulnerability, or the difficulty Tauranga Māori faced in accumulating capital to develop their lands. Whenever crops failed, or markets were poor, or jobs were scarce, Tauranga Māori faced hardship. In 1903, 1904, and again in 1906, for example, combinations of blight, frost, and heavy rain ruined crops. Māori needed State assistance in the form of seed potatoes to renew their efforts to feed themselves from their own lands.⁶⁰ In 1906, too, money gained from new dairy ventures was reportedly all spent trying to shore up winter supplies, and Māori were reportedly in debt at the stores.⁶¹ Such difficulties underline the deepening dilemma Tauranga Māori faced in trying to develop lands that were increasingly insufficient to support them in either a customary or a farming economy. They also highlight that at least some Crown officials were well aware of the precarious situation of Tauranga Māori. This prompts a question: other than occasionally providing small quantities of supplies to stave off starvation, what constructive assistance did the Crown provide to Tauranga Māori in this period to help them develop their lands?

3.3 CROWN INVOLVEMENT WITH MĀORI LAND DEVELOPMENT, 1886–1929

The history of Crown involvement with Māori land development in the late nineteenth and early twentieth centuries has been thoroughly addressed by the central North Island Tribunal. We do not repeat their analysis, but briefly outline here the Crown's general role in land development before the 1930s. We would have liked to hear more evidence specific to Tauranga for this period, and are not able to make firm findings about whether the pattern of events in Tauranga differed greatly from the pattern observed by the central North Island Tribunal.

The Crown did not initially view assisting farming to be a State responsibility. By the 1890s, however, the incoming Liberal Government was keen to promote closer settlement of the land by small-farming families. It became concerned at the difficulties such settlers faced bringing the more difficult lands of the North Island into production. By this time, most remaining undeveloped land was marginal farming country, typically hilly and

59. *Census 1916*, p xi

60. Teacher, native school, to under-secretary, Native Affairs, 16 May 1907 (doc A38(d), pp 1139–1140)

61. Teacher, native school, to under-secretary, Native Affairs, 19 December 1906 (doc A38(d), p 1143)

bush-covered, often with poor soils. In 1894, members of Parliament were generally agreed that farms on even the best of such land needed to be at least 500 acres in size, and anything from 2000 to 20,000 acres on poorer land.⁶² It was also widely recognised that to clear, grass, fence, and stock such large areas of difficult land required much more capital than most aspiring farmers could accumulate. Access to credit was therefore critical to the further development of farming, but during the early 1890s private credit was expensive, unregulated, and variable.⁶³ A second, widespread problem was that many farmers lacked adequate training. Producing quality goods for export required farmers to develop a wide range of skills in animal husbandry and increase their technical knowledge.⁶⁴

The Liberals' chief response to the first problem was to pass legislation providing assistance to settler farmers: the Lands for Settlement Act, the Lands Improvement and Native Lands Acquisition Act, and the Government Advances to Settlers Act were all passed in 1894. The latter Act, for example, provided cheap Government credit to enable farmers to further develop their land – including the already-fenced and surveyed blocks, with secure title and established access roads, available for purchase through the regional waste land boards.⁶⁵ The Government's response to the second problem was to intensively involve the State in training and advising the nation's farmers. Formal educational institutions were established alongside programmes of advisory services, quality control, and research, and the Department of Agriculture was established in 1892.⁶⁶ The central North Island Tribunal found that the Crown failed to ensure that Māori gained the benefits of these responses. They noted, for instance, that while Māori were technically not barred from the Advances to Settlers scheme, debates in the House make it clear that the measures were not intended to include Māori land.⁶⁷

In short, Māori had no Crown assistance to survey, fence, or build access to their land, and they faced even greater problems in gaining credit, since private institutions were (and are) extremely reluctant to loan money against land in multiple ownership. And, as Apirana Ngata noted some decades later, while Māori had extensive experience in preparing land for growing food, they generally lacked adequate training in the forms of farming, particularly dairy farming, that dominated land use and development from the late nineteenth century onwards.⁶⁸ Yet the lands that Māori retained were often just as difficult to develop as those held by settlers.

62. Edward Stevens, 21 September 1894, NZPD, 1894, vol 86, p 202

63. Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 958–959

64. *Ibid*, p 993

65. *Ibid*, pp 960–961, 974

66. *Ibid*, p 993

67. *Ibid*, p 964

68. Apirana Ngata, 'Native Land Development: Statement by the Hon Sir Apirana T Ngata, Native Minister', September 1929–31 August 1931, AJHR, 1931, G-10, pp iv, vi, xiii

These problems were well known to successive governments during the 1890s, and the importance of addressing them was stressed by successive official inquiries. William Rees and James Carroll, for example, jointly argued in their 1891 report on the operation of native land laws that:

It was not only in the alienation of their land that the Maoris suffered. In its occupation also they found themselves in a galling and anomalous position. As every single person in a list of owners comprising, perhaps, over a hundred names had as much right to occupy as anybody else, personal occupation for improvement or tillage was encompassed with uncertainty.⁶⁹

A little later in their report, Rees and Carroll added: ‘it will be a tardy act of justice to a noble race if at last it is aided in developing its capacities for the proper administration of its own estates and the guidance of its own destiny.’⁷⁰

Similarly, in 1891, Carroll, a member of the Native Land Laws Commission, and about to become a member of the Liberal Cabinet, lamented:

is it not a somewhat melancholy reflection that during all the years the New Zealand Parliament has been legislating upon Native-land matters, no single *bona fide* attempt has been made to induce the Natives to become thoroughly useful settlers in the true sense of the word? No attempt has been made to educate them in acquiring industrial knowledge or to direct their attention to industrial pursuits.⁷¹

Despite these recommendations by official inquirers, the Crown declined to extend the Advances to Settlers Act to meet the requirements of Māori land during the 1890s and the early twentieth century. The Government refused repeated efforts by Māori members of Parliament to have Māori land explicitly brought under the Act.⁷² It allowed the administrative board to impose extremely strict criteria for any lending on Māori land, which (among other things) had to be held in fee simple in the applicant’s name, and be under registered lease to a European using the land.⁷³ Because most Māori held unascertained or undivided shares in a block, very few ever gained loans for their land to be developed under this legislation. Furthermore, none could gain this assistance to farm their lands themselves.⁷⁴

69. ‘Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws’, sess 2, 1891, AJHR, 1891, G-1, pp x–xi

70. Ibid, p xxv

71. Ibid, p xxx

72. Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 962–964

73. Ibid, pp 968–969

74. Ashley Gould, ‘Maori Land Development Schemes: Generic Overview, circa 1920–1993’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc T37), p 95; Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 974

The Crown has acknowledged in this inquiry that Māori have found it very difficult to raise development finance on land in multiple ownership.⁷⁵ Yet it also suggested that there was no evidence about whether Tauranga Māori had accessed State funds through the Advances to Settlers schemes, and it argued that State funds were available to them through provisions made to lend to incorporations from 1906.⁷⁶ The Crown also initially suggested that State funds were made available through the Native Trustee (though for reasons we explain shortly, it subsequently retracted this suggestion).⁷⁷

On the basis of the limited evidence before us, we cannot be sure if any Tauranga Māori accessed the Advances to Settlers funds, though it is well known that very few Māori ever did.⁷⁸ We heard of only one attempt to do so. Paraire Pareto wrote to James Carroll in 1911 seeking advice on how to gain a Government advance to improve his land at Pāpāmoa. His people, he said, ‘object to land-leasing and to land-individualisation; they want to hold it in common.’⁷⁹ He, however, had broken with them, and decided to have his land cut out. Though the land was not yet surveyed, he was now the sole owner of his block. Officials advised him, first, that he needed a separate title and that the land needed to be suitable as security, and secondly (when Pareto gave these details), that without the survey, he would not be able to gain an advance.⁸⁰ We had no evidence whether this then occurred. This appears to have been an isolated incident. It is clear that Māori had to go to considerable lengths, and the expense of subdivision surveys, before they had any prospect of gaining Government assistance for land development.

Similarly, while it may have been theoretically possible for Tauranga Māori to access State funds through forming incorporations, we note that such bodies were relatively expensive to establish and operate, and that the limited lending finance available was tightly controlled through the Public Trustee – an office widely and deeply distrusted by Māori.⁸¹ Perhaps unsurprisingly, very few Māori ever established incorporations in the early twentieth century. Certainly, Stout and Ngata said Tauranga Māori had not done so by 1907. Ngata later commented that, as of 1931, incorporations had been practically limited to the East Cape.⁸²

The First World War brought more Government assistance to settlers. In October 1915, the Government passed the Discharged Soldiers Settlement Act ‘to make Provision for the Settlement of Discharged Soldiers on Crown and Settlement Lands.’⁸³ Again there is no

75. Document U26, p 49

76. Ibid; Crown counsel, supplementary closing submissions, 12 February 2007 (doc U42), p 3

77. Document U26, pp 49–50

78. Document T37, p 43; doc A38, p 49; Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 974

79. Paraire Pareto to James Carroll, 11 February 1911 (doc A38(b), p 594)

80. Under-secretary to Mr Grace, 13 May 1911 (doc A38(b), p 591); Paraire Pareto to secretary, Government Advances Office, 3 May 1911 (doc A38(b), p 592); W Pitt to Mr Grace, 13 March 1911 (doc A38(b), p 593)

81. Waitangi Tribunal, *He Maunga Rongo*, vols 2 and 3, pp 777–778, 796, 978–980

82. Ngata, September 1929–31 August 1931, AJHR, 1931, G-10, p iii; see also Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 979

83. Discharged Soldiers Settlement Act 1915, full title

explicit indication that Māori were barred from such assistance, but it is clear from the Act's wording, and from debate in the House when the Bill was introduced, that the intended recipients were to be settlers – 'young men who have gone to the front, and who by so doing have lost their opportunity of getting into positions as farmers, business men, or otherwise.'⁸⁴ Land would be provided, and there was also the possibility of funding to cover the cost of clearing, fencing, draining, and general improvement, the erection of buildings, and the purchase of implements, stock, seeds, plants, trees, and 'other such things as may be deemed necessary for the successful occupation of the land'. Costs were to be recouped by way of a mortgage, at a rate of interest to be determined by the Minister – although in cases of hardship, interest might be waived.⁸⁵ The Act did not, however, cover assistance to those who might want to develop land they or their whānau already owned.

Finally, as the Crown subsequently conceded in this inquiry, the funds available to Tauranga Māori from the 1920s through the Native Trustee or Māori lands boards – both of which they did access – were not State funds, but were, rather, income derived from Māori land.⁸⁶ They were in no way a financial contribution from the State, but were simply administrative measures that enabled some land in multiple ownership to be used as security.⁸⁷ Nor, in fact, were these funds specifically directed at promoting the use of Māori land by its owners; rather, they were all too often used to ease European occupation of Māori land. Ngata later criticised all these efforts to develop Māori land for that reason: '[i]n none of these' he said, 'was the settlement of the Maori upon land a feature of the schemes, and they were not supported by the good will of the communities interested.'⁸⁸ Unsurprisingly, Ngata also remained highly critical of the failure of successive governments to actually fund Māori to use their land. He claimed in 1931, with only very slight exaggeration, that '[t]he State during the last fifteen years has not provided one penny of the money to be loaned out to Maori farmers or to assist Maori farming.'⁸⁹

We have seen that Pākehā, during this crucial period in which farming in Tauranga became well established, had easy and direct access to large State funds. By contrast, Māori only accessed much smaller sources of funds. Moreover, these were not generally State funds, but rather income from Māori land channelled by the State. We have also seen that Pākehā had ready access to private finance, whereas Māori did not. As illustration of the overall disparity, in 1931 alone the Advances to Settlers fund loaned £1,328,740 to over 1500

84. John Anstey, NZPD, 1915, 24 September, p 222

85. Discharged Soldiers Settlement Act 1915, ss 3–4, 6–7

86. Document U42, p 3

87. Ngata, September 1929–31 August 1931, AJHR, 1931, G-10, p v; Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 974–977, 984–985, 988–992

88. Ngata, September 1929–31 August 1931, AJHR, 1931, G-10, p ii

89. Document T37, pp 126–127. Gould notes that a very few Māori did access State funds through the Advances to Settlers loans, while others gained funds through settlement of First World War veterans (see doc T37, p 43, fn 32).

settlers, at an average of over £800.⁹⁰ By contrast, in the all the years up to and including 1931, the Native Trustee and various land boards had issued a cumulative total of only £728,540 in 904 mortgages, at an average of around £800 – and some of these mortgages were to Europeans leasing Māori land. Furthermore, of this total, the Waiariki Māori Land Board, which included the Tauranga area, had issued only £27,073 to 94 mortgagors.⁹¹ Thus, on average, less than £300 a head was loaned to Māori farmers by the Waiariki Māori Land Board in the years to 1931.

Moreover, the Stout–Ngata commission estimated that the State spent almost £1500 in placing each settler on their land, before loaning any of the money that was made available ‘on easy terms’ and offered to the settler ‘as a matter of right, because he is a valuable asset to the State.’⁹² Māori land received no such free development assistance.

It is therefore clear that, before 1929, the Crown did not provide Māori with access to State funding equivalent to that made available to the general community. Moreover, it would appear that Māori in the Waiariki district (including Tauranga) were disadvantaged even as compared with Māori elsewhere.⁹³

We now turn to whether the Crown extended its extensive training and advisory programmes to Māori in an equitable manner. The central North Island Tribunal unequivocally found that it did not, concluding that Māori gained very little from the Government’s extensive investment in agricultural training and advice from the 1890s onwards.⁹⁴ That Tribunal’s finding echoes the conclusions of Tom Brooking, historian of the Liberals’ land legislation and agricultural policies, who found that they ‘ensured that Maori farming could never become a serious competitor to the heavily subsidised, tightly regulated, and scientifically instructed white settler farmer.’⁹⁵ This was a crucial failure, with lasting consequences: Pākehā smallfarming became the dominant land use in New Zealand as a direct result of the Liberals’ extensive assistance; the lack of such assistance to Māori farmers placed them at a severe and ongoing disadvantage. This occurred despite the pleas of informed observers such as Carroll, Stout, and Ngata.⁹⁶ Stout and Ngata, for example, issued a very strong statement of their concerns in 1907:

the paramount consideration . . . is the encouragement and training of the Maoris to become industrious settlers. The statute-book may be searched in vain for any scheme

90. ‘State Advances Office (Report by the Superintendent of the) for the Year Ended 31st March, 1931: Thirty-Seventh Annual Report’, AJHR, 1931, B-13, p 1

91. Ngata, September 1929–31 August 1931, AJHR, 1931, G-10, p v

92. ‘Native Lands and Native Land Tenure’, 11 July 1907, AJHR, 1907, G-1C, p 15. The figure of £800 is calculated from data in ‘State Advances Office (Report By the Superintendent of the) for the Year Ended 31st March, 1931: Thirty-Seventh Annual Report’, AJHR, 1931, B-13, p 1

93. Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 989

94. *Ibid*, p 994

95. Tom Brooking, “‘Busting Up’ The Greatest Estate of All: Liberal Maori Land Policy, 1891–1911”, *New Zealand Journal of History*, vol 26, no 1 (April 1992), p 88

96. Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 993–996

deliberately aimed in this direction. The Legislature has always stopped short when it had outlined a scheme or method of acquiring Maori lands . . . The necessity of assisting the Maori to settle his own lands was never properly recognised. It was assumed that because he was the owner according to custom and usage, and because the law had affirmed his right of ownership, he was at once in a position to use the land . . . Because he has failed to fulfil expectations and to bear his proportion of local and general taxation, he is not deemed worthy to own any land except in the vague undefined area that should be reserved for his 'use and occupation' . . . The spectacle is presented to us of a people starving in the midst of plenty . . . It is more difficult for the individual Maori owner to acquire his own land, be he ever so ambitious and capable of using it. His energy is dissipated in the Land Courts in a protracted struggle, first, to establish his own right to it, and, secondly, to detach himself from the numerous other owners to whom he is genealogically bound in the title. And when he has succeeded he is handicapped by want of capital, by lack of training – he is under the ban as one of a spendthrift, easy-going, improvident people.⁹⁷

That powerful statement encapsulated many of the problems that had arisen for Māori and their land that have been reiterated time and again during our hearings, in submissions, and in the research reports. In particular, the emphasis on a lack of training not only echoed similar comments by Carroll and Rees in 1891, but Ngata felt compelled to reiterate the same theme in 1931.⁹⁸

Stout and Ngata had some particularly prescient suggestions on how the Government might assist Māori farming in Tauranga. They felt that, because of its climate and fertile soils, Tauranga was eminently suitable for horticultural development. They were impressed by the success of a small experimental fruit-farm started by the Department of Agriculture on 60 acres of land near the Borough of Tauranga which, within two years of operation, already had surprising results: 'Lemons, peaches, apricots, nectarines, plums, apples, pears . . . and all kinds of vegetables grow well'.⁹⁹

Though the department had probably not considered it, Stout and Ngata thought that Tauranga Māori could be involved in this kind of development, and they recommended a cadetship scheme whereby suitable young Māori from the Tauranga area would each undergo a two-year training period at the farm. They noted that in Rotorua County, Māori had already proved to be 'excellent workers in this kind of industry', and concluded that:

Both Europeans and Maoris need to have their attention directed to the possibilities of the Tauranga County. We found various kinds of produce imported into Tauranga that could be better raised in Tauranga than in any other part of New Zealand.¹⁰⁰

97. 'Native Lands and Native Land Tenure', 11 July 1907, AJHR, 1907, G-1C, p15

98. Ngata, September 1929–31 August 1931, AJHR, 1931, G-10, pp vi–vii

99. 'Native Lands and Native-Land Tenure', 11 June 1908, AJHR, 1908, G-1K, pp1–2

100. Ibid, p2

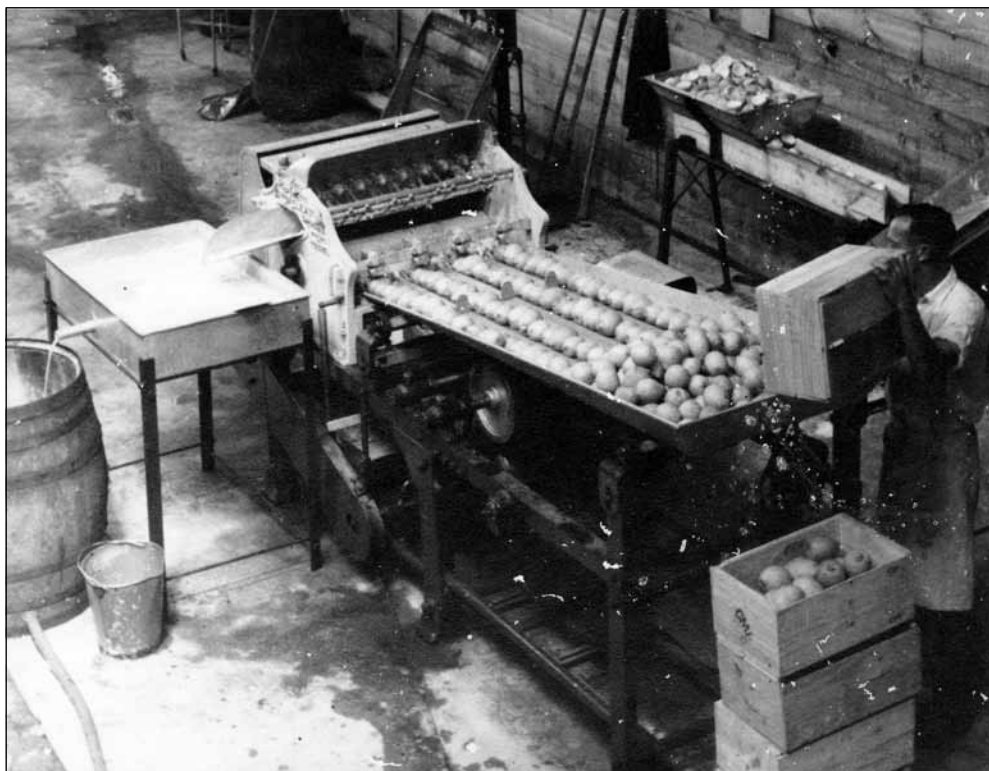


Figure 3.3: Grading lemons in the early citrus industry, circa 1940s
Photographer unknown. Reproduced courtesy of Tauranga City Libraries (05–234).

The only evidence we have of agricultural training, however, is of instruction to young Māori attending Maungatapu Native School. In August 1916 the *Bay of Plenty Times* commented:

It is to be regretted that the Maoris hereabouts have not been able to make the best use of their lands, but unfortunately they have been handicapped by a lack of knowledge and a shortness of capital. Mr Roche is directing his efforts to eliminate the former drawback; but the second is one for the State to grapple with. Of late years all the land in this vicinity has advanced in value. The establishment of the dairying industry, and the keen demand for cattle have been contributing factors . . . Surely it is not asking the Government to do too much to bestir itself at once, and make determined efforts to ensure the development of all idle lands in this district . . . The work at Maungatapu being carried out under the direction of Mr Roche . . . is calculated to fit them [the male pupils] to become not only proficient agriculturalists, but useful, self-reliant citizens of the Dominion.¹⁰¹

101. *Bay of Plenty Times*, date unknown [1916], clipping filed in BAAA 1001 345c, Archives NZ, Auckland (doc A38(e), p1788)

We note that historians such as Tom Brooking and Ashley Gould concur that successive governments prior to 1929 ‘generally ignored’ the Stout–Ngata commission’s recommendations regarding the need for agricultural education.¹⁰² By comparison, we note the strong emphasis on agricultural training, and in particular horticultural training, for soldiers discharged after the First World War: time and again, during the debating of the Discharged Soldiers Settlement legislation in 1915, it was stressed that those being settled on the land would need suitable training, and Richard Hudson (member for Motueka) particularly noted that ‘the Orchard Branch of the Agricultural Department is capable and well worked, and has competent instructors.’¹⁰³

In sum, in the late nineteenth and early twentieth centuries, it is clear that the Crown did not allow Māori equal access to its substantial attempts to encourage farming through providing finance and training, though their particular need for both was well known. Nor did the Crown develop alternative and equivalent remedies for Māori. In essence, the Crown made no adequate attempt to assist Māori in the development of their lands before the 1930s. We make further findings on this issue in section 3.8.1.

3.4 NGATA’S LAND DEVELOPMENT SCHEMES

The Crown’s first substantial attempt to assist Māori owners in the development of their lands began in the late 1920s, when Apirana Ngata, now Native Minister, instigated a national programme of Māori land development schemes. The primary mechanism of Ngata’s programme was to place large blocks of land into schemes under State control and immediately begin developing them as large single farming projects, using predominantly Māori labour. Four such schemes were implemented in Tauranga. Though Ngata’s programme also provided for smaller units to receive development assistance, these were not so significant, and, though they occurred in Tauranga, we received virtually no evidence on them. After outlining the political and legislative context for Ngata’s programme, this chapter therefore focuses on the two large development schemes about which we did receive claims and hear evidence, those at Kaitimako and Ngāpeke. We only briefly discuss the Mangatawa and Poripori schemes, about which we heard comparatively little evidence, but which seem to have been relatively successful.

The Native Land Amendment and Native Land Claims Adjustment Act of 1929 established the schemes for the ‘better settlement and more effective utilisation’ of Māori land and the ‘encouragement of Natives in the promotion of agricultural pursuits.’¹⁰⁴ The Act gave

102. Document T37, p 35; Tom Brooking, ‘Use it or Lose it: Unravelling the Land Debate in Late Nineteenth-Century New Zealand’, *New Zealand Journal of History*, vol 30, no 2 (October 1996), p 161

103. Richard Hudson, 24 September 1915, NZPD, 1915, p 216

104. Native Land Amendment and Native Land Claims Adjustment Act 1929, s 23(1)

the Minister very wide-ranging powers to achieve these aims. The Minister could gazette any Māori land as part of a scheme, ignoring difficulties with titles; the Minister could then authorise any and all works as a charge against the land. Once intention to develop the land had been published, no owner could exercise any rights of ownership.¹⁰⁵ Owners could not interfere with development work, for example, nor could they alienate the land. The Native Land Act 1931 even made it a summary offence for any owner to trespass on scheme lands and obstruct the performance of duties set out in the Act. This legal impediment remained in place through to, and including, the 1989 Māori Affairs Restructuring Act.¹⁰⁶

These sweeping powers were regarded as necessary to secure State funds, only available on the condition that the Government controlled the land, and could charge costs against it. This sidestepped the slow process of consolidating Māori land into functional titles. Ngata envisaged consolidation would continue while the land was developed, eventually allowing Māori to occupy their own productive land as economically viable farms. Over the long term, Ngata regarded the development schemes as a means to make Māori communities 'economically viable', and 'culturally secure'.¹⁰⁷ His ultimate goal was for Māori to attain economic parity with Europeans through farming their own land, largely as dairy farmers.¹⁰⁸ Though this would involve the creation of family dairy farms, Ngata and tribal leaders generally saw no difficulty in maintaining overall tribal control over such land development.¹⁰⁹

As it transpired, however, the most important short-term role of the land development schemes was to help ameliorate the severe economic hardship being caused by the Depression. Māori in the Bay of Plenty region were particularly affected because of the rapid reduction in public works projects, and the diminishing availability of rural labouring jobs such as gum digging and timber extraction.¹¹⁰ Ngata seized the opportunity the Depression presented to expand the schemes as rapidly as possible. According to a letter written by Ngata in 1938 to John Houston, a Taranaki lawyer:

Native land development was a product of the depression, which forced its initiation as a method of relief. The depression enabled us to achieve a conquest over the Treasury mind, which had always opposed direct State aid to Maori farming. When Labour took over it found the land scheme flourishing [and] achieving a fundamental social service, which involved large capital outlay but bid fair to be self supporting [and] fully reproductive.¹¹¹

105. Document T37, p 117

106. Ibid, p 121

107. Alan Ward, *National Overview*, 3 vols (Wellington: GP Publications, 1997), vol 1, p 108

108. Document T37, p 36

109. Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 1017

110. Document T37, p 160

111. Ibid, p 132

The schemes became the primary vehicle for channelling unemployment relief funds to Māori.¹¹² These funds were only discontinued once schemes began to be profitable and started paying tax and administration costs.¹¹³

Ngata's authoritarian powers under the legislation, added to his personal mana, helped him quickly to convince a large number of reluctant owners to vest their lands in schemes. However, he resigned in 1934, following a commission of inquiry into the running of the Native Department, and the fall of the Government to which he belonged. The control vested in the Minister was assumed by the newly constituted Board of Native Affairs, under the Board of Native Affairs Act 1934–6 and the Native Land Amendment Act 1935–6. The former Act gave the board the power to do more or less anything it liked in the development of Māori land. Claudia Orange argues that 'it suspend[ed] the operation of the ordinary law', giving the board 'an open mandate to develop and improve the land and place it under capable management . . . [it was an] extraordinary measure of a more or less emergency nature'.¹¹⁴

The administration of the schemes became an increasingly bureaucratic affair managed by the Native Department's predominantly Pākehā staff. Owner input was soon marginalised and, according to Orange, 'the emphasis seemed to shift from the development of the Maori, to that of the land'.¹¹⁵ A circular from Tipi Tainui Ropiha, then under-secretary of the department, conveys the reasons for a widespread feeling of distrust of its administration among Māori:

when Part 1 of the [1936] Act is applied, owners very often, for practical purposes see the last of their land. . . . It is necessary to say that the department's administration, in many instances, gives ground for this feeling. Head Office has seen cases of disregard of owners and complete absence of any thought of providing payments for them where it would have been possible to do so.¹¹⁶

From 1949, and Tipi Ropiha's appointment as secretary of the newly renamed Department of Māori Affairs, the land development schemes changed character in a number of significant ways, in no small measure due to his influence. Ropiha was instrumental in ensuring that Māori played a much larger role in the administration of their lands. That year, the first proper leases were issued to some of the approximately 1900 settlers located on schemes throughout the country.¹¹⁷ And, according to Gould, owner consultation also became the

112. Ibid, p 35

113. Tony Nightingale, 'Tauranga Land Development Schemes, 1929–55' (commissioned research report, Wellington: Waitangi Tribunal, 1996) (doc A31), p 45

114. Document T37, p 186

115. Ibid, p 183

116. Ibid, p 229

117. Ibid, p 228

norm from this time.¹¹⁸ Another notable innovation was that the Māori Affairs Act 1953 provided for incorporations to represent owners of development schemes, at a time when land in the schemes was being handed back to them. It increasingly suited the Department of Māori Affairs to use incorporations as a mechanism to return schemes back to owner control and also to manage further development through the use of section 469 rural lending.¹¹⁹ We further discuss the management role of incorporations and trusts in section 3.5.2

Alan Ward has commented that it is ‘premature to conclude negatively about the development schemes overall and generally’.¹²⁰ He notes that while there was ‘ineptitude in planning and excessive paternalism in management’, the Crown cannot be held wholly responsible for the mixed outcomes of the various schemes. A range of unforeseen factors contributed to the Crown’s difficulty in helping Māori farm their land, such as the demands of the Second World War, and the increasing amounts of land required to form a viable farm. Ward concludes that each scheme’s particulars must be examined, especially the balance of profit and loss to the communities concerned, as well as the respective contributions of Māori and the State.¹²¹ This is the general framework within which we examine the claimants’ concerns regarding the Tauranga development schemes. The specific issues that arise within this framework include: how were the schemes presented to Tauranga Māori, and did they live up to these representations? Was the duration of Crown control justified? Was the extent of Crown control justified? How adequate were Crown procedures for returning land from the schemes to Tauranga Māori? And, finally and most importantly, did the schemes achieve their twin purposes: developing the land, and the owners’ ability to use it.

3.5 TAURANGA LAND DEVELOPMENT SCHEMES

There were four main land development schemes in Tauranga: Kaitimako (724 acres), Ngāpeke (716 acres), Mangatawa–Pāpāmoa (663 acres), and Poripori–Kumikumi (around 2000 acres). In addition, development assistance was provided for unit settlers and market garden projects covering another 2000 or so acres. Altogether, therefore, perhaps 6000 acres were involved in land development schemes from 1931 to 1975.¹²²

As well as the main scheme lands and the ‘unit’ farms, the Labour Government also established the Maungarangi Training Farm in 1939 on private land purchased for future settlement by Māori ex-servicemen. The training farm operated between 1939 and 1957, and at least three Māori farmers were settled on a dairy farm.¹²³ This is notable as a rare example

118. Document T37, p 57

119. Ibid, p 284

120. Ward, *National Overview*, vol 1, p 112

121. Ibid

122. Document A31, p 3

123. Ibid, p 49; *Te Ao Hou*, no 6 (royal tour special number) p 55

of land being acquired by the Crown and, in at least a few instances, being used for Māori settlement. We briefly discuss this farm in the context of describing Crown efforts to train Māori to develop their lands.

3.5.1 Kaitimako, 1931–59 (Wai 342, 540)

Kaitimako, in the Welcome Bay district on Ngāti Hē lands, was the first of the Tauranga development schemes, and the only one initiated while Ngata was Native Minister. It was gazetted on 10 December 1931, with an initial area of 724 acres. Two adjacent blocks were included soon after, bringing the total of land to 746 acres, but at any one time there was usually less land included, owing to owner reluctance to vest their lands in the department.¹²⁴

A later Board of Māori Affairs report would note that, as with most of Ngata's early schemes, 'very little recorded evidence is available of any arrangements . . . made with the owners of the land, or of the events leading up to the commencement of development.'¹²⁵ There is little doubt, however, that all concerned, including the owners, agreed that the land should be developed for dairying.¹²⁶ This was always Ngata's preference, as dairy farming allowed comparatively close settlement, and encouraged the establishment of rural communities. WJ Scott, the farm supervisor, assessed the land's suitability for this purpose, and though he noted several drawbacks, including susceptibility to 'bush-sickness', its initial state as 'a mass of gorse, fern, blackberry and every other noxious weeds [*sic*] imaginable',¹²⁷ and its being 'undulating country with a few steep faces', concluded that on balance, it was 'a very suitable block for development'.¹²⁸

There is no conclusive evidence about how long owners were told the scheme would last. The owners' later comments, however, consistently show that they were led to expect a rapid release of their lands from the scheme. More generally, according to researcher Ashley Gould, it is obvious that owners in many early schemes were not adequately informed about the length of time required for development, and that this caused impatience.¹²⁹ Certainly, the owners at Kaitimako began calling for farmers to be settled on the land from the late 1930s. They argued that such an early release from the development phase had been promised them by Ngata. AP Faulkner, of Maungatapu, and Raraku Hetara, of Hairini, for instance, later wrote letters to the farm supervisor and Native Minister saying:

We, the owners, contended that the sooner we farmed the land the greater the benefit to us and the State. We remembered the utterances of Sir Apirana Ngata at the time, 'After

124. Document A31, pp 21–22

125. Assistant district officer to Board of Native Affairs, 'Kaitimako Development Scheme Settlement', undated, p2 (doc A31(a), p 69)

126. Document A31, pp 28–29

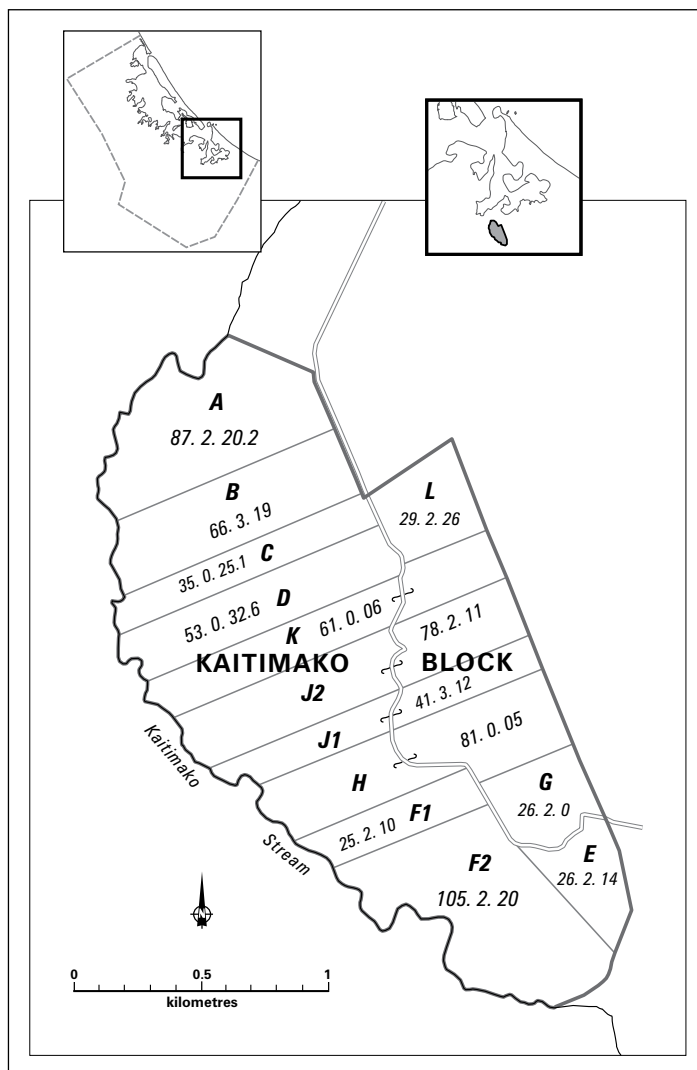
127. WJ Scott to registrar, Native Department, 23 September 1935, p 2 (doc A38(d), p 1329)

128. Document A31, p 23; WJ Scott to registrar, Native Land Court, 13 June 1934, p 1 (doc A38(d), p 1339)

129. Document T37, p 54

TAURANGA MOANA, 1886-2006

3-5-1



Map 3-3: Blocks involved in the Kaitimako development scheme

five years of working in the development [of] your land it would be ready for dairy farming, that was in 1931, eight years ago and today we are confident the land is ready for the purposes intended. Knowing this we appeal to you, sir, to allow dairy farming now on our land. This will remove us from being mere wage earners and becoming useful, self-reliant producers. It must be remembered too, only two or three principal owners are being employed on the block, mostly they are outsiders. Other properties adjacent to ours are all dairy farming, so why not we do the same.¹³⁰

Similarly, in 1947, and again in 1950, owners reproached Tipi Ropiha, deputy under-secretary of Māori Affairs, claiming that they had been told at the initial meetings that they

130. Document A31, p 29

would be farming themselves within three years of starting the scheme, but now it was clear that it would be their children who might eventually begin to farm their land.¹³¹

If such representations of the length of time that the scheme would run were indeed made to the owners, they were clearly highly naive portrayals, if not intentionally false. This was because the terms of the development schemes required that the land had to be developed before being returned. In addition, the State's considerable development costs also had to be recouped. It was inevitable that this would take much longer than three to five years; quite how long depended principally on the level of debt incurred in developing the land.

At Kaitimako, development costs appear to have been high. First, the lands were cobalt deficient. Much fertiliser was required to prevent the 'bush sickness' caused by that deficiency, and the potential for sickness also meant that a permanent flock of sheep could not be established. Secondly, Kaitimako began during the Depression, when the overriding priority was to provide Māori with wage labour. This meant that larger numbers of owners were employed than had been anticipated. In 1935, there were 31 adult workers (supporting 60 dependants) working at Kaitimako. The farm manager reported that the scheme was 'doing exceptionally well'.¹³² However, it appears that while they were largely subsidised by unemployment funds, 25 per cent of labour costs were charged to the land. Since much of this labour only marginally increased productivity, the social necessity for employment assistance increased the scheme's debt.¹³³ It is also clear that, while officials used the schemes to provide owners with labour, other aspects of their welfare were initially neglected. As Nightingale notes, for example, 'preliminary work was minimal'.¹³⁴ Workers and their families – largely owners of the land – initially had to cope with living in tents, as land improvement was given strict priority. The land board's stance was that owners would not be housed until after the land was developed and stocked. Not until the board was warned that lack of adequate shelter was likely to cause the owners serious illness and disease did it relax its stance on the provision of housing. Three cottages were then built on the land by the end of 1935.¹³⁵

The owners' early requests (noted above) for the land to be settled received some sympathy from A F Blackburn, the chief supervisor, who suggested focusing on establishing settlers one at a time. Senior officials remained concerned, however, over the potential for reversion to weeds if heavy stocking numbers were reduced for dairying. Also worrying was the amount of debt still carried on the land, which officials felt precluded the establishment

131. Tipi Tainui Ropiha, 'Kaitimako & Mangatawa Blocks – Tauranga', 4 August 1947, p 1 (doc A31(a), p 115); Meeting of Owners Held at Maungatapu on 27th October 1950 at 11 a.m., 27 October 1950, p 3 (doc A31(a), p 139)

132. W J Scott to registrar, Native Department, 'Monthly Report Tauranga-Kaitimako', 3 May 1935, p 1 (doc A38(d), p 1331)

133. 'Tauranga (Kaitimako)', undated (doc A31(a), p 34); doc A31, pp 4, 27

134. Document A31, p 23

135. W J Scott to registrar, Native Department, 'Monthly Report Tauranga-Kaitimako', 3 May 1935, pp 1–2 (doc A38(d), pp 1331–1332); 'Tauranga Development Scheme Estimates 1934/35 Season', 13 July 1934 (doc A38(d), p 1341); doc A31, p 24

of individual dairy farms. The outbreak of war also limited the availability of materials, and effectively foreclosed anything being done by a distracted department.¹³⁶

During the war and its immediate aftermath, debt remained an obstacle to settling individual farms. In 1942, the farm supervisor despaired of gaining enough revenue to reduce debt on the property. Although costs had been kept to a minimum and returns had been good, the scheme was still crippled by interest repayments.¹³⁷ The next year, however, the scheme did become profitable. From that point, high commodity prices helped rapid debt reduction, from £13,777 in the 1944–1945 financial year to £9535 by 1947–1948.¹³⁸ It should be remembered, however, that by 1945, £12,000 had been provided in the form of labour subsidies.¹³⁹ That year, the department determined that subsidies would cease. Perhaps to balance this, the department decided that all previous labour charged against the land would be written off, as it was more reasonably regarded as unemployment assistance than as a charge to be associated with development.¹⁴⁰

If the war delayed settlement on the land, it did at least stimulate belated official recognition of the need to provide training to prospective farmers. As mentioned briefly above, in 1939 a farm was established nearby at Maungarangi for the purpose of training ex-service-men.¹⁴¹ (In addition, another part of the land was made available for settlement by a Māori ex-serviceman.)¹⁴² This farm helped address a lack of training identified yet again, in 1947, by Tipi Ropiha, who acknowledged that it was ‘regrettable that the development of human resources has not proceeded simultaneously and equally with that of material resources.’ This, he argued, had engendered among the schemes’ owners ‘a feeling of helpless inefficiency as farmers and consequent resentment.’¹⁴³

Between 1945 and 1957 (when the training farm was disestablished), at least some of the settlers who were later selected for occupying lands at Kaitimako and Ngāpeke in the early

136. Document A31, p 29; AF Blackburn to under-secretary, ‘Re Tauranga (Kaitimako) Development Scheme’, undated (doc A31(a), p 153); registrar to under-secretary, Native Department, 19 June 1939, p 1 (doc A31(a), p 158); registrar to AP Faulkner, 9 May 1939 (doc A31(a), p 161); JM Cram, property supervisor, to registrar, Māori Land Court, 4 April 1950, p 1 (doc A38(d), p 1251); JJ Dillon to head office, Native Department, 10 April 1947 (doc A38(d), p 1280)

137. Property supervisor to registrar, Native Department, 2 December 1942, p 1 (doc A38(d), p 1298); for effects of interest repayments see also CV Fordham, registrar, to head office, Native Department, 3 December 1941, p 1 (doc A38(d), p 1301).

138. ‘Board of Maori Affairs: Kaitimako Development Scheme’, 24 February 1949 (doc A31(a), p 113)

139. ‘Board of Maori Affairs: Kaitimako Development Scheme’, 24 February 1949 (doc A31(a), p 113); ‘Board of Native Affairs: Kaitimako Development Scheme’, 8 December 1947 (doc A31(a), p 114)

140. Document A31, pp 4, 27

141. ‘Maori Rehabilitation Finance Committee: Settlement of Section 2 Maungaranui Development Scheme’, undated, p 1 (doc A31(a), p 319)

142. Ibid, p 2 (doc A31(a), p 320)

143. ‘Kaitimako and Mangataua Blocks – Tauranga, 4 August 1947, p 2 (doc A38(d), p 1271)

1950s received farm training.¹⁴⁴ In addition, Māori running small dairy farms (all between 50 and 100 acres) established their own Rangataua Young Farmers Club in 1949, the first all-Māori organisation of this type, which pooled farmers' knowledge so that 'every one of those properties is a shining example of farm management to all other farms in the district'.¹⁴⁵

Already by this stage, however, these young Māori farmers had realised that 'the days of sheep and dairy farming are for us fast disappearing'. In 1950, club secretary William Ohia presented the club's views in a letter to Tipi Ropiha. Ohia presciently pointed out the difficulty posed to pastoral farming by the increasingly small and fragmented landholdings of Tauranga Māori.

He estimated that, even if and when consolidated, their overall holdings would average out at three to five acres. He further suggested that the high rate of settlement around Tauranga meant that it would become a region of smallholdings.¹⁴⁶ Taking a long-term view, he urged the department to switch emphasis, and use the land at Maungarangi to train Tauranga Māori in small-farming ventures, such as market gardening, small fruit-farming, and orchard work. Ohia felt that while Pākehā were already managing to sustain themselves in such ways on smallholdings, Māori were handicapped by lacking knowledge of intensive horticultural cultivation. He suggested that the result was not only unused land running to weeds, but that 'many Maori men [were] depending on casual labour for a living who have sufficient land to make them their own masters if only they knew how to use it'.¹⁴⁷

Such concerns were made more pressing by council attempts to gain rates from unproductive Māori lands (as we discuss in chapter 5) and they were reiterated at meetings between Tauranga Māori and Crown officials throughout 1950. In response, in 1951 the Board of Māori Affairs did attempt to institute a scheme of small-farm horticultural settlements. The attempt was abortive however, since board officials believed that the high wages



Figure 3.4: Members of the Rangataua Young Farmers Club 1953. From left to right, front: W Ohia, D Werohia, M Ohia, O Pukekura, A Kahotea, F M Pinfeld (senior advisory member); back: B Te Kani, T Cairns, T Te Kani, A McPhee

Photograph by W Ohia. Reproduced from *Te Ao Hou*, no 6 (royal tour special number).

144. 'Board of Maori Affairs: Kaitimako Development Scheme', 15 November 1951, p 1 (doc A31(a), p 445); 'Maori Rehabilitation Finance Committee: Maungarangi Development Scheme', 20 August 1958, p 1 (doc A31(a), p 461); brief of evidence of Tai Taikato, undated (doc Q30), p 2; W Ohia, 'Rangataua Farmers Club', article attached to brief of evidence of Raheara Ohia on behalf of Ngāti Pūkenga, 26 June 2006 (doc R38)

145. W Ohia, 'Rangataua Farmers Club', p 29, article attached to doc R38

146. R Cairns and W Ohia to under-secretary for Māori Affairs, 18 October 1950, pp 1–2 (doc A31(a), pp 130–131)

147. R Cairns and W Ohia to under-secretary for Māori Affairs, 18 October 1950, pp 2–3 (doc A31(a), pp 131–132)



Figure 3.5: William Ohia

Photograph by J Ashton. Reproduced from *Te Ao Hou*, no 6 (royal tour special number).

available at the recently enlarged port would be too tempting, and work at the port would absorb the bulk of Māori labour. Officials also regarded very few of the Māori candidates as suitable.¹⁴⁸

Ohia also noted that if the Ngāpeke and Kaitimako blocks were subdivided into dairy farms, then the owners would again be excluded from the use of their lands for the term of the lease. This also suggested that market gardening was a preferable alternative.¹⁴⁹ These very considerations arose in the following year when the Kaitimako scheme, boosted by bumper wool prices, at last reached credit. Discussions immediately began between owners, and between owners and the board, over how best to divide the land.¹⁵⁰ Dairying still dominated discussion, but the possibility of market gardening was raised by officials, and was seized on by some, such as Raraku Hetara,

who regarded it as a chance for ‘the salvation’ of his scattered family, allowing them perhaps to settle in one place.¹⁵¹ He had, he claimed, planned to withdraw his block from the scheme to pursue this sort of development. In the event, however, the owners resolved to have the scheme subdivided into ‘economic dairy farms and such other farms as a utilisation survey may disclose.’¹⁵² This proved a fateful decision, since the utilisation plan proposed subdivision into dairy farms only.

The division of Kaitimako into seven dairy farms resurrected the underlying and unresolved problem with title. It will be recalled that Ngata had foreseen the necessity for

148. Tony Walzl, ‘Ngati Ruahine: Land Issues Overview, 1900–2000’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001) (doc N2), pp 56–57, 63; see also Marinus La Rooij, ‘“That Most Difficult and Thorny Question”: The Rating of Maori Land in Tauranga County’ (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc P14), pp 68–69

149. R Cairns and W Ohia to under-secretary for Māori Affairs, 18 October 1950, p 4 (doc A31(a), p 133)

150. ‘Kaitimako Development Scheme, Profit & Loss Account – 1/7/50 to 31/3/51’, undated (doc A31(a), p 437)

151. ‘Meeting of Owners Held at Maungatapu on 27th October 1950 at 11 am’, 27 October 1950, pp 4–5 (doc A31(a), pp 140–141); ‘Kaitimako Development Scheme, Profit & Loss Account – 1/7/50 to 31/3/51’, undated (doc A31(a), p 437)

152. ‘Meeting of Owners Held at Maungatapu on 27th October 1950 at 11 a.m.’, 27 October 1950, p 4 (doc A31(a), p 140)

consolidation to ‘come in to clean up the problem’ while the land was developed.¹⁵³ However, proposals to carry out consolidation in Tauranga, which were in any event limited to Matakana Island and Matapihi, were stillborn, and the department generally abandoned attempts to consolidate land in favour of focusing on development.¹⁵⁴

Unsurprisingly, the ensuing process of choosing the few individual farmers from among the many owners was very tense. Owners saw it as their right to select who among them would occupy the land, and on what terms. Conversely, officials regarded long leases providing secure tenure as a prerequisite to successful farming, and they insisted on being able to veto the selection of people deemed unsuitable. Owner nominations for the first two proposed units were accepted. However, disputes arose between owners, and between owners and the board, regarding the selection of occupiers on some of the units that remained. One group of owners could not agree on a nominated settler, and so withdrew their land from the scheme.¹⁵⁵ Another group were now classified as Europeans; their land became general land, and so was also withdrawn.¹⁵⁶ The board deemed one nomination unsuitable on the grounds of poor performance at the training farm, a judgment hotly disputed by the owners.¹⁵⁷ Further problems arose when settling ex-serviceman Dan Heke, whose family was living in a scheme house. The board initially attempted to evict the family, before eventually accepting that the family might remain in residence, and that Heke could live nearby.¹⁵⁸ There were also disputes over the terms of settlers’ occupation. Officials advocated long-term leases of 21 years, with 21-year rights of renewal, all based on an initial one-off valuation, to provide occupiers with security of tenure. The owners successfully established their own terms for the leases only after threatening to withdraw their lands from the scheme. These terms were a 30-year lease, at a rental based on 5 per cent of capital value, with a special Government revaluation conducted at 10-year intervals. Improvements were to be at the expense of the owners, and paid from their income, although no improvements were to be undertaken without the agreement of the Board of Māori Affairs and the lessee.¹⁵⁹ In the end, despite these problems in settling occupiers on the farms, most were on the land by the mid-1950s, and the scheme was considered fully settled by 1 April 1959.¹⁶⁰

The Kaitimako development scheme successfully brought into production a fairly large area of run-down land. Its owners would certainly not have been able to develop it to this extent without the substantial financial and administrative assistance of the State. Over and

153. Ashley Gould, ‘Twentieth Century Maori Land Administration: Maori Land Development 1929–1954: An Introductory Overview with Representative Case Studies’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 1996), p 32

154. *Ibid*, p 34

155. Document A31, p 32

156. *Ibid*, p 31

157. *Ibid*, p 32

158. *Ibid*, p 33

159. *Ibid*, p 33–34

160. *Ibid*, p 34



Figure 3.6: Māori land development scheme at Kaitimako in 1952, shortly before division into individual dairy farms

Photographer unknown. Reproduced from *Te Ao Hou*, no 1 (winter 1952).

above this success, however, we must consider whether the duration and extent of Crown control were necessary to the conduct of the scheme. On the face of it, the critical factor determining whether the department was justified in retaining control over Kaitimako for almost 30 years is the problem of debt. Understandably, the department would not return control of land to owners before debt had dropped to a level where individual farms might be self-supporting.¹⁶¹ It must also be remembered that establishing individual farms involved significant costs.¹⁶²

In a Cabinet paper of 1958, Lands and Survey officials produced a balance sheet for a land development scheme that, according to Ashley Gould, exhibited the ‘ideal time and financial characteristics.’¹⁶³ This saw the scheme run at a loss for five years, but clear the resulting debt in a further five years. As Gould comments, however, even ‘small changes’ in factors such as commodity prices or climate could quickly alter this equation for the worse. The Kaitimako (and Ngāpeke) schemes should be assessed in light of these considerations. In addition, it is important to factor in the impact of the social necessity for employing marginally productive labour during the Depression. Most significant, however, is the dramatic impact of the Second World War on the availability of manpower and materials.

The Kaitimako scheme followed the trajectory outlined by Lands and Survey, but took twice as long to reach financial security. Could it and should it have been settled sooner? We think the first plausible opportunity to agree that the land should be settled was in

161. Document T37, p 77

162. ‘Minutes of Meeting of Owners of the Kaitimako Dev. Scheme Held in the Tauranga Office’, 15 February 1960 Wellington, p 2 (doc A31(a), p 92); ‘Board of Maori Affairs Kaitimako Development Scheme Settlement’, 14 October 1952, p 2 (doc A31(a), p 429)

163. Document T37, p 81

1947. That was when Tipi Ropiha and other officials met owners in response to a request by Whetu Werohia that the land be divided. However, at the meeting, and in correspondence immediately afterwards, officials were unanimous that the scheme was not yet ready for closer settlement. Reasons given ranged from a lack of available materials, through the danger the land would revert to weeds without heavy stocking, to the problem of excessive debt. The problem of debt was portrayed as decisive. According to Ropiha in 1947, even Whetu Werohia, a dairy farmer already struggling on his own unit and so able to provide wise counsel, was:

wholeheartedly in agreement with the desire of the people to resume their property, [but] he had to agree with my view that the added costs required to enable them to undertake dairying would increase the mortgage to an uneconomic level. He advised his people to wait and bring up the matter again in four years time.¹⁶⁴

And, four years later, the first dairy farmers were indeed placed on the land.

However, the role of debt at this stage was not quite so clear cut. Following the 1947 meeting, the Rotorua deputy registrar (soon to become registrar), JJ Dillon, acknowledged that, in fact, the land *was* ready for settlement, and ‘would undoubtedly make suitable dairy or sheep farms if suitable men were available’. The chief supervisor, A F Blackburn, concurred that the real issue was now the lack of suitable farmers among the owners:

The owners have shown no desire to work their own land and I do not consider they have anyone that could do better than [the] Dept, or even as well. The Govt. have spent £11,500 on labour (free to the land) and we cannot permit any action that is likely to negative the results of this expenditure of public money.¹⁶⁵

Officials consistently discounted the ability of Māori as farmers and, as here, sometimes even their willingness to farm.¹⁶⁶ It was only this belief – that the owners could not be trusted to farm their own land efficiently – which continued to make the issue of debt decisive from 1947. It may be that, in 1947, there was a shortage of trained farmers among the owners. But if so, as Ropiha had acknowledged, this shortage was because the department had failed to provide training, and had largely excluded owners from the management of their land. They had also excluded owners from other aspects of their lands’ administration, in ways which seem very difficult to justify. For example, owners had a great deal of trouble obtaining the scheme’s accounts. It was not departmental policy to provide this information

164. ‘Kaitimako and Mangatawa Blocks – Tauranga’, 4 August 1947, p1 (doc A38(d), p1270)

165. A F Blackburn, annotation, 15 April 1947, on JJ Dillon, deputy registrar, to head office, Native Department, 10 April 1947 (doc A38(d), p1280)

166. JJ Dillon, registrar, to under-secretary, Native Department, 5 November 1947, pp1–2 (doc A38(d), pp1268–1269)

until the 1940s. Even then, officials on the ground were reluctant to reveal the extent of debt, believing ‘the large majority of owners’ incapable of grasping ‘the true position.’¹⁶⁷

Likewise, while officials eventually accepted requests that 10 per cent of profits be returned to Kaitimako owners, and paid dividends for several years, the money was very slow to arrive and, more importantly, was not provided in the way that the owners desired.¹⁶⁸ The request had led to confusion between Māori Land Board and Board of Māori Affairs officials, who were unsure who had jurisdiction to decide whether this was appropriate. Payment for the 1948–1950 financial years was held up while such issues were debated.¹⁶⁹ Greatly frustrated owners sent representatives to the Waiariki Māori Land Board offices in Rotorua, and wrote to the under-secretary of Māori Affairs to complain that their marae was rapidly deteriorating because of the lack of funds.¹⁷⁰ A particular problem was that the owners of Kaitimako (and Mangatawa) wanted any dividends to be paid to the management committees of owners. These committees had been formed in 1947, at the request of owners, ‘to assist the supervisor to bring the mortgage down to a workable level.’¹⁷¹ As Tame McLeod told officials, the money was intended ‘for the use of the people generally, on communal projects.’ However, the Waiariki Māori Land Board, which held the schemes’ accounts, took the stance that money should be distributed to individual owners according to their shareholding.¹⁷² In 1949 the president of the Waiariki Māori Land Board preemptorily dismissed the owners’ proposal, saying, ‘I do not favour payment to so called Development Committees or to Committees of management. This Board was equipped for the job and has been doing the job for the past 40 years.’¹⁷³ The owners complained that although the dividend was intended for ‘the use of the tribe as a whole’, many owners only received ‘6d. and such, in the distribution and generally, the money is frittered away and there is nothing

167. Raraku Hetara, Moihi Tirimi, Kereama Hapi, and Heke Kaiawha to Native Minister, 18 December 1942 (doc A31(a), p 121); Raraku Hetara to Native Minister, 11 June 1943 (doc A31(a), p 120); John Dickson, property supervisor, to registrar, Native Department, Rotorua, 2 December 1942, pp 1–2 (doc A31(a), pp 122–123); under-secretary, Board of Māori Affairs, to secretary to the Treasury, 26 March 1941 (doc A31(a), p 152)

168. ‘Board of Maori Affairs Kaitimako Development Scheme Settlement’, 14 October 1952, p 1 (doc A31(a), p 428)

169. Under-secretary to the secretary to the Treasury, 15 February 1951 (doc A38(d), p 1248); under-secretary to registrar, Rotorua, 2 November 1949 (doc A38(d), p 1254); ‘Notes: Maungatawa and Kaitimako Development Schemes’, 14 September 1949 (doc A38(d), p 1255); T McLeod to under-secretary, Māori Affairs, 6 September 1949 (doc A38(d), p 1256); JJ Dillon to under-secretary, Māori Affairs, 1 September 1949 (doc A38(d), pp 1257–1258)

170. ‘Translation of Extract From Letter to Under-Secretary From Whetu Werohia’, 31 January 1931 (doc A38(d), p 1247)

171. ‘Kaitimako & Maungatawa Blocks – Tauranga’, 4 August 1947, p 1 (doc A31(a), p 115); under-secretary to registrar, Rotorua, 5 November 1947 (doc A38(d), p 1265); registrar, Rotorua, to under-secretary, Māori Affairs, 1 September 1949 (doc A31(a), p 112)

172. Registrar, Rotorua, to under-secretary, Māori Affairs, 30 January 1951, pp 1–2 (doc A31(a), pp 106–107); ‘Meeting of Owners of the Kaitimako, Mangatawa and Ngapeke Blocks Held at Maungatapu Pa on Sunday the 12th August, 1951’, 12 August 1951, p 3 (doc A31(a), p 97); ‘Kaitimako and Mangatawa Blocks’, undated (doc A38(d), p 1249)

173. Registrar, Rotorua, to under-secretary, Māori Affairs, 30 January 1951, p 1 (doc A31(a), p 106)

to show for it.¹⁷⁴ Owners of the Kaitimako and Mangatawa schemes then decided that they were better off going without dividends, and attempting to settle as soon as possible. The development committees, which had very limited powers, seem to have become inactive.¹⁷⁵

In essence, Crown officials focused on land development, as opposed to the development of the owners' ability to use their lands during or after the scheme, and did not allow them to participate meaningfully in the scheme's management. The owners' perceived lack of ability was then cited as justification for continued and exclusive Crown control. The department had a consistently sceptical attitude towards owners' capacity to farm. This attitude underpinned its view of the overriding importance of maintaining control and thereby ensuring repayment of debt – and departmental control shut owners out of the scheme's finances and administration. This attitude is also reflected in the failure to consolidate titles, which failure proved particularly problematic after the scheme had been settled, making it very hard to allocate the profits from the scheme to various owners (since different blocks had been part of the scheme for different periods, and had received different levels, and kinds, of improvements).¹⁷⁶ Finally, this attitude is also arguably evident in the dogmatic determination to establish dairy farms at Kaitimako, rather than the smallholdings suggested by some owners.

Free of State control, those few owners who at last occupied the Kaitimako lands faced an immediate and enduring problem: their smallholdings of about 100 acres were no longer economic dairy-farming units. Even though for the first two years they were paid a living allowance of £300 per annum, and were on strict budgetary control (precisely the same terms as applied to returned servicemen), the Māori settlers struggled to make their dairy farms a paying proposition.¹⁷⁷ They faced considerable pressure from the outset, since the need to restructure operations to establish their units, at a cost of as much as £8000 each, meant beginning under a considerable burden of debt.¹⁷⁸ Unsurprisingly, initial turnover was rapid, and no units have survived as dairy farms.¹⁷⁹

One settler who persisted for a considerable time was Johnson Taikato who, according to his son Tai, reluctantly took over a unit in 1960 at the request of other owners.¹⁸⁰ The story

174. 'Meeting of Owners of the Kaitimako, Mangatawa and Ngapeke Blocks Held at Maungatapu Pa on Sunday the 12th August, 1951', 12 August 1951, p 4 (doc A31(a), p 98); see also 'Translation of Extract from Letter to Under-Secretary from Whetu Werohia' 31 May 1951 (doc A31(a), p 105); 'Meeting of Owners Held at Maungatapu on 27th October 1950 at 11 a.m.', 27 October 1950, p 2 (doc A31(a), p 138)

175. Document A31, p 30; 'Meeting of Owners Held at Maungatapu on 27th October 1950 at 11 a.m.', 27 October 1950, p 2 (doc A31(a), p 138); 'Board of Maori Affairs Kaitimako Development Scheme Settlement', 14 October 1952, p 1 (doc A31(a), p 428)

176. Document A31, pp 35–36

177. 'A Meeting of the Owners of the Mangatawa, Kaitimako and Ngapeke Blocks Held at Maungatapu Meeting House, Tauranga on Sunday 18th January 1953', 18 January 1953 (doc A31(a), p 262)

178. 'Minutes of Meeting of Owners of the Kaitimako Dev. Scheme Held in the Tauranga Office', 15 February 1960, p 2 (doc A31(a), p 92); 'Kaitimako Development Scheme: Profit & Loss Account 1/7/50 to 31/3/51', undated (doc A31(a), p 437); doc A31, pp 32–33

179. Document A31, pp 34–35; doc Q30, p 3

180. Document Q30, p 3

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of this family's attempts to develop the land is representative. Johnson Taikato eked out a subsistence living for his whānau from the farm until the early 1980s. His son recalls that, '[h]e only really kept the farm going because all the whānau pitched in and helped it work. I remember many times when we would be out there pulling the ragwort out by hand.'¹⁸¹ Towards the end of the lease, the land was sublet for grazing, and became run down. As with most of the Kaitimako block, and indeed the Ngāti Hē lands generally, this land became managed by a trust.¹⁸² Tai Taikato became involved as a trustee, seeking alongside others to develop the block at the end of his father's lease. Some papakāinga housing has been built, and the land has been used to grow maize to pay rates, which have become a considerable burden on the owners of Kaitimako lands since the area was recently zoned residential as part of the SmartGrowth planning process.¹⁸³ Though various ventures have been suggested, and approaches made both to the Department of Māori Affairs and to banks, the trustees have never been able to gain development finance because of the multiple ownership of the land.¹⁸⁴

In sum, over more than 20 years the Kaitimako lands were successfully developed through the labour of the Māori owners, and the capital injection of the Crown, to the point where a handful of dairy farms were created. Over those 20 years, owners who worked on the schemes received over £12,000 in subsidised wages and, in addition, small dividends for four years. Ngāti Hē families attempted to farm the dairy units which were created from the scheme when it was wound up. However, none was able to do so successfully. The simple reason for this is that the size of a viable dairy farm has increased. Witnesses before us concurred that, to be viable, dairy farms now needed to be in the vicinity of 250 acres.¹⁸⁵

Today the owners of the various Kaitimako blocks collectively number over 1000; though each block is being administered by a trust, these trusts are still struggling to find ways in which to develop their lands for either their occupation or use. Meanwhile the pressure to find such solutions is growing, under an increased rates burden, and with numerous offers being made to buy these lands.¹⁸⁶

3.5.2 Ngāpeke, 1937–67 (Wai 342, 751)

In February 1937, a meeting was held at Pāpāmoa where officials from the Board of Māori Affairs and Native Land Court met with Māori land owners to discuss the possibility of

181. Document Q30, p 3

182. Desmond Parekura Heke Kaiawha, 'Virtual Hikoi of the Ngati He Estate Stage II Raupatu Hearings, Tauranga Moana Raupatu Enquiry', PowerPoint presentation, 26 May 2006 (doc Q38)

183. Desmond Parekura Heke Kaiawha, brief of evidence, undated (doc Q29), pp 15–16; doc Q30, p 4

184. Document Q30, p 4

185. Hone William Newman, brief of evidence, 26 June 2006 (doc R42), pp 5–6; Rehua Smallman, brief of evidence, 26 June 2006 (doc R43), pp 10–11

186. Document Q29, pp 15–16

establishing a development scheme on the Mangatawa, Pāpāmoa, and Ngāpeke blocks. The owners agreed that lands from these blocks should be included in a scheme.¹⁸⁷ In the event, land at Mangatawa and Pāpāmoa formed one scheme, and land at Ngāpeke another.¹⁸⁸

Minutes for this crucial meeting, unfortunately, have not been located. The only record of what the owners were told about the terms of the arrangement is a memorandum written soon after by a Native Land Court registrar. According to this eyewitness account, the owners were initially very reluctant to vest their land in the scheme:

There is still a feeling with these people that if the land is handed over to a scheme that they virtually handed it over for all time. However it was explained that the land had to be gazetted in the Scheme before land development funds could be expended and that as soon as charges against [the land] were repaid that they could again have the land excluded from the scheme if they so desired. They were averse to having expenditure charged against their lands and seemed to prefer that work undertaken should be limited to assistance from unemployment funds principally in the way of clearing noxious weeds and drainage.¹⁸⁹

Local member of Parliament Charles Burnett, however, provided the assurances that persuaded the owners to vest their lands in the scheme. The registrar reported to the under-secretary of the Board of Māori Affairs in April 1937 that he had:

done much to get the people interested in the scheme and it was mainly through his telling the people that all labour would be free and fully subsidised from Unemployment Funds that they were willing to let some of their lands be brought under the scheme. The supervisor thinks the land should and is able to bear a small percentage of the labour cost.¹⁹⁰

While the evidence is not conclusive, it is clear that from the outset, owners were very concerned both about losing control over their lands, and about the costs that would be charged against their lands. It is also clear that owners had been principally persuaded by promises that labour costs would not be charged. The farm supervisor, however, apparently unilaterally decided the land could bear a portion of the labour costs, calculated as 12 per cent of total labour, rather than having all costs borne by unemployment funds. Despite flying in the face of the basis for the owners' agreement, this decision was accepted by officials such as the Rotorua registrar, who believed that the lands to be included in the development scheme were of good quality. The Rotorua registrar confidently expected the scheme to succeed.¹⁹¹

187. Heather Bassett and Richard Kay, 'Ngati Pukenga and Ngapeke Block' (commissioned research report, Wellington: Waitangi Tribunal, 1998) (doc D2), p 71

188. Document A31, pp 38–39

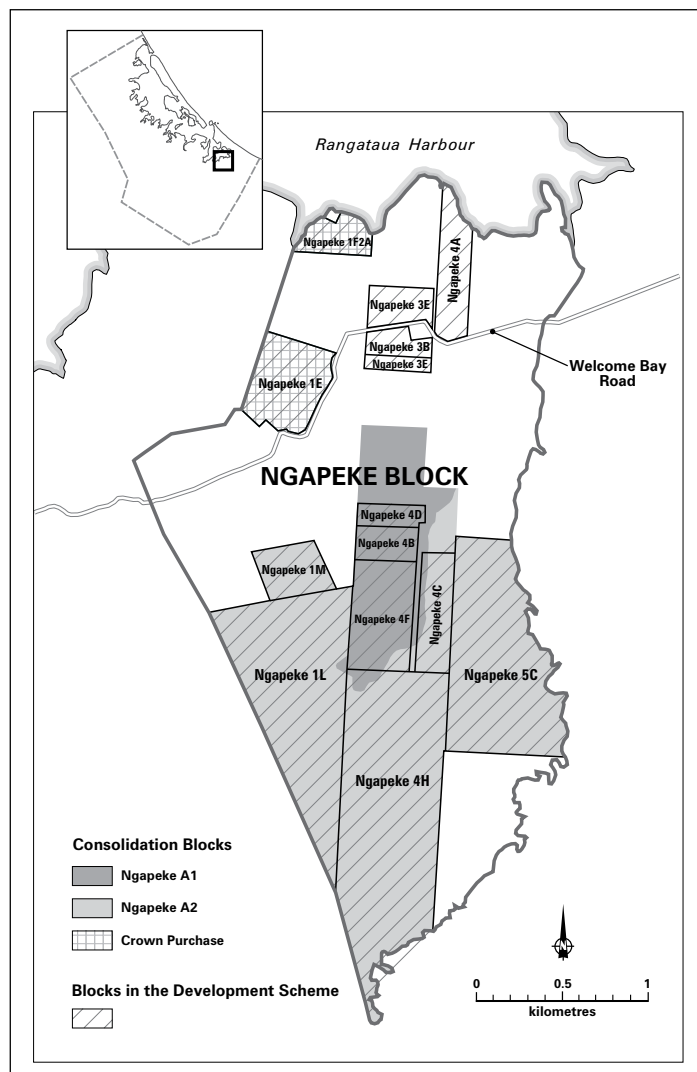
189. Registrar to under-secretary, 3 March 1937, Wellington (doc D2, p 71)

190. Registrar to under-secretary, 23 April 1937, Wellington (doc D2, p 72)

191. Registrar, Rotorua, to under-secretary, Native Department, 23 April 1937, p 1 (doc A31(a), p 12); doc D2, p 74

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Map 3.4: Blocks involved in the Ngāpeke development scheme

This confidence did not take adequate account of considerable variation in the land's quality – that of the Ngāpeke block in particular. The Ngāpeke block, which by the twentieth century was the only land retained by Ngāti Pūkenga, spreads inland from Rangataua Harbour, being bounded on the east by the Waitao Stream. The front of the block, near the water, includes a band of relatively flat, fertile, and arable land, but the land towards the back of the block becomes increasingly rugged and undulating, with some swamp, and steep faces.¹⁹² The bulk of the main development scheme lands were on poorer land towards the back of the block.

192. Document A31, pp 39–40

At its inception, the Ngāpeke scheme consisted of 13 sub-blocks, and another was added in 1941, forming a total of 716 acres.¹⁹³ Three of these blocks were on the better lowlands, and these initially formed two small farms occupied by their owners (1E and 1F2A, and 3B). These farms were effectively separate from the main development scheme.¹⁹⁴ However, 1E and 1F2A were purchased by the Crown in 1946, with the intention of settling returned Māori servicemen. When that plan failed, they were incorporated into the main development scheme, though they remained Crown land.¹⁹⁵

As at Kaitimako, the initial work focused on removing weeds and improving pasture, much of it using Ngāti Pūkenga labour. The scheme returned a profit every year after 1943, except 1949. By 1956, all of the block save one steep face was in grass, and was stocked with sheep and cattle.¹⁹⁶ We received little evidence on the involvement of owners in the development and management of the scheme, and there are few records of consultation with the owners before meetings in the 1950s.¹⁹⁷ The head shepherd, Paki Brown, was brought up from the East Coast, as was commonly the case with Ngata's land development schemes. His assistant shepherd, Te Keepa Smallman, was from Ngāti Pūkenga.

Owners and officials seem to have been in broad agreement in 1950 that the land was not yet ready for subdivision, being still too weedy, and with too much debt.¹⁹⁸ Nevertheless, the owners did want to see some return, and so the scheme paid a 10 per cent dividend between 1951 and 1953. It seems that officials were now readier to see money distributed to committees of owners, and so the dividend was able to be used as intended, to maintain and develop Whetū Marae.¹⁹⁹

By the mid-1950s, debt had been sufficiently reduced so that the development scheme could be split into individual farms. The Ngāpeke lands, however, could not be farmed as intensively as at Kaitimako, and were divided into only two farms (and the possibility of limiting it to one was even discussed). These comprised a dairy farm on the front of the block, and a sheep farm on the back country. At a meeting in 1953 to discuss how to settle the development schemes, the owners expressed concern to officials about their ability to retain control once their land had been leased. The owners were also concerned about the proposed length of tenure. They were assured, however, that they would be able to nominate tenants, and that the long leases were necessary for the tenant to repay the outstanding

193. Ibid, pp 37–38, 40

194. Document D2, pp 74, 80–81

195. Ibid, pp 80–81

196. Ibid, p 75

197. Document A31, p 41

198. 'Meeting of Owners Held at Maungatapu on 27th October 1950 at 11 a.m.', 27 October 1950, p 6 (doc A31(a), p 142)

199. Document D2, p 76; doc A31, p 41

mortgage debt, and for the tenant to have sufficient security. The owners apparently accepted this explanation.²⁰⁰

The owners nominated occupiers – Te Keepa Smallman and Jack Steedman – who were accepted by the board in 1956. These men began farming the following year, on the 21-year leases (with right of renewal for a further 21 years) that were recommended by the board.²⁰¹ The Crown lands (blocks 1E and 1F2A) were separated out, and a proportion of the overall scheme profits returned to the Crown for the use of that land as part of the scheme.²⁰² At least initially the Crown then leased the blocks to Māori returned servicemen.²⁰³

In 1967, a meeting of owners voted to amalgamate all blocks in the scheme and formally divide them into two titles, providing a single title each for the dairy farm and the sheep station. The Māori Land Court confirmed this arrangement, and created the amalgamated Ngāpeke A block. This was later split in two and leased to the two original occupiers: Mr Smallman leased the Ngāpeke A1 block, and Mr Steedman leased Ngāpeke A2. Te Keepa Smallman described his difficulties farming under the Board of Māori Affairs:

It was difficult farming the land with the Maori Affairs always looking over you. They set up things for the farm that I didn't necessarily need. This was a problem for the owners as I knew that the farm debts would be difficult to payoff out of the lease proceeds. I found it difficult to get the Maori Affairs to provide the improvements I really needed. Some things never came, some things took a long time to arrive. All I could do was keep on with the farming as best I could.²⁰⁴

When these leases expired, the lessees consolidated their interests in both blocks to partition out their own shares. These shares had increased owing to the purchase of the other owners' 'uneconomic shares' offered to them by the Board of Māori Affairs.²⁰⁵ Even so, they were not sufficient to form economic units, and Smallman felt forced to sell his lands.

The remaining lands, Ngāpeke A1C and A2B, have been aggregated into one unit administered by a trust, and most of the area is now in forestry.²⁰⁶ As Rehua Smallman comments, this is a suitable use for such poor land, and it will in future produce some return. But these Ngāpeke blocks are the last substantial landholdings of Ngāti Pūkenga, and they are far from adequate as support for this iwi. As Mr Smallman observed:

200. 'A Meeting of the Owners of the Mangatawa, Kaitimako and Ngapeke Blocks Held at Maungatapu Meeting House, Tauranga on Sunday 18th January 1953', 18 January 1953, p 3 (doc A31(a), p 264); doc D2, p 76

201. Document D2, pp 78–79; 'Board of Maori Affairs Ngapeke Development Scheme', 31 July 1968, p 1 (doc A31(a), p 269)

202. Document D2, p 84

203. Document A31, pp 42–43

204. Te Keepa Smallman, brief of evidence, 22 May 2006 (doc Q24), pp 7–8

205. Ibid, p 8

206. Document D2, pp 79–80; Hone William Newman, brief of evidence, 22 May 2006 (doc Q27), p 5

the great problem for the economic development of Ngāti Pūkenga in horticulture and farming is the fact that the lands of the iwi are now generally inland and are extremely hilly and less fertile than the lands that the iwi has lost along the coast. In addition to their fertile alluvial soils, the coastal lands that have been lost are also the more desired and valuable because of their harbour access and frontage.²⁰⁷

We do not know who now owns the alienated land, or the use to which it is being put. We only know that Ngāpeke A1A, A1B, and A2A were alienated by private purchase, and that the A2A transaction appears to have taken place in 1989.²⁰⁸

In sum, the Ngāpeke scheme was not the rapid success that officials had envisaged, and which Ngāti Pūkenga believed they had been promised. Ngāti Pūkenga lost control of their Ngāpeke lands for 20 years while the scheme was running, and then for another 42 years while it was leased.²⁰⁹ Two families of owners derived a living from the land for the duration of the leases, and other owners received rents. The land was effectively protected against alienation to outsiders for this period, though some owners lost land to other owners, sometimes without their knowledge, through the compulsory sale of uneconomic shares.²¹⁰ Finally, at the conclusion of the leases, the owners have regained control of their residual land. A trust has been formed, and most of the land is now forested.

3.5.3 Mangatawa–Pāpāmoa, 1937–57

Though we did not receive specific claims on the Mangatawa–Pāpāmoa development scheme, we do briefly discuss it, simply because it was ultimately more successful than the previous two examples. It provides a useful point of comparison when considering whether the Crown bears any responsibility for the partial, and regrettably transient, success of the Kaitimako and Ngāpeke schemes.

The Mangatawa–Pāpāmoa scheme comprises largely flat and fertile lands on the margins of Tauranga Moana. The blocks included in the scheme were all among those recommended for the occupation and use of Tauranga Māori by the Stout–Ngata commission. The scheme was initiated alongside the Ngāpeke scheme, being gazetted in 1937–1938. By 1953, it included some 663 acres of land.²¹¹ All this land included in the scheme was Māori land, although the owners purchased a portion of general land to add to the scheme in 1945.²¹² The scheme initially developed roughly in parallel with Kaitimako and Ngāpeke. Like those schemes, the land when the scheme began was overgrown with ragwort and gorse. Again,

207. Document R43, p 13

208. Document T16(a), p 70

209. Paper 2.652, p 6

210. Document Q24, p 8

211. Document A31, p 44

212. *Ibid*, p 43

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local Māori at first gained employment clearing the land on unemployment subsidies, with 12 per cent of labour costs charged to the land.²¹³ Again, the scheme turned a profit by the early 1940s, and the issue of who would settle the land arose in the early 1950s.²¹⁴

In 1952, a meeting of owners agreed that six dairy farms should be set up on the land, and nominated their preferred occupiers for the two that had already been established: Tarawhata and Leo McLeod. The board, however, sought further nominations. The owners succeeded in having their nominees chosen, but only after threatening to withdraw the relevant land from the scheme.²¹⁵

Soon after, the scheme took a different course from that of Kaitimako and Ngāpeke. Officials now felt that, despite being in a very healthy financial position, the land was not suitable for farming settlement, since demand for housing and commercial sections on the outskirts of Mount Maunganui meant that the land might now have better uses.²¹⁶

Accordingly, the aim was to have the land administered flexibly, rather than having it locked into long-term leases. At a meeting of owners on 26 April 1956, the owners agreed to form an incorporation to take over the scheme, and their newly formed incorporation received the land the next year.²¹⁷ This incorporation was the predecessor of the Mangatawa–Pāpāmoa Incorporation set up in 1968, which has since administered the land. Part of the land has continued to be used for cropping and grazing, but other parts have been developed for horticulture (particularly kiwifruit) and a native nursery.²¹⁸

Two factors have been critical in the comparative success of Mangatawa–Pāpāmoa: better quality land, and the decision to form an incorporation. In this the Mangatawa–Pāpāmoa scheme was fortunate since, as Ashley Gould has noted, at this time the Crown generally restricted the use of incorporations to land unsuitable for close settlement.²¹⁹ In the event, this decision avoided incurring substantial debts in establishing a series of marginally economic dairy units. The owners were subsequently allowed to make communal and flexible decisions about how best to use the land.

3.5.4 Poripori–Kumikumi, 1950s

As the Poripori–Kumikumi development scheme was not the subject of a claim, and there was little evidence given about it, our consideration of this scheme is correspondingly brief. Again, however, its relative success provides a point of comparison.

213. As per figures cited in registrar to under-secretary, Native Department, 23 April 1937, p 2 (doc A31(a), p 13)

214. Document A31, p 45; 'Board of Maori Affairs. Mangatawa Development Scheme', undated (doc A31(a), p 223)

215. Document A31, pp 45–46

216. *Ibid*, pp 47–48

217. *Ibid*, pp 47–48

218. Paula Werohia-Lloyd, brief of evidence, undated (doc E19), p 4

219. Document T37, p 23

The Poripori–Kumikumi scheme was set up later than the early schemes, in the early 1950s, and was also much larger, involving some 2000 acres of land. Nightingale notes that this scheme also involved the owners much more in decision-making. The district officer reported to the Board of Māori Affairs in May 1952 that, '[t]he commencement of development in this land was by individual effort on the part of some of the owners'. The owners unanimously resolved to put the blocks 'into cultivation by the Department for settlement', and immediately appointed an advisory committee of seven owners. This report concluded that 'the Poripori Kumikumi people are generally an energetic kind and it is anticipated that no difficulty will be experienced in obtaining settlers of a good kind'.²²⁰

Although we were provided with almost no evidence on the scheme's subsequent development, the Poripori Farm Trust's website discloses that it was administered by the Department of Māori Affairs until the current trust was established on 18 August 1982. Since then, the trust has built up livestock numbers on the Poripori farm to some 8700 sheep, 1380 cattle (and another 1000 grazing heifers), and 630 deer. It has also invested in a number of off-farm activities, including mussel farming, kiwifruit, commercial property, and local and international equities.²²¹

3.6 POST-WAR ARRANGEMENTS FOR LAND DEVELOPMENT

The post-war period was characterised by an intensified effort from central and local government to bring all 'idle' Māori land into production and, at the same time, to integrate Māori more fully into the wider community. A question remained, however, over whether Māori would be the people to develop their lands. And the issue of multiply owned land, and the resulting fractionalisation of interests, had still not been addressed. Consolidation had not occurred, being confined in Tauranga to failed attempts at Matapihi and on Matakana Island in the 1950s.²²²

In 1961, the Tauranga County Council estimated that 15 per cent of the county was Māori land, but that only half was 'usefully occupied' through farming – either by owners, or under lease to Pākehā, or in development schemes.²²³ That year, a Ministry of Works survey noted that Māori land not under development schemes tended to be unproductive. The survey stated that large tracts of Māori land in Tauranga were leased to Europeans, and stressed that this was problematic for the productivity of the land. European tenants exploited the land to the extent that it was impoverished by the end of the tenure. As Māori could not

220. Document A31, p 51

221. Poripori Farm Trust, 'Poripori Farm A Trust', Poripori Farm Trust, <http://poriporifarmtrust.cyberstore.co.nz/cs/default.asp> (accessed 19 March 2010)

222. Tony Nightingale, 'Tauranga Moana: A Social and Economic Impact Report, 1865–1960' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1996) (doc A39), pp 52–53; doc A38, pp 154–155

223. 'Representations by Tauranga County at County Offices', 17 March 1961, p 1 (doc A38(d), p 1431)



Figure 3.7: After the Second World War, Tauranga Māori increasingly sought to develop small-farming and orchard enterprises, as at this nursery, 1948

Photograph by Edward Percival Christensen. Reproduced courtesy of the National Publicity Studios Collection, Alexander Turnbull Library (F-40798-½).

afford to pay for improvements on the land, it reverted to scrubland as the leases drew to an end.²²⁴ The surveyors stated that they did not know much about the condition of Māori-owned farms, although they did remark that many Māori dairy farms were too small to be economic. The survey attributed problems with Māori land development to some familiar factors: problems with title caused by multiple ownership, insufficient capital, and a lack of training.²²⁵ In this section, we examine the adequacy of measures that the Crown took to resolve some of these perennial problems. These include the abortive small-farm scheme of the 1950s, and the growing use of incorporations and trusts from the 1960s.

3.6.1 The small-farm scheme of the early 1950s

The small-farm scheme was an abortive attempt in the early 1950s to help Tauranga Māori develop their lands as smallholdings for market gardening and horticulture. The potential

224. Document A38, pp 148–149

225. Ibid, p 149



Figure 3.8: Tomatoes grown by H Kuka, Te Puna, with assistance of the Waiariki Māori Land Board

Photographer unknown. Reproduced from *Te Ao Hou*, no 1 (winter 1952).

for such a land use has already been mentioned in the context of the decisions over how Kaitimako was divided. Judge Harvey, who championed the development of the scheme, saw the eastern harbour lands, once developed, as ‘a model Maori centre from both social and economic angles.’²²⁶ He and his staff expressed a worry that if the owners were not helped to develop their lands, they would lose those lands to commercial market gardeners from elsewhere. The need for development finance, given the ‘unproductive’ state of the land, and the owners’ clear lack of requisite capital levels, were also a concern.²²⁷

In November 1951, a paper went forward on behalf of the Waiariki Māori Land Board recommending to the Board of Māori Affairs – a body responsible, under the Minister of Māori Affairs, for administering the finance available for Māori land development and housing – that it approve financial assistance for the development of a number of small (10-acre) horticultural units in the Tauranga area.²²⁸ In response, the Board of Māori Affairs pointed to a decision by the Minister that it was to allocate funding and take over direct control and operation of development schemes (hitherto under the District Māori Land Boards and the Māori Trustee). This shift of accountability occurred despite the department’s limited experience of such schemes, most of which had in any case involved sheep and dairy projects. The plan to develop horticultural units was nevertheless approved; a ‘workable arrangement’ would be devised to give ‘the necessary flexibility of administration required.’²²⁹

226. Document N2, p 61

227. Document P14, pp 66–67

228. Document N2, pp 57, 61

229. ‘Board of Maori Affairs: Head Office Comments,’ approved 20 November 1951 (doc N2(a), p133)

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The potential for over 70 such units was identified, and 15 initial candidates were put forward for settlement. However, the Board of Māori Affairs was very sceptical of their ability, accepting only nine.²³⁰ Then, once the port became a certainty, the small-farm policy was reviewed and the nine were cut to just three.²³¹ Walzl concludes that any development at this time:

was ultimately undermined by the decision made to establish a port and industrial complex at Mount Maunganui. Whilst irresistible national forces were at play behind this decision, little thought was given of the impact this inevitably would have immediately and over time on Maori communities . . . and their land.²³²

Undeniably, very many Tauranga Māori did find employment at the port (as we discuss in more detail in chapter 9). However, this was to the significant detriment of the ongoing development of their lands, at a time when pressure from local bodies to use land or lose it was very high (as we discuss more fully in chapter 5). It was precisely this pressure that had prompted the scheme, as a last-ditch effort to justify continued Māori retention of unproductive land. We heard many instances of families who had abandoned the attempt to farm their lands during this period. Those who were determined to remain on their ancestral lands were in desperate need of other forms of Government assistance.

3.6.2 The 1960s to the present: the era of incorporations and trusts

Since the 1960s, the difficulties Tauranga Māori have had in retaining and developing their lands have largely stemmed from trying to cope with the problems associated with multiply owned land in the context of skyrocketing land values surrounding a burgeoning city. The explosive success of the horticulture industry has also played a major role in escalating land values. Evelyn Stokes suggests, for example, that dairy land valued at \$720 per hectare in the mid-1960s might have been worth \$13,000 per hectare as horticultural land by 1979, and so became quite uneconomic for dairying.²³³

These forces propelled changes in land use around Tauranga at a pace with which many Tauranga Māori – hamstrung by the administrative and organisational difficulties imposed by the unique form of their land tenure – struggled to cope. As we have seen, dairying had long been the dominant form of land use by Tauranga Māori.²³⁴ Clearly, Tauranga Māori

230. Document N2, pp 51, 56

231. Ibid, p 63

232. Ibid, p 175

233. Evelyn Stokes, 'Tauranga Moana: A Study of the Impact of Urban Growth on Rural Maori Communities', Occasional Paper no 7, June 1980 (doc A15), p 68

234. Document P14, pp 112–121

faced intense pressures to find more productive and economic uses for their remaining land.²³⁵ (Issues posed by rating pressures in particular are examined in chapters 5 and 6.)

It is evident that, during the 1960s in particular, local and central government officials shared a prevailing attitude that Tauranga Māori were best served working on the wharf, rather than trying to develop their lands. It was often thought Māori themselves shared this view. In 1960, for example, the mayor of Tauranga, D S Mitchell, asserted that ‘Maoris in the Tauranga area were not interested in farming [instead] they preferred wharf or road work.’²³⁶ Although it is quite true that many Tauranga Māori walked off their land in this period, this was mostly a matter of economic necessity. As William Ohia pointed out in an open letter in reply to the mayor, the underlying issue of multiply owned land continued to mean that ‘[f]ailure to obtain a secure tenure is the main reason why there is so much of our lands lying idle today.’²³⁷

Though, as we have seen, some prescient Tauranga Māori had foreseen the need for change, Māori on the whole remained largely ill-prepared for the challenges presented by rising land values, and the rapid obsolescence of dairy farming in the area. A report produced by the Bay of Plenty Agricultural Development Committee in 1971, for example, estimated that Māori farmers in the region had fallen behind by about 10 or even 20 years in their farming practices. The committee believed that only a massive injection of capital from the Department of Māori Affairs would keep most Māori farmers on the land.²³⁸ Yet few Māori could contemplate switching to horticulture, particularly the kiwifruit orchards on which booming land valuations were being based, for this required very large amounts of capital investment.

In this section, we examine the Crown’s legislative and policy provisions which helped Tauranga Māori to develop their land, in particular by either direct provision of credit and capital, or facilitated access to it from other sources. A key aspect of this discussion is to assess the Crown’s provision of mechanisms for channelling such capital, and more generally for administering Māori land. The key mechanisms in this respect are incorporations and trusts.

As discussed earlier, incorporations were first provided for in 1893, but were not adopted by Māori until after Ngata employed them with Ngāti Porou land on the East Coast around the turn of the century.²³⁹ These incorporations treated the multiple owners of blocks of land as shareholders of a single enterprise. The owners elected from among themselves a committee of management, and then appointed a single manager for day-to-day operations. Owners were usually employed as farm workers by their incorporation. This structure has

235. Ibid, pp 115–20

236. ‘Maori Land Tenure Discussed’, *Bay of Plenty Times*, 13 July 1960 (doc P14, p 75)

237. ‘Maori Farmer Replies to Mr Mitchell’, *Bay of Plenty Times*, 16 July 1960 (doc P14, p 91)

238. ‘Maori Farmers in Urgent Need of Financial Aid’, *New Zealand Herald*, 2 January 1971 (doc P14, pp 115–116)

239. As noted in chapter 2, the first significant provision for incorporations was the Native Land Court Act 1894.

persisted to the present, though some efforts have been made to render incorporations more responsive to the particular problems of Māori land administration.

In Tauranga the mechanism of incorporation has been seldom used. It seems that incorporation was applied first, and most successfully, to the settlement of the Mangatawa-Pāpāmoa development scheme lands, discussed above in section 3.5.3.

Another attempt to form an incorporation occurred in the 1960s. This attempt was a direct response to the need to stimulate Māori land development, which had been given further impetus by the ramifications of the Hunn report of 1960 and the Prichard–Waetford report of 1965. The Prichard–Waetford report recommended a range of measures designed to promote Māori land development. However, it also threatened large-scale Europeanisation of undeveloped land, and the removal of rating protections. (Rating is discussed in chapter 5.) In the face of these perceived threats, the Tauranga Māori Executive decided in 1966 to take stock of Tauranga Māori lands as a first step towards identifying development priorities. It asked the Department of Māori Affairs to provide information about what land remained in Māori ownership in the area, as well as lists of land owners.²⁴⁰ However, this request was denied on the grounds of cost.²⁴¹ The executive resolved to continue, regardless, to try and identify ways to help owners develop their lands. It began with a proposal to incorporate the owners of some 3800 acres that comprised the Ongaonga and Kaimai 2 blocks.²⁴² A committee of the executive then sought help from the Department of Māori Affairs in gaining the names and addresses of the 600 to 700 owners, and release from administrative costs involved in calling meetings of owners. But this help, too, was refused.²⁴³ Instead, the department and the Māori Trustee assisted the lessee of some of the lands to acquire uneconomic shares in the lands, which were then partitioned, and these portions (including two urupā) were promptly sold to Pākehā.²⁴⁴ According to Desmond Kahotea, the land once proposed for incorporation has still never been commercially farmed, and to cover rating charges is now leased, for rough grazing, by tenants who have not made any improvements.²⁴⁵

The only other incorporation in Tauranga Moana about which we heard any evidence was the Ngā Manawa Incorporation. Some claimants before us had a number of concerns about this incorporation, which was formed in 1971 to protect forested land in the Kaimai Range from acquisition for public works (it is therefore discussed more fully in chapter 4).

240. W Ohia, secretary Tauranga Tribal Executive, to JR Hanan, Minister of Māori Affairs, 11 March 1966 (Waitangi Tribunal, *Raupatu Document Bank*, 139 vols (Wellington: Waitangi Tribunal, 1990), vol 68, pp 26,333–26,336)

241. JR Hanan to W Ohia, 9 May 1966 (Waitangi Tribunal, *Raupatu Document Bank*, vol 68, p 26,332)

242. RD MacGregor to J McEwen, secretary of Māori Affairs, 5 July 1966, p1 (Waitangi Tribunal, *Raupatu Document Bank*, vol 68, p 26,324)

243. IW Apperley to Holland, Beckett, & Company, 17 June 1966 (Waitangi Tribunal, *Raupatu Document Bank*, vol 68, p 26,330)

244. Desmond Tatana Kahotea, 'Alienations of Te Ongaonga No1 and Ruakaka Blocks, Ngati Kahu, Ngati Kirihika', part 3 of summary of document A37(a), November 1998 (doc C13(c)), pp 9–19

245. Ibid, pp 3–4

In particular, they argued that it did not properly recognise the collective interests of hapū and iwi in their land. Michael Tane O'Brien put the view of Ngāti Hangarau as follows:

The Incorporation is required to manage its assets for the benefit of all its shareholders. The management committees have always faithfully fulfilled this duty. However, the Crown returned the Kaimai and Whatikuranui 5D2 blocks to members of other hapu as well as members of Ngati Hangarau. Therefore, the Incorporation's asset base can not be used solely for the development of Ngati Hangarau interests such as the Bethlehem marae. In order to maintain equity and fairness the management committee must administer the land for the benefit of the shareholders and not Ngati Hangarau.²⁴⁶

Similarly, members of those other hapū, such as Ngāti Motai and Ngāti Mahana, have argued that the incorporation structure marginalises their interests as minority shareholders. Instead, the structure shifts the focus from hapū and iwi to the corporate interests of individual block owners.²⁴⁷ While incorporations provide 'manageable ways of dealing with multiple ownership', it is clear that they do not necessarily represent the collective interests of hapū or whānau.²⁴⁸ The emphasis is thus on managing the rights of individuals, 'irrespective of their relationship with each other or even with the specific pieces of land they once owned.'²⁴⁹ According to the Commission of Inquiry into Māori Reserved Land, held in 1975, incorporations have tended to become remote from their owners, who lack any great degree of input into the running or management of their land. The formal legal requirements involved in establishing and operating an incorporation also involve financial costs.²⁵⁰ A further particular, but transient, problem was that, under the 1967 Māori Affairs Amendment Act, all incorporated land became European land.²⁵¹ This problem was partially rectified in 1974, however, when it became an option to have the land revert to being Māori land. The problem has now been fully dealt with by Te Ture Whenua Māori Act 1993.

It is clear that Tauranga Māori have regarded trusts of various kinds as more effective and suitable vehicles than incorporations for management of multiply owned land. A very large proportion of the residual Māori land in Tauranga Moana is now managed under these trusts, which are less formal in structure and cumbersome in operation than incorporations.²⁵² According to Ashley Gould, it is therefore generally accepted that such trusts are better able to reflect the owners' concerns and priorities. This is because, unlike incorporations, they are not required to act as commercial entities, and do not have to file annual

246. Michael O'Brien, brief of evidence, undated (doc D31), p 11

247. Counsel for Ngāti Motai and Ngāti Mahana, closing submissions, 24 November 2006 (doc U11), pp 34–37

248. Michael Belgrave, Anna Deason, and Grant Young, 'Crown Policy With Respect to Maori Land, 1953–1999' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc T36), p 53

249. Ibid, pp 53–54

250. The findings of the commission are cited in GV Butterworth and SM Butterworth, *The Maori Trustee* (Wellington: Maori Trustee, c 1991), pp 105–106.

251. Document T36, p 154

252. Butterworth and Butterworth, *The Maori Trustee*, p 106

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reports with the Māori Land Court.²⁵³ These distinctions are far from absolute, however. Trusts may have to file annual reports with the Māori Land Court if so required by their trust order. Further, while trusts do not have to act as commercial entities, their duty to protect and preserve the trust assets for the benefit of the beneficiaries often requires considerable investment in the enterprise or enterprises being administered. This has clearly been the case with several of the trusts established by Tauranga Māori.

Though, as with incorporations, there were early provisions for Māori land to be placed into trusts, Māori only gradually began to embrace trusts as a vehicle for managing multiply owned land under the provisions of the 1953 Māori Affairs Act and its amendments. Section 438 of the Māori Affairs Act 1953 allowed for the creation of owners' trusts (widely known as section 438 trusts) as a vehicle to administer land, and to channel finance.²⁵⁴ There are now dozens of examples of section 438 trusts in Tauranga Moana. One of the most successful is the Ngāi Tūkairangi Trust (which we discuss below).

Apart from the development schemes, most State assistance in the past several decades has been channelled through section 438 trusts, initially under the 1953 Act. Its stated purposes, as set out in part XXIV, echoed those of earlier legislation, being to 'promote the occupation of Maori freehold land by Maoris and the use of such land by Maoris for farming purposes'.²⁵⁵ Section 460 of the Act allowed the board to lend money with security by way of a mortgage over the land and collateral mortgage over stock and plant.²⁵⁶

The momentum for section 460 lending increased after 1965, when the degree of security required for such loans was reduced from the initial three-fifths. By 1970, section 460 was regarded as the principal source of financial assistance for Māori land development outside the land development schemes. Lending grew further still once the Māori Affairs Amendment (Māori Purposes Act) 1974 broadened the lending criteria to include 'any dairy, cropping, or other farming enterprise'.²⁵⁷

In Tauranga, some Māori did receive the finance they so desperately needed to develop their landholdings through Department of Māori Affairs loans to section 438 trusts during the late 1970s and early 1980s. According to a study conducted by Evelyn Stokes for the Ministry of Works in 1983, 11 orchards were developed on Māori land with State-assisted finance, while a few more had gained funds from the Rural Bank.²⁵⁸ The Department of Māori Affairs also offered valuable education to people employed to manage Māori trusts

253. Document T36, pp 296–697

254. *Ibid*, p 68

255. Māori Affairs Act 1953, s 327

256. Document T37, p 297

257. Māori Affairs Amendment (Māori Purposes Act) 1974, s 4

258. Evelyn Stokes, *The Impact of Horticultural Expansion in the Tauranga District*, Technical Report 14 (Wellington: Town and Country Planning Division, Ministry of Works, 1983), p 147

and incorporations.²⁵⁹ Cliffe Adams described to us how Māori Affairs funding for the Ngāti Hē orchards on the Ranginui 12 block was gained:

During the 1970s I had seen the development potential in these lands and had written to Maori Affairs suggesting they could become involved with developing them. At that stage I didn't get any reply.

Enquiries were made with two private Banks who showed some initial interest but in the end they both said that as a matter of policy they did not lend money on multiply owned Maori land.

However, in [the] late 1970s, Turi Te Kani and others got Maori Affairs interested in looking at the area. Eventually Maori Affairs proposed that they finance the development of a kiwifruit orchard over a number of the blocks in the Ranginui area. The owners of a number of these blocks agreed and these became amalgamated into the Ranginui 12 Block, of which I became one of the trustees.

Once the owners had agreed to the development taking place, Maori Affairs, under the terms of the Maori Affairs Act, took complete control of the development. They brought in farm advisers, contractors to set the orchard up. They brought in an orchard manager.²⁶⁰

The trust now provides a range of benefits, including employment, dividends to land owners, scholarships, and pensions to kaumātua.²⁶¹ But, according to Tai Taikato, there has been no subsequent assistance for Ngāti Hē lands:

Of all the land within the traditional Ngāti He rohe that remains in the hands of Ngāti He owners I can only think of one instance where there has been successful development. This is at the Ngāti He Orchards at the Ranginui No 12 block in Welcome Bay. They have successfully operated a Kiwi Fruit orchard for a number of years now. I understand that this development was possible because finance was provided through Maori Affairs in the 1970's. It is an example of what could be possible if more opportunities for development finance and other assistance were provided to multiply owned Maori land in our area.²⁶²

The Ngāi Tūkairangi lands at Matapihi cannot be ignored as another outstanding example of this period of land development in Tauranga Moana. Again, this development was only made possible by the Crown's provision of development finance through part XXIV of the Māori Affairs Act 1953. The development of Māori land at Matapihi during the 1970s is undeniably also a testament to the foresight and determination of the Ngāi Tūkairangi leaders of the 1970s. However, earlier, equally determined plans to develop their land failed in the face of local government opposition. In the late 1950s, an attempt to consolidate land at

259. Ibid, p122

260. Cliffe Adams, brief of evidence, 26 June 2006 (doc R36), p1

261. Document U7, p34

262. Document Q30, p7

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Matapihi had failed because of the Tauranga County Council's opposition. Mahaki Ellis, the current chair and trustee of the Ngāi Tūkairangi Trust, describes that situation:

Under [Turi Te Kani's] leadership, the Ngai Tukairangi Tribal Committee proposed a consolidation scheme at Matapihi in the late 1950s. The idea was to consolidate a group of titles into one block which would allow us to farm an area together with a subdivision to provide for housing needs. This scheme was opposed by the Tauranga County Council. Their approach was quite ignorant of Māori needs and aspirations. They thought that if Ngai Tukairangi lived on our own lands, that would be akin to a system of segregation. Turi Te Kani strongly opposed that suggestion. He told the Tauranga County Council that Ngāi Tukairangi did not want urban development of Matapihi, what we wanted was housing for ourselves and that we opposed the sale of their lands. The scheme did not succeed due to opposition from the County Council.²⁶³

Two successful section 438 trusts were, however, established at Matapihi in the early 1970s, both of them in response to threatened and actual land sales on the peninsula. The Matapihi–Ohuki Trusts were formed in 1972 to administer 58 blocks of Māori land. The Ngāi Tūkairangi Trust was established around the same time to administer the 55 hectares of land now known as Ngāi Tūkairangi 2.²⁶⁴ In the early 1970s these lands were converted from small farms into horticultural lots to grow kiwifruit and avocados. Much of the cost of this conversion was funded by a loan from the Department of Māori Affairs, charged against the value of the land, at a low rate of interest. The trust subsequently repaid some of this debt but, according to Neil Te Kani, most of the loan was written off in the early 1990s.²⁶⁵ The trust now has a substantial asset base with which it is able to provide a range of assistance to its owners.²⁶⁶

It is significant that these loans were still charged as a cost against the land, as with the earlier development schemes. Unlike the earlier schemes, however, the developments of the 1970s returned the land to its owners reasonably soon after the new land use was established. In these cases this occurred in the early 1990s.²⁶⁷ The owners then managed the land themselves. In this way, owners did not lose control over their lands for nearly so long, and they were trusted to gain the necessary skills to manage their land.

The availability of finance under the Māori Affairs Act 1953 was crucial to Māori land development, because private lending institutions still remained extremely reluctant to

263. Mahaki Ellis, brief of evidence, undated (doc Q9), pp 5–6

264. Michael Belgrave, Grant Young, Adam Heinz, and David Belgrave, 'Tauranga Maori Land Alienation: A Quantitative Overview, 1886–2006' (commissioned research report, Wellington: Waitangi Tribunal, 2006) (doc T16(a)), p 68

265. Neil Te Kani, 'Ngai Tukairangi Hapu Cultural Impact Report for the Southern Pipeline', February 2006, pp18–19, attachment to Neil Te Kani, brief of evidence, undated (doc R1)

266. Document Q9, p 8

267. Document R36, p 2

provide finance on multiply owned Māori land. In 1983 Evelyn Stokes stressed that, unless funding and expertise was made available for Māori trusts to manage the transition to intensive horticulture, ‘there will be serious financial difficulties for the owners of a number of Maori blocks in the future.’²⁶⁸ She warned that otherwise Māori would struggle to resist further land sales.

Several tangata whenua witnesses attested to continuing difficulties in this regard. For example, Tai Taikato stated, regarding lands once held under the Kaitimako scheme, that:

the trustees had made applications to Maori Affairs for finance, but nothing seemed to come of that. As a trustee in the early 1980s, I was involved with a number of attempts to get development finance from banks. However, we were told that they would not provide finance while the land remained multiply owned by Maori shareholders. We were told that finance may be possible if the trustees alone could manage to own the land. However that was never a possibility.²⁶⁹

Desmond Heke Kaiawha, also a trustee for one of the Kaitimako blocks, expanded on this theme; in his experience, he said, ‘enormous pressures’ had been placed on trustees and owners to utilise their lands, but the requisite funds or assistance to solve problems of multiple ownership had not been forthcoming. He argued that central and local government agencies need to address these issues immediately, given the vulnerability of the Kaitimako lands.²⁷⁰

In sum, the Māori Affairs loans of the late 1970s and early 1980s resulted in significant land development as well as the empowerment of some of the hapū of Tauranga Moana. And although Tribunal researcher Marinus La Rooij asserts that many earlier requests for finance from the Department of Māori Affairs, during the late 1960s and the 1970s, were turned down,²⁷¹ a lack of detail about the number and nature of those requests prevents us from commenting further.

It is clear that sheer demographics meant that, by the second half of the twentieth century, most Tauranga Māori would have been unable to derive a living from their remaining land base, no matter how it was developed. Inevitably, many of those Tauranga Māori who still sought to sustain themselves from their lands have been forced to either replace or supplement that income by wage labour on the wharf or at freezing works.²⁷² But the fact remains that much of their land base has remained needlessly unproductive.

268. Stokes, *The Impact of Horticultural Expansion in the Tauranga District*, pp 148, 153

269. Document Q30, p 4

270. Document Q29, p 16

271. Document P14, pp 120–121

272. William John Ranui Signall, brief of evidence, 22 May 2006 (doc Q8), p 5; John Ohia and Orewa Barrett-Ohia, brief of evidence, 26 June 2006 (doc R37), p 6; doc R38, pp 8–9; Tirikawa Ohia, brief of evidence, 26 June 2006 (doc R41), p 2

Further, we are particularly concerned that the loans of the late 1970s and early 1980s may be isolated instances of State assistance. The claimants state that no equivalent help has been given since the 1980s, when the Department of Māori Affairs, now Te Puni Kōkiri, lost the power to provide development finance: since that time, successive governments have pursued a policy of devolution which has transferred many of the programmes for Māori economic and social development to other wings of government.²⁷³ The claimants further contend that, as a result, no significant commercial development of Māori land has occurred in Tauranga – and this over a period of some 25 years during which all other sectors of Tauranga have grown enormously.²⁷⁴

Such contentions raise very important issues about the adequacy of the Crown's assistance to Tauranga Māori over approximately the past 25 years. Unfortunately, we heard very little evidence about these matters. We were particularly hampered by a lack of evidence from the Crown. It is certainly the case that Te Puni Kōkiri itself is now largely reduced to offering policy advice and business mentoring. This is no doubt often useful. We heard, for example, that Te Puni Kōkiri has recently begun to provide assistance to several of the ahu whenua trusts established to administer the Kaitimako lands, to help them determine the development potential of their lands. Te Puni Kōkiri is also brokering relationships with other government agencies.²⁷⁵ However, we had no indication that this might result in Government assistance with finance. It appears that such assistance as the Crown has recently provided is entirely focused on housing. (Issues surrounding the housing of Tauranga Māori are discussed in chapter 9.)

We conclude this section with a brief consideration of how trusts have functioned in recent times as vehicles for the successful administration and development of Māori land. Claimants were generally supportive of the role that trusts have played in easing the administration of their land, though some described a range of residual problems. We noted in particular the evidence of Mahaki Ellis regarding the experience of the Ngāi Tūkairangi Orchard Trust. This trust is now an ahu whenua trust under the 1993 legislation. Ellis notes that the orchards at Matapihi are part of a coolstore and packing cooperative – Te Awanui Huka Pak Co-op – with other Māori-owned orchards in Tauranga. The cooperative has been particularly successful in alleviating the pressure from declining kiwifruit prices and also in the sharing of facilities.²⁷⁶ The success of the developments at Matapihi is, however, tempered with continued pressure from urbanisation in Tauranga, particularly pressure to sell or subdivide the land, or both, for residential purposes. Public works, such as transmission lines (discussed in chapter 4), and the limitations rural zoning has placed on housing and land use (discussed in chapter 9), have also hampered development. Based on his

273. Document T36, pp 298–299, 320–321

274. Paper 2.659, pp 18, 21

275. Paper 2.628, pp 4–5

276. Document Q9, p 8

considerable experience as a trustee at Matapihi and elsewhere, Ellis lists the problems that face owners wanting to develop Māori lands in Tauranga as:

- ▶ dramatically increasing land values;
- ▶ rampant urbanisation;
- ▶ difficult access to finance;
- ▶ compulsory creation of reserves;
- ▶ multiply owned Māori land; and
- ▶ constraints imposed by Te Ture Whenua Māori Act and trust orders.²⁷⁷

Ellis warns that, '[i]t is my personal belief that one day Matapihi will be rezoned. The consequences could be disastrous for Māori landowners at Matapihi if they do not start now to plan for other economic uses of their lands and to have full ownership and control'.²⁷⁸ It must be noted that, even in successful cases such as the Ngāi Tūkairangi Trust's development of its lands at Matapihi, the constraints imposed by legislation, and local and central government policy, have hampered administration.

Te Ture Whenua Māori Act 1993 has helped rectify many of the problems Māori had identified with previous legislation controlling trusts and incorporations. For example, it returned full beneficial ownership of specific land parcels to members of incorporations. However, Mahaki Ellis also referred to problems with Māori land development which Te Ture Whenua Māori Act 1993 has not fully rectified. The Matapihi Trusts had been established under section 438 of the 1953 Act, and now became ahu whenua trusts under section 215 of the 1993 Act. This Act diversified the range of trusts available to Māori, providing for pūtea trusts (s 212), whānau trusts (s 214), whenua tōpū trusts (s 216), and kaitiaki trusts (s 217) to be constituted by the court. These trusts provide various solutions to the problems posed by multiple ownership, such as managing land vested in an iwi or hapū (whenua tōpū trusts), or consolidating whānau interests (whānau trusts).²⁷⁹ Succession does not continue under these trusts. However, it does for the ahu whenua trusts and, as Mahaki Ellis stressed to us, the Ngāi Tūkairangi Trust therefore continues to be 'bedevilled by the issue of multiple ownership', greatly complicating its administration.²⁸⁰ Though mechanisms such as trusts and incorporations have undoubtedly helped, they have not wholly cured the problems of fractionation that have plagued Tauranga Māori in the attempt to develop their lands.

277. Ibid, pp 14–15

278. Ibid, p 14

279. Document T36, pp 328–330

280. Document Q9, p 15

3.7 SUBMISSIONS OF COUNSEL

3.7.1 Claimant submissions

Claimant counsel submitted that:

- ▶ The Crown's wrongful imposition of 'individualised' land titles underpins the persistent problems that Māori in Tauranga Moana have faced in trying to develop their lands.²⁸¹ The primary problem is the increasing fractionation and fragmentation of interests in multiply owned Māori land. Multiple ownership of land has prevented owners from raising finance, and made coordinating decisions very difficult. These problems persist to the present.²⁸²
- ▶ Because the Crown imposed this system, which the Tribunal in stage 1 found to be a breach of the Treaty, it has had a particular and positive obligation to help overcome the problems it has subsequently caused for land development. This obligation stems from the duty of active protection and the duty to provide redress for previous Treaty breaches.²⁸³ It requires the Crown do more than provide equal treatment.²⁸⁴ However, Government assistance for Māori land development has been 'sporadic and overall, wanting'.²⁸⁵
- ▶ Until 1930, the Crown did almost nothing to promote Māori land development. Having accepted that loans from the Native Trustee were not State funds (as originally submitted), the Crown suggests only that Māori could gain State funds on incorporated lands. There is no evidence that Tauranga Māori ever benefited from this provision.²⁸⁶ For some hapū, such as Waitaha, any subsequent assistance was 'too little, too late': they had already lost their lands.²⁸⁷
- ▶ The land development schemes, and particularly the Kaitimako and Ngāpeke schemes, were created with inadequate consultation that misrepresented the length of time that the Crown would take control of the land, and the absolute extent of that control.²⁸⁸ The Crown therefore breached the terms on which the claimants agreed to place their lands in the schemes.²⁸⁹
- ▶ During the course of the schemes, owners lost all rights regarding their lands, including access rights. It was not necessary for the Crown to assume such 'draconian and dictatorial' control.²⁹⁰

281. Document U13, p 29

282. Ibid

283. Ibid, pp 16–18; paper 2.651, p 6

284. Paper 2.659, p 18

285. Document U13, p 29

286. Paper 2.659, p 17

287. Paper 2.656, p 3

288. Document U7, pp 31–32; doc U34, pp 35–37, 40

289. Document U34, pp 39–40

290. Ibid, p 39; doc U13, pp 40–41

- ▶ The development schemes were fundamentally unsuccessful. During their operation they provided little financial return to owners, and few owners received any training.²⁹¹ They did not solve the underlying title issues, with the exception of the lands eventually administered by the Mangatawa–Pāpāmoa Incorporation.²⁹² Only Mangatawa has established a successful communal agricultural unit.²⁹³ The other schemes failed to establish a communal operation, and individual farming units all failed not long after the end of the schemes.²⁹⁴
- ▶ Crown development assistance was more successful during the 1970s, when Department of Māori Affairs loans enabled horticultural development by some Māori trusts and incorporations.²⁹⁵ However, these successes are isolated experiences, unlikely to be replicated, especially since the Crown has failed to provide financial assistance since the 1970s.²⁹⁶ No further significant commercial development of Māori land has occurred in the region in the 25 years since the Crown has ceased providing financial assistance. This is a significant breach of the principles of active protection and equity.²⁹⁷
- ▶ Tauranga Māori still struggle to find any form of finance to develop their lands, at a time when intensive land development elsewhere has substantially raised land values. This has become a significant cause of Tauranga Māori selling their lands. The Crown failure to assist with development finance is a significant breach of its Treaty obligations.²⁹⁸

3.7.2 Crown submissions

The Crown submitted the following:

- ▶ The Crown accepted that Māori had a right to develop their lands, but submitted that ‘the Government has discharged any obligation it may have had in that regard by facilitating land development through various legislative mechanisms as well as providing financial support.’²⁹⁹
- ▶ Māori faced similar problems obtaining finance whether they held customary or individualised title. In both cases private institutions have been reluctant to lend.³⁰⁰ Māori title did make it difficult to access State-finance schemes, such as the Advances to

291. Document U13, pp 36, 40–41

292. Ibid, pp 36, 39

293. Ibid, p 39

294. Ibid

295. Ibid, p 43

296. Ibid; paper 2.660, p 9

297. Paper 2.659, pp 18, 21

298. Document U13, pp 43–44

299. Document U26, p 51

300. Ibid

Settlers loans, but Māori did have access to other State sources; for example from 1921 the Native Trust Board could provide advances secured by mortgage of Māori freehold land.³⁰¹

- ▶ The policy of land development commenced from 1929 was undertaken in good faith. The land development schemes were ‘considered to be the most viable option at the time and there is little evidence that had any other model been adopted, physical development would have taken a more economically efficient and faster course.’³⁰²
- ▶ There is insufficient evidence to determine how the land development schemes were represented to local Māori.³⁰³ Regardless, ‘it appears the schemes were successful in developing the land to a state which could be utilised by the owners.’³⁰⁴ The schemes also aided the retention of Māori land.³⁰⁵ The Mangatawa–Pāpāmoa Incorporation land, for example, is still ‘held by the relevant iwi/hapu today, without alienation and has in fact continued to benefit from the original development scheme by way of successful farming enterprises.’³⁰⁶
- ▶ Advances made available under the Māori Affairs Act 1953 have allowed Tauranga Māori to undertake very successful development of their lands.³⁰⁷ While multiple ownership is an ongoing problem, ‘the Government has fulfilled its obligations to facilitate development in the provision of legislative mechanisms such as trusts and incorporations, which allow Māori to amalgamate and consolidate their lands to provide viable economic units.’³⁰⁸

3.8 TRIBUNAL DISCUSSION, ANALYSIS, AND FINDINGS

We must assess whether the Crown has provided Tauranga Māori with adequate assistance in terms of legislation, policy, finance, and training, to enable them to develop their lands between 1886 and 2006. Although the claimant and Crown submissions have both concentrated on the early land development schemes and their aftermath, we must assess those schemes within a wider context: in addressing our overall question, we must examine not only the Crown’s efforts to aid Māori through the development schemes, but also closely examine what assistance the Crown has provided before and after.

301. Document U26, pp 49–50

302. Ibid, p 56

303. ‘United Nations International Convention on the Elimination of all Forms of Racial Discrimination’, 16 May 2006 (doc U24(a), app, p 19)

304. Document U26, p 61

305. Ibid, p 59

306. Ibid, pp 61–62

307. Ibid, pp 50, 55

308. Ibid, pp 64–65

Claimants and the Crown were broadly agreed that Tauranga Māori have a Treaty right to develop their land.³⁰⁹ As we have seen, however, beyond this initial point of agreement their positions were fundamentally at odds. The claimants asserted that the Crown's sporadic assistance had never been sufficient to discharge a particular obligation to assist Tauranga Māori that stemmed both from the raupatu and from the imposition of an alien form of tenure with debilitating effects on land development. The Crown did not directly address this contention. It argued only that its legislative regimes and financial support were sufficient to discharge whatever obligations it may have had.

As outlined in the introduction to this chapter, the central North Island Tribunal has already discussed in detail how a right of development is inherent in the rights of property guaranteed to Māori in article 2 of the Treaty. In essence, Māori have the right to develop their properties, and particularly to receive the assistance of the Crown, where the Crown has created unfair barriers to participation in development. Further, Māori have the right to a sufficient land and resource base to develop, and the right to decide when and how to do so.³¹⁰

In fulfilling its part of the Treaty exchange by which Māori and Pākehā would both gain mutual benefit from the Treaty, the Crown is not obliged to ensure the success of Māori. It is, rather, obliged to establish a framework within which Māori can prosper, by taking reasonable steps to actively protect the ability of Māori to access development opportunities, as *iwi* and *hapū* if that is their wish, on an equal basis with other sectors of society.³¹¹ Therefore the crucial Treaty principles applicable to our question are those of mutual benefit, options, and equity, supported by the duty of active protection.

Any findings that we make on land development in light of these standards also have to be seen against the background of land alienation, given our earlier finding in chapter 2 that the Crown purchased and encouraged the private purchase of so much Māori land in Tauranga that the claimant *iwi* and *hapū* no longer retained a sufficient endowment for their future welfare. Well before the mid-twentieth century, most Tauranga Māori – though proud possessors of scattered fragments of land – could no longer earn a living from that land. And, as we further discuss in chapter 9, most had abandoned the attempt and gone to earn a living on the new wharves, in industry in Tauranga and other cities, and public works projects in and beyond the district.

We also make clear at the outset that we agree with claimant counsel that the Crown had a positive obligation under the Treaty to assist Māori in the development of their lands. This is particularly the case in Tauranga, where so little Māori land remained by the twentieth century, and where what remained was held under an introduced form of tenure unilaterally imposed by the Crown. Drawing on the findings of the stage 1 report, we reiterate

309. Document U13; doc U26, p 51

310. Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 912–913

311. *Ibid*, pp 896, 913, 948

3.8.1

that this form of tenure rendered the land of Tauranga Māori susceptible to alienation, and greatly hindered their efforts at land development. The Crown therefore had an obligation to assist Tauranga Māori to overcome the effects of the disadvantage it had created for them. In subsequent sections, we discuss the Crown's efforts to do so.

3.8.1 Crown assistance for Tauranga Māori land development, 1886–1929

Did the Crown provide Tauranga Māori with adequate levels of assistance in terms of legislation, policy, finance, and training, to enable them to develop their lands between 1886 and 1929?

(1) Discussion of the facts

We have outlined the persistent attempts made by Tauranga Māori to develop their remaining lands in the late nineteenth and early twentieth centuries. There is no doubt that Tauranga Māori wanted to develop their arable lands as commercial farming operations, and some others of their forested lands for milling. Further, they faced unrelenting pressure from the Crown and local bodies to either use their lands, or lose them. It is also notable that, in their efforts to farm, Tauranga Māori chose to maintain traditional forms of communal organisation, and that they largely tried to ignore the actual titles created by the Crown's imposed system of tenure.

As we have seen, the late nineteenth and early twentieth centuries were when new forms of farming became viable – changes which were to dominate land use in Tauranga for several decades. Success or failure to engage with this new economy at this formative stage therefore played a major role in shaping economic fortunes for a considerable period. At this time, the State became heavily involved in providing the finance and training necessary to encourage settlers into this economy. We have noted that the particular need to improve Māori access to development capital was stressed to the Crown by Rees and Carroll (in 1891), and Stout and Ngata (in 1907). Stout and Ngata also emphasised the need for Māori to have training in developing their lands. Two successive government inquiries thus identified the major barriers to Māori success in developing their lands and participating in the new economy: namely, a lack of finance and a lack of training.

We have also seen that there was an awareness of these barriers in Tauranga. Te Mete Raukawa, for example, tried to sell land in the hills in order to generate cash to buy and develop land nearer the coast and the town, but the Crown appears to have been unwilling to assist (see section 2.3.4). Hori Ngatai, too, indicated to the Stout–Ngata commission a willingness to sell some blocks of land for the specific purpose of allowing his people to develop others. Ngatai knew development capital was critical to participating in the emerging small-farming economy of the late nineteenth and early twentieth centuries. However,

as discussed in chapter 2, very few Tauranga hapū retained sufficient land to be able to easily contemplate any further alienation. This was repeatedly made known to the Crown.

The Crown was, therefore, well aware of the two key obstacles hampering Tauranga Māori land development. Yet, in our inquiry, the Crown's final submissions pointed only to the ability, noted by Ngata, of incorporations to access State funds from 1906. The central North Island Tribunal concluded that incorporations were initially expensive to establish and operate, had limited access to lending finance, and also required the owners to relinquish control over the land. They were not mechanisms that facilitated Māori landowners farming their own land.³¹² Further, the evidence before us suggests that such incorporations were not formed in Tauranga during this period, and indeed for very many years after. We also have no evidence of any State assistance to train Māori during this period, other than some agricultural instruction to pupils at native schools.

These very limited provisions pale into complete insignificance compared to the funds available to Pākehā under legislation such as the Advances to Settlers Act 1894 and the Discharged Soldiers Settlement Act 1915. Māori were, in practice, excluded from accessing those crucial funds. Rather, as the central North Island Tribunal found, Māori were 'effectively required . . . to use dwindling moneys from Maori funds to finance their farm development'.³¹³

The Mohaka ki Ahuriri Tribunal found, on the basis of such considerations, that Māori in that area lacked access 'to sufficient capital and technical assistance to maintain viable farms'. The Crown had therefore, it found, breached the principles of mutual benefit, the Māori right to development and, possibly, the principle of equity.³¹⁴ The central North Island Tribunal was in no such doubt on the latter point, finding that the Crown's failure 'to provide access to state rural lending equivalent to that made available to other sectors of the community' was a breach of both article 3 and the principle of equity.³¹⁵

(2) Findings on Crown assistance for Tauranga Māori land development, 1886–1929

We reiterate the above-mentioned findings of previous Tribunals, in particular those of the central North Island Tribunal. The Crown had identified that Tauranga Māori faced similar barriers in the development of their lands as Pākehā settlers, only exacerbated by problems with tenure and title that were of the Crown's making. The Crown was, therefore, under a clear obligation to ensure that Tauranga Māori had at least equal access to State measures designed to help other sectors of the community – particularly since, as we noted at section 3.2, the Crown had earlier been instrumental in depriving Tauranga Māori of some of their

312. Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 979–980, 984

313. *Ibid*, p 992

314. Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington; Legislation Direct, 2004), vol 2, p 500

315. Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 1000

3.8.2

potentially most productive lands (including the area that was later to become the Athenree Forest), during the raupatu and the Te Puna–Katikati ‘purchase’.

Land development during this critical stage in the transition towards new forms of farming largely determined economic success then and for some time after. But Pākehā farmers received State subsidies and training while Māori farmers were left to struggle. The Crown failed in its obligation to actively protect Tauranga Māori in the right to develop their lands. It also breached the principle of equity and the plain meaning of article 3 by failing to provide Māori with the same rights enjoyed by other citizens. This failure by the Crown to assist Tauranga Māori to develop their lands before 1929 created significant and ongoing disadvantage and thus breached the principle of mutual benefit: Tauranga Māori were significantly prejudiced by their resultant inability to compete, and were also placed at a considerable competitive disadvantage in trying to develop their lands over ensuing decades.

Following the eventual change of policy after 1929, Ngata was to write:

nearly ninety years after the Treaty of Waitangi, [Parliament] assumed direct financial responsibility for a policy of encouraging and training the Maoris to become industrious settlers under Government direction and supervision. It was the scheme that Carroll and other leaders of the Maori people pleaded for thirty-eight years earlier.³¹⁶

3.8.2 Early land development schemes

Were the early land development schemes consistent with the Crown’s Treaty obligation to assist Tauranga Māori to develop their land?

(1) Discussion of the facts

The land development schemes were a significant, and sometimes successful, Crown initiative to enable Tauranga Māori to participate in farming on their own lands. We heard no claims about the Mangatawa and Pāpāmoa schemes, and indeed these seem to have been good examples of successful land development in which the Crown played a crucial part. We note, too, that the claimants and the Crown agreed that even the early land development schemes, which were greatly hampered by depression and war, nevertheless had some positive outcomes for Tauranga Māori. They provided employment during a time of economic crisis, and they did help develop the land.³¹⁷ We accept the Crown’s point that the schemes helped retain and protect land in Māori ownership.

316. Apirana T Ngata, ‘Maori Land Settlement’, in *The Maori People Today: A General Survey*, edited by ILG Sutherland (Christchurch: Whitcombe & Tombs Ltd, 1940), p 144

317. Document U34, pp 35–36

However, the Crown's Treaty obligations did not rest with active protection and the right to development. As originally conceived, the development schemes involved a partnership between the Crown and groups of owners and their wider communities. The Crown provided capital and expertise, and the owners temporarily relinquished many of their rights regarding their land. We do not, however, think that they thereby gave up the right to be consulted over the management of their lands, and to participate in decision-making over their lands. The Crown also had an obligation to involve Tauranga Māori in its land development programmes, not just as day labourers on the land development schemes, but also in management.

The Crown later acknowledged as much by promoting the formation of owners' committees to advise officials on how communities wanted their lands to be developed. But the Crown did not adequately consult owners over the formation of the early development schemes at Kaitimako and Ngāpeke and nor did it involve owners in their management. Indeed, though evidence of precisely how the schemes were 'sold' to owners is sketchy, we agree with the claimants that it is most unlikely that Tauranga Māori would have agreed to place their lands under Crown control if they could have foreseen how completely, and for how long, their rights would be abrogated. They repeated this refrain during the two decades following the scheme: what they had been promised was not what they had received.

As we have discussed, these schemes were entirely run by a bureaucracy, very few of whom were Māori, let alone Tauranga Māori. In some key respects, officials commendably restrained themselves from implementing some of the more draconian aspects of the legislation. For example, we found no evidence that owners were treated as trespassing when they entered their own lands. Owners were also able, in practice, to withdraw lands from the schemes. Nevertheless, officials usually prescribed, down to the finest details, matters relating to farm development and operations. These officials also consistently discounted the ability and capacity of Tauranga Māori to farm their own lands, to understand the schemes' financial affairs, and even to control the distribution of their own profits. As owners pointed out at the time, the Crown's insistence on paying dividends to individuals resulted in the money providing virtually no benefit to the owners and their wider community.

The Crown has argued that it was not responsible for the schemes lasting so long, and that it was the Depression and the Second World War which delayed the schemes' settlement. We agree that these events played a major role in delaying settlement. We also discount, with only minor reservations, the argument by some claimants that undue amounts of debt were accrued which delayed the return of the schemes. Large quantities of State funds were provided to develop the land. Labour costs, for instance, were either subsidised from the start, or the associated debts later written off.

Nevertheless, we find that Crown control was maintained for longer than it could and should have been. This was due to officials' belief (outlined above) that the lands' owners

3.8.2(1)

were incapable of farming as well as the State. Therefore, owners could not be entrusted with the task of recouping the State's expenses. This belief also underpinned the unnecessary degree of control maintained by the Crown over the development schemes. For example, the chief supervisor, A F Blackburn, stated in 1947, when other officials on the ground felt that the Kaitimako land was ready for settlement, that '[t]he owners have shown no desire to work their own land and I do not consider they have anyone that could do better than [the] Dept, or even as well.'³¹⁸ Clearly, the original goals of developing the land for the benefit of the owners, and cultivating the owners' farming ability, had become secondary to the goal of pursuing the perceived national interest in land development.

The officials' belief was unjustified. Tauranga Māori had been entirely capable of farming their lands in the early days of colonisation and, as we have noted, by the early 1950s many, such as the members of the Rangataua Young Farmers Club, were again recognised as knowledgeable farmers. If training in new farming techniques had been provided in the intervening period, we see no reason whatsoever why Tauranga Māori would not have successfully managed their lands. Instead, as we have noted, officials like Tipi Ropiha lamented the lack of training that had been provided on the development schemes as of 1947.

We also note the concerns of the Waiheke Island Tribunal about how farmers were chosen for development schemes. While they acknowledged that the stated intention of the Crown's legislation, reiterated in the Māori Affairs Act 1953, had been 'to promote the occupation of Māori freehold land by Maoris and the use of such land by Maoris for farming purposes', they posed the question, 'which Maoris?' They accepted there was the vexed question of whether preference should be given to individual farmers or a corporate Māori group, but pointed to a more fundamental problem: namely that the law simply specified 'Maori':

No distinction is drawn between Maoris who are owners, or Maoris of the same kin group or tribe, or Maoris from other areas. There is no requirement that an applicant for settlement have the precedent support of the local tribal group or that the local group should be involved.³¹⁹

That said, they did acknowledge that consultation with owners improved over time.

The Crown has accepted that the procedures for returning lands to owners were not optimal.³²⁰ However, it argues only that delays after it had been decided to settle the schemes were largely due to the owners nominating unsuitable settlers. We disagree. These delays were fundamentally a reflection of the unresolved tension between the rights of the owners

318. A F Blackburn, annotation, 15 April 1947, on JJ Dillon, deputy registrar, to head office, Native Department, 10 April 1947 (doc A38(d), p 1280)

319. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Waiheke Island Claim*, 2nd ed (Wellington: Government Printing Office, 1989), p 17

320. Document U26, p 59

and those of the prospective occupiers. This partly reflected the ongoing problem of fractionating titles. We note that the Crown did not pursue consolidation of titles in these development schemes, as originally planned by Ngata. We accept that consolidation never met with much more than temporary success, since no sooner was it achieved than succession restarted the process of fractionation. Trusts and incorporations manage problems associated with multiple ownership of Māori land far more effectively. But such solutions were not made available to manage the lands returned at Kaitimako or Ngāpeke. Instead, the Crown persisted in the assumptions that land should be returned to individual settlers. It failed to consider alternatives, such as incorporation, and it maintained a fixation with dairying as the model land use. In the case of Ngāpeke, this ignored the stated wishes of some owners to develop their land as small farms. Where land quality allowed, this use would surely have been more successful than dairying.

(2) Findings on early land development schemes

The early development schemes were genuine endeavours by the Crown to assist Tauranga Māori to develop their lands. Though such endeavours were well overdue, this should not detract from the Crown's sincere efforts to assist land development in Tauranga Moana, and ameliorate the effects of the Depression.

That said, it is not clear that the Crown adequately involved local owners in the decision to establish the early development schemes in the Tauranga area. In particular, on the basis of the evidence available to us, it seems to us unlikely that the probable duration and impact of the schemes was fully explained to owners. However, it must be borne in mind that this was a time of crisis, and that Crown officials believed they were acting in the best interests of land owners. Once the Depression eased, this justification for exercising such overt state control did not apply to the same extent, and we consider that the Crown maintained a degree of control over the Kaitimako and Ngāpeke scheme lands which was unnecessary: it was not essential to achieving the purpose of developing these lands, and it hampered the training of their owners. It is also arguable, as we have seen, that a reluctance to relinquish this control unjustifiably extended the duration of the schemes, albeit fairly briefly. The Hauraki Tribunal considered whether similar State intervention in that region might be 'so maladroit that it amounts to a failure of the duty of active protection' but did not, in the end, make any finding of Treaty breach.³²¹ In our view, while on the one hand 'ineptitude in planning and excessive paternalism in management', as Alan Ward has framed it,³²² is not a clear Treaty breach, on the other hand the Crown's exclusion of owners from the management of their lands is not a clear endorsement of the principles of partnership and options. Nevertheless, we cannot find the Crown in breach of the Treaty for attempting to carry out

321. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 877

322. Ward, *National Overview*, vol 1, p 112

3.8.3

a policy clearly aimed at assisting Tauranga Māori, however clumsily and ineptly some officials may have acted at particular times. Therefore, we make no findings of Treaty breach regarding the early development schemes in Tauranga Moana.

We do stress, however, that the development schemes at Kaitimako and Ngāpeke did not entirely succeed in overcoming the competitive disadvantages faced by Māori land in multiple ownership. Further, most owners of the Kaitimako and Ngāpeke lands suffered a degree of harm as a result of the development schemes. They were effectively excluded from any meaningful management of their lands, while seeing very little financial return from them, not only for the duration of the schemes, but for many years after, as the very few owners who were able to occupy the lands were placed on long-term leases. These schemes were, to reiterate, carried out on the last substantial landholdings of the respective owners, who greatly needed them to provide a more substantial contribution to their wellbeing.

3.8.3 Legislative and policy assistance: post-war period

Has the Crown provided Tauranga Māori with adequate levels of assistance, in terms of legislation, policy, finance, and training, to enable them to develop their lands in the post-war period?

(1) Discussion of the facts

The claimants and Crown are agreed that the Crown has assisted with some successful land development in Tauranga Moana in the post-war period. In particular, loan finance from the Department of Māori Affairs enabled some extremely successful development during the late 1970s and early 1980s. Such developments have indisputably aided some hapū of Tauranga Moana in providing capital, employment, and other social and economic benefits to their communities. Their very success, however, prompts the question of whether the Crown has been remiss in not offering equivalent assistance at other times, especially since the claimants argue that Tauranga Māori are still today struggling to gain any access to the development finance that was key to such success.³²³ This is the key contention that we address here.

It is clear that, since the Second World War, Tauranga Māori have continued to face the intense pressure to use their lands or lose them that we documented for earlier periods. Much of this pressure stemmed directly from Crown policy and legislation that prioritised the most efficient and economic use of land in the service of the State. More recently, some of this pressure has been alleviated by the significant statutory protections of Te Ture

323. Document U13, pp 43–44

Whenua Māori Act 1993. However, significant pressure to alienate land also stems from rapidly rising land values, and the associated rating burden.

We accept the claimants' argument that, for these sorts of reasons, Tauranga Māori will continue to lose their land unless they can find ways to develop it. We also agree with the claimants that, in the post-war period, Tauranga Māori have continued to face substantial barriers to developing their lands. These barriers are, namely, the increasing fractionation of owners' interests which complicate land administration, and an inability to access development finance. We find that the Crown did not provide sufficient development assistance to Tauranga Māori during the critical decades of the 1950s and 1960s. The only major programme of assistance contemplated in that time was abandoned almost from the outset. Yet there was no sign that the problems it was designed to ameliorate had been solved.

We are faced with the complex question of whether the Crown has subsequently fulfilled its obligation to provide a legislative and policy framework that enables Māori to develop their lands. We accept that incorporations and trusts have allowed Māori to form vehicles which can consolidate their interests for development. We also note, however, that they are generally corporate bodies responsible to that body's shareholders rather than to iwi and hapū. Indeed, as we noted in the case of the Poripori–Kumikumi incorporation, overlapping hapū membership has sometimes inhibited the plans of individual iwi or hapū. It is a problem that the Waiheke Island Tribunal commented on in relation to the Waiheke Island development scheme. Writing in 1987, it said, 'In more recent years the continued requests of Maoridom for tribal recognition have been more graciously received but the tribal principle is not perfected in law or official policy and is not given the attention it needs in practice.'³²⁴

The great merit of trusts and incorporations is that they are a vehicle which can effectively promote land development, despite many of the ongoing problems associated with administering Māori land. It must not be forgotten that those administrative issues still remain, and that the trustees who must deal with them are often voluntary, with few resources with which to begin developing the land. The trustees deal with access issues, fragmentation, successions, locating and contacting many owners, as well as the costs of court actions to administer and develop the land. While those problems apply to a greater or lesser extent to all trusts and incorporations, as Mahaki Ellis' evidence makes clear, some particular and intractable administrative issues still result from the multiplication of fractionated interests. We regard this as an unfortunate consequence of the original imposition of multiple ownership, for which we see no ready solution.

The various trust mechanisms introduced by Te Ture Whenua Māori Act 1993 offer more flexibility and scope to hold land collectively in different ways. Examined as a whole, then, trusts and incorporations, in that they provide collective management structures for the

324. Waitangi Tribunal, *Report on the Waiheke Island Claim*, p 20

3.8.3(2)

land, are a positive and empowering mechanism. Nonetheless, they are inadequate by themselves as a means of addressing the multitude of problems that beset trustees. We urge the Crown to work more actively with landowners to overcome these problems.

The most pressing remaining issue is the ongoing problem of access to development finance. On the limited evidence available to us, it appears that there are no legislative barriers to either incorporations or trusts gaining development finance on the open market. In this sense, the Crown has enabled solutions to the problem. Yet we are concerned that we have been told that many Tauranga Māori have not been able to gain this finance.

This raises the question of whether public finance is available to redress this problem. As noted above, Te Puni Kōkiri has very limited programmes for development. The Crown referred us to the Māori Potential Fund as one possible source of public finance; yet we note that this has an annual budget of only \$23 million for the entire country, and serves a very wide range of purposes.³²⁵ It is true that housing may now be the appropriate form of development for many areas of Māori land in Tauranga. (In chapter 9 we discuss whether the Crown is providing adequate assistance to house Tauranga Māori.) However, this is certainly not true of all areas of Māori land, some of which require other forms of development assistance. We would have greatly liked to hear much more detailed evidence on this matter from the Crown. On the limited evidence available, it seems that, in essence, only training and mentoring is available, and that the Crown is no longer in the business of providing loan finance. It is difficult to avoid the conclusion that this has greatly contributed to the fact that many Tauranga Māori have been quite unable to develop their lands during the last 25 years, and have watched in understandable frustration as development proceeded apace all around them.

(2) Findings on legislative and policy assistance: post-war period

One of the major development constraints on the iwi and hapū of Tauranga Moana throughout the latter half of the twentieth century has been lack of finance options. Māori Affairs loans in the second half of the century were a generally positive attempt to redress this gap, but are no longer available. Such finance has proven the key factor that has enabled some of the hapū of Tauranga Māori to re-establish an economic base.

We agree with the claimants that:

It cannot be the case that the Crown can simply sit back and watch while Maori land held under customary values fails to develop because private finance is not available. This would be in breach of Article 2 obligations of active protection and Article 3 obligations of equal treatment.³²⁶

325. Te Puni Kōkiri, 'Māori Potential Fund', Te Puni Kōkiri, <http://www.tpk.govt.nz/en/services/mpf/> (accessed 22 March 2010)

326. Paper 2.659, p 18

The Crown has made efforts to remove legislative barriers to the provision of private finance through the development of trusts and incorporations. It has submitted that the current legislative and policy framework is sufficient to discharge its obligations in this respect. However, we would have liked more evidence to address the issue of why Tauranga Māori have, on their own account, remained unable to access adequate amounts of private finance. We were also not at all impressed with what the Crown did tell us about its policies for providing public finance.

While not definitive, the evidence provided strongly suggests that the Crown is once more renegeing on its Treaty obligations, and may be in breach of the principles of active protection, mutual benefit, and equity. We urge the Crown to once again explore creative solutions to the problems of financing Māori land, perhaps with suspensory or interest-free loans, or by encouraging assistance through existing banks – particularly as the evidence before us suggests that private lending institutions remain reluctant to finance multiply owned Māori land in Tauranga Moana. We also urge the Crown to work more closely with the trustees and management committees of Tauranga Māori lands, to lessen the administrative burdens that continue to flow from the Crown-imposed system of title.

3.9 MAIN CONCLUSIONS AND FINDINGS IN THIS CHAPTER

Our main conclusions and findings are as follows:

- ▶ The Crown is obliged to provide Tauranga Māori with legislative, policy, financial, and training assistance to enable them to develop their lands that is at least equal to that provided to the general community. Where the Crown has created impediments to Māori land development, such assistance may need to be greater than that provided to the general community.
- ▶ In the period from 1886 to 1929 the Crown provided sustained assistance to the general community to enable the development of new forms of farming. However the Crown provided little or no assistance to Māori, despite having created impediments to Māori land development, particularly in the form of cumbersome land tenure (and despite having already deprived Māori of much of their potentially most productive land prior to 1886). The Crown therefore placed Māori at a considerable competitive disadvantage, in breach of the principles of active protection and equity.
- ▶ The Crown's land development schemes between 1929 and 1975 were a commendable if belated effort to enable some Tauranga Māori to develop their land, and we make no finding of Treaty breach in relation to them. However, they did not in the main succeed in overcoming the competitive disadvantages faced by Māori land in multiple ownership. We also note that owners of the Kaitimako and Ngāpeke lands were effectively

excluded from any meaningful management of their lands under the scheme, while seeing very little financial return from them. These two schemes were carried out on the last substantial landholdings of the respective owners.

- ▶ Since 1975, the Crown's responses to problems of Māori land development have focussed on the provision of trusts and incorporations to facilitate access to private finance. Other than a brief period when loans were provided by the Department of Māori Affairs, the Crown has provided only limited public finance. At the same time, it is clear that difficulties in accessing private finance persist. If Tauranga Māori do not gain better access to finance, they are in danger of losing more land. To avoid breaching the principles of active protection, mutual benefit, and equity, the Crown needs to find some way of assisting Tauranga Māori to realise their aspirations for holding on to their land and developing it.

CHAPTER 4

PUBLIC WORKS ACQUISITIONS, 1886–2006

The taking of land through the Public Works Act was a subtle form of confiscation. The use of a pen was devastating over the Maori wellbeing causing an overwhelming feeling of helplessness and despair . . . The feeling of hitting a brick wall time and time again.

Tahi McLeod, Ngā Pōtiki¹

4.1 INTRODUCTION

After the 1860s wars and raupatu, the Crown actively pursued a policy of purchasing land and encouraging settlers into the Tauranga district. The new arrivals demanded that central and local government improve roads, communications, and other services, and this pressure provided the initial momentum for public works projects. While infrastructure development proceeded slowly at first, the pace picked up markedly in the twentieth century. The decision to build a deep-water port at Mount Maunganui in 1950 marked the start of 30 years of public works on a grand scale. Motorways were built, land reclaimed in the inner harbour for sewerage works, three hydroelectric power stations constructed on the upper Wairoa, and various other large infrastructure works completed. In the twenty-first century, with Tauranga City one of the fastest growing urban districts in New Zealand, public works projects remain vitally important to its future development.²

But the claimants argue that the price they have paid for the development of Tauranga's infrastructure is too high. They say that land has been compulsorily taken from them under a public works regime that – far from protecting Māori interests, as required under the Treaty – has in fact neglected their interests, suppressed their cultural values, and impoverished iwi and hapū. The Crown, on the other hand, defends the use of compulsory acquisition as a legitimate exercise of government or kawanatanga. As Tauranga is a relatively

1. Tahi Makarauri McLeod, brief of evidence, undated (doc 14), p 4

2. See chapter 5 for more about population growth and urbanisation in Tauranga Moana; likewise chapters 7 and 8 for the effects of public works on the environment and cultural heritage of tangata whenua.

small and increasingly urbanised area, the Crown argues that there has been an unavoidable impact on local Māori.

To explore these claims, we begin by setting out, in table 4.1 below, a summary of the different groups, their public works claims and the amount of land they lost to public works. There follows a brief introduction to the history of New Zealand's public works regime. We then look at how public works legislation was applied to Māori land in Tauranga Moana, dividing our narrative into three periods: 1886–1945, 1946–80, and 1981–2006. For each period we give an overview and a number of case studies which span different types of work and demonstrate the workings of different aspects of the legislation. We have selected these cases because, in many senses, they are representative of all the claims, revealing common patterns in public works policy, practice, planning, and procedures.

Next, we return to the issues of concern identified by claimants, providing a summary of the legal submissions by claimants, the Crown, and local authorities. In light of these submissions and the evidence presented to us, we then consider what the Crown's Treaty responsibilities were towards Māori with regard to the public works regime, and whether the Crown made reasonable efforts to meet those responsibilities. To answer this, we examine and make findings on matters of general principle and the actual mechanics of the public works regime, covering:

- ▶ notification, objection, and consultation processes;
- ▶ consideration of alternative forms of title and sites;
- ▶ the protections afforded to significant sites;
- ▶ compensation;
- ▶ offer-back;
- ▶ the Crown's delegation of compulsory acquisition powers to local authorities; and
- ▶ the current public works regime.

4.1.1 Summary of claims

Before beginning the history of public works in Tauranga, we set out a summary table of the public works claims presented to us. The detailed discussion and case studies which follow are drawn from the claims summarised here. The table includes the total amounts of land taken from claimant groups, using figures cited in their respective closing submissions.³ We

3. The specific references are as follows, in tabular order: [Matakana hapū] counsel for Wai 228 and Wai 266 claimants, closing submissions, undated (doc U23), p 25; [Ngā Pōtiki] counsel for Wai 717 claimants, closing submissions, 24 November 2006 (doc U2), p 57; [Ngāi Te Ahi] counsel for Wai 370 claimants, closing submissions, undated (doc U33), pp 17–19; [Ngāi Tūkairangi] counsel for Wai 211 and Wai 668 claimants, closing submissions, undated (doc U12), pp 7–8; [Ngāti Hangarau] counsel for Wai 672 and Wai 503 claimants, closing submissions, undated (doc U38), pp 5–6; [Ngāti Hē] counsel for Wai 342 claimants, closing submissions, 24 November 2006 (doc U7), pp 19–20, 22, 26–27; [L Grey] counsel for Wai 465 claimants, closing submissions, undated (doc U19), p 5; [Ngāti Hinerangi] counsel for Wai 1226 claimants, closing submissions, 5 December 2006 (doc U24), pp 37, 46, 49; [Ngāti Kāhu] counsel for Wai 636 and Wai 1061 claimants, closing submissions, 24 November 2006 (doc U8), p 3;

note that, in some cases, there is uncertainty about the total amount of land taken and that more than one group usually had interests in the same area affected by the work, so there is some repetition of takings. Only those public works acquisitions on which we were given evidence are represented here and, as such, they are almost certainly an underestimate.

4.1.2 Background to public works in New Zealand

The colonists brought with them to New Zealand a basic set of ideas and principles about public works. British public works legislation empowered the State to acquire private property, by compulsory means if necessary. Underlying this legislation was an assumption that, on occasion, private property rights should give way to the common good. For compulsory acquisition to be justified, three important safeguards were essential: first, the land was only to be taken for public use or benefit; secondly, there would be fair compensation for the land taken; and finally, consent was required (not from the individual landowner, who would not always agree with compulsory acquisition, but collectively from a representative body such as Parliament).⁴

In Britain, the precise extent and nature of ‘public works’ was not defined in the legislation. Over time, the term came to cover a widening range of activities – roads, drainage, waterworks, schools, railways, land reclamation, harbour development, and more. Historically such activities were undertaken by local authorities, the church, and increasingly (once the Industrial Revolution got underway) by wealthy individuals. The State took a leading role in acquisitions during war or other emergencies, but during peacetime it has been described as a ‘neutral umpire’ between parties.⁵ It also enacted legislation (such as the Land Clauses and the Railways Clauses Consolidation Acts (UK) of 1845) that codified landowners’ right to compensation, notification, and objection, and required independent arbitration of compensation disputes.

[Ngāti Kuku – Wai 947] counsel for Wai 211 and Wai 668 claimants, closing submissions, undated (doc U14), pp 47, 57, 60–61, 63, 69; [Ngāti Kuku – Wai 489] counsel for Wai 489 claimants, amended closing submissions, 4 December 2006 (doc U20(a)), p 40; [Ngāti Motai and Ngāti Mahana] counsel for Wai 255 and Wai 1340 claimants, closing submissions, 24 November 2006 (doc U11), pp 49–51, 55–56; [Ngāti Pūkenga] counsel for Wai 210, Wai 637, and Wai 751 claimants, closing submissions, 10 December 2006 (doc U34), pp 43–48; [Ngāti Ruahine] counsel for Wai 362 claimants, closing submissions, 24 November 2006 (doc U1), pp 55, 57, 60, 64, 66, 74, 78–79, 81, 83; [Tauwhao Te Ngare] counsel for Wai 755 and Wai 807 claimants, closing submissions, 24 November 2006 (doc U4), pp 12–13; [Wairoa hapū] counsel for Wai 42(a) claimants, closing submissions, undated (doc U37), p 16; [Waitaha] counsel for Wai 664 claimants, final closing submissions, 12 December 2006 (doc U5(a)), pp 11, 13; [Kakau whānau] counsel for Wai 1355 claimants, closing submissions, 4 December 2006 (doc U21), p 11; [Ngāi Te Rangī] counsel for Wai 540 claimants, closing submissions, undated (doc U31), p 64

4. M Taggart, ‘Expropriation, Public Purpose and the Constitution’, in *The Golden Metwand and the Crooked Cord: Essays on Public Law in Honour of Sir William Wade QC*, edited by C Forsyth and I Hare (Oxford: Clarendon Press, 1998), pp 91–96

5. Cathy Marr, *Public Works Takings of Maori Land, 1840–1981*, Rangahaua Whānui Series (Wellington: Waitangi Tribunal, 1997), pp 16–18

Iwi, hapū, or whānau	Area lost (acres, roads, perches)	Public works
Matakana hapū	371 2 33.6	Harbour works; roads; Matakana School site
Ngā Pōtiki	421 0 23.7	Mangatawa quarry and reservoir; East Coast Main Trunk Line; Pāpāmoa rubbish dump; rifle range; school site, Kopukairoa communications tower; sewerage pipeline through urupā Pāpāmoa 2B, gas pipeline; oxidation ponds Rangataua Harbour
Ngāi Te Ahi	704 2 9.4	Motorway; water catchment; educational purposes – Pāpāmoa school and polytech
Ngāi Tūkairangi	422 2 21.1	Airport; port takings for 'better utilisation'; East Coast Main Trunk Line; motorway; Matapahi School
Ngāti Hangarau	284 3 23.9	East Coast Main Trunk Line; hydroelectric project
Ngāti Hē	879 0 0	Maungatapu School; Tauranga–Te Maunga motorway; Hairini substation; water catchment area; Ōtawa scenic reserve
Linda Grey and whānau (Ngāti Hē)	103 0 0	Hairini substation
Ngāti Hinerangi	Figures lacking	Kaimai tunnel (eastern side within district); telecommunications tower, Te Weraiti; harbour works
Ngāti Kāhu	9 0 0	Pāpāmoa School site; Mangatawa Quarry
Ngāti Kuku	301 2 8	Airport and aerodrome; rail and road; harbour bridge; 'better utilisation'; animal and scenery preservation; ballast pit; also harbour port and marine figures varying from 129 acres 68 roads 8 perches to 140 acres 1 road 29 perches

Ngāti Motai and Ngāti Mahana	177	3	26.6	Mangapapa hydroelectric scheme (Kaimai blocks); roading and scenery preservation – Ongaonga block
Ngāti Pūkenga	478	2	39	Ōtawa scenic reserve; Tauranga–Te Puke Road; interests in Kopukairoa
Ngāti Ruahine	232	3	15.3	Roading; motorways; Poike quarry; Wairoa River catchment; Bay of Plenty Polytechnic; Tauranga 4 High School
Tawhao Te Ngare	5	0	0	Kawera wildlife sanctuary
Wairoa hapū	Figures lacking			Roading realignment State Highway 2 and bridge; East Coast Main Trunk Line; Ongaonga scenic reserve
Waitaha	290	3	20	Water conservation; Ōtawa Scenic Reserve; waterworks
Kakau whānau	0	2	0	Widening State Highway 2 to Pāpāmoa (in 2006 a proposed taking)
Ngāi Te Rangī (comprising several of the hapū listed above)	2003	0	6.6	Spanning several works and individual hapū

Table 4.1: Land lost by Tauranga Māori to public works, 1886–2006

Such legislation and its principles provided a foundation, but New Zealand's public works regime then took its own course in response to the vastly different circumstances of the new colony. New Zealand's initial infrastructure needs were urgent and basic: roads and, a little later, railways. There were also some early attempts to reserve land for future public works, such as parks and public buildings in townships, and for possible military uses. It was soon recognised that, in New Zealand, the State and local authorities would have a larger role than private enterprise which 'was not able or willing to promote and develop public works in the same way as in England'.⁶ Local authorities and the provincial governments were encouraged to take responsibility for local public works and, following the British pattern, there were a number of Acts authorising specific works.

The colonists also had to decide how to approach the use of Māori land for public works. Article 2 of the Treaty of Waitangi guaranteed Māori undisturbed possession of their lands for as long as they wished. The potential for conflict between this undertaking and the State's power to compulsorily acquire land for public works was obvious. However, conflict was at first avoided, as Crown policy in the initial post-Treaty era was to buy land in advance of settlement needs. Consequently, public works were largely confined to land already purchased from Māori. If Māori land *was* used, there was usually a process of negotiation and agreement.⁷

This changed, however, under the combined impact of an increasing European population and the wars of the 1860s. Efficient military communications demanded good roads. To meet this demand, and the needs of the burgeoning population, the settler government began passing general laws on public works, such as the Land Clauses Consolidation Act 1863 and the Public Works Lands Act 1864. These Acts outlined a process of acquisitions either by agreement or compulsory acquisition, and included provisions for notification, objection, and compensation. In the case of key infrastructure works, such as road and rail (and later electricity), landowners' right to be notified, to object, and to have compensation were all greatly restricted. Crown-granted Māori land was soon brought under the public works regime, although there were some important differences in procedure.

The economic decline of the 1870s prompted the Government to set up a public works department and initiate a significant programme of public works, in the belief that public works were the key to recovery.⁸ This was to be a recurring theme for New Zealand governments. Public works were seen as vital to opening up new land for settlement and farming, and for the development of the nation. The Public Works Department soon became the largest construction agency in the country; railway construction boomed between 1870 and 1920, closely followed by road building and hydroelectric power. The electrification of

6. Marr, *Public Works Takings of Maori Land, 1840–1981*, p 20

7. *Ibid*, pp 36–37

8. RJ Noonan, *By Design: A Brief History of the Public Works Department, Ministry of Works, 1870–1970* (Wellington: Government Printer, 1975), p 34

tramways and irrigation schemes added to the growing list of public works in the first few decades of the twentieth century. Public works were set on a course of expansion which continued well into the twentieth century.⁹

4.2 PUBLIC WORKS IN THE PERIOD 1886–1945

4.2.1 Overview

Tauranga in the 1880s was still a very small, isolated township, and for a long time the growth of the district proceeded relatively slowly. Such development as there was tended towards the east of the township. Consequently, the remaining Māori ancestral lands, also located in the east after raupatu, came under increasing pressure to be used for public works (see map 4.1). The state of the roads by the end of the nineteenth century left much to be desired from the settlers' viewpoint. According to the *Bay of Plenty Times* in 1889, 'The road to Te Puke is almost Te Puke Canal. Very little more water would make the road navigable.'¹⁰ In many parts of the district, the situation was to remain little changed well into the early twentieth century. Construction of the East Coast main trunk railway, another project promoted enthusiastically for years by the settlers, eventually began in 1909, lasting through to 1922, and taking a good deal of Māori land.

Roads and rail were considered to be of such national importance that under various land and public works Acts up to 5 per cent of a land block could be taken for this purpose without compensation. The native land Acts made Māori land subject to similar (though rather harsher) provisions: at first land could be taken in this way, without compensation, for up to 10 years after title was issued by the Native Land Court, but the period was extended to 15 years in 1878 – a state of affairs that continued until 1927, when the legislation was repealed. It was a particular consequence of raupatu that Tauranga land blocks were originally granted under the Tauranga District Lands Act 1867 and did not go through the Native Land Court until they were partitioned. The effect of this, and the wording of some of the original titles, appears to have reduced the amount of land taken under these provisions. We were, however, given evidence of land for three roads constructed in the 1890s – the Rocky Cutting Road, Reid Road, and Waitao Road – across the Pāpāmoa 2 block, taken without compensation under the '5 per cent' provisions.¹¹

Following the national pattern, land was taken for an increasing variety of works in Tauranga in the first half of the twentieth century. The importance of the harbour for the growth of the town was recognised and a new Tauranga Harbour Board was created in

9. Ibid, pp 75, 86, 93

10. Evelyn Stokes, *A History of Tauranga County* (Palmerston North: Dunmore Press, 1980), p 217

11. Marr, *Public Works Takings of Maori Land, 1840–1981*, pp 63–71; David James Alexander, brief of evidence, September 2006 (doc s52), pp 20–21

TAURANGA MOANA, 1886–2006

4.2.1



Figure 4.1: Service car stuck in the mud on the Tauranga–Rotorua Road (undated)
Photographer unknown. Reproduced courtesy of Tauranga Heritage Collection (dr 6, fld 5, no 14).



Figure 4.2: Main road to Katikati under construction (undated)
Photographer unknown. Reproduced courtesy of Tauranga Heritage Collection (dr 2, fld 9, no 1).

1912 with powers of compulsory acquisition. It took Māori land from the southern end of Matakana Island in the 1920s to prevent coastal erosion and, it was believed, the consequent narrowing of the channel into the harbour. The board also took Poike land for a quarry in 1938.¹² The growth of towns in the district created the need for secure water supplies: in the 1930s, Māori land was taken for the water catchment of Te Puke township (see the case study below). An increasing interest in conservation and tourism in the 1930s was the motivation for Government interest in the islands off the coast of Tauranga. Tūhua (Mayor Island), for example, was owned by members of Te Whānau a Tauwhao who successfully resisted Government attempts to purchase it, as well as suggestions that it be compulsorily taken.¹³ On the other hand, in 1940 the owners of Te Ongaonga block in the Kaimai region lost some 86 acres when it was compulsorily acquired from a scenic reserve next to State Highway 29. Some of the owners were prepared to give up the land to the Crown on condition a board of owners was appointed to control the reserve, but this suggestion was ignored.¹⁴

The construction of Tauranga Airport, part of the effort to establish a nationwide network of airports in the 1930s, was another public work affecting Māori land. Land at Whareroa was purchased for the airport in 1939. The size of the airport was increased in 1940 and 1942, with some 198 acres of Māori land compulsorily taken, the 1942 taking being for 'defence purposes'.¹⁵ The Pāpāmoa rifle range land was the other Second World War defence taking on which we received evidence.¹⁶

A rather different type of public work were the native schools. Unlike the general schools system, Māori usually gifted the land for native schools (this was the case for schools at Matakana in 1897, Maungatapu in the 1880s, and Matapihi in 1912).¹⁷ The usual practice was for this land to then be formally acquired using the provisions of the public works Acts, thereby becoming Crown land. As the land was gifted, no compensation was paid. Land

12. Suzanne Woodley, *Matakana Island*, Waitangi Tribunal Research Series, 1993, no 5, pp 63–66; Stokes, *History of Tauranga*, pp 227–228

13. Suzanne Woodley, *Tuhua (Mayor Island)*, Waitangi Tribunal Research Series, 1993, no 8

14. Desmond Tatana Kahotea, 'Alienations of Te Ongaonga No 1 and Ruakaka Blocks: Ngati Kahu, Ngati Kirihika' (commissioned research report, Wellington: Waitangi Tribunal, 1998) (doc C13(c), pp 4–7)

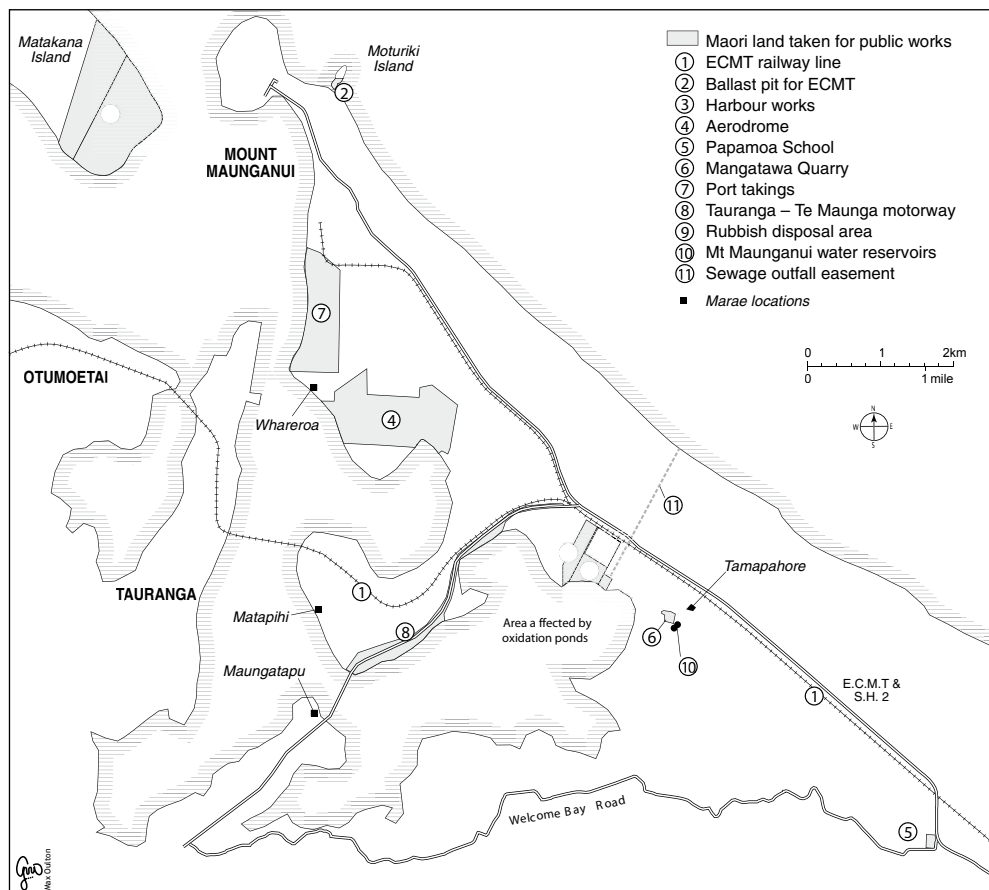
15. Brent Parker, brief of evidence, 20 October 2006 (doc T17), p 4, attachment 1; Wendy Hart, 'A Comparative Study of Public Works Takings in the Tauranga Moana Inquiry District' (commissioned research report, Wellington: Waitangi Tribunal, 2006) (doc S2), pp 38–39

16. H Bassett and R Kay, 'Crown Acquisition and Desecration of Nga Potiki Land' (commissioned research report, Wellington: Waitangi Tribunal, 1999) (doc E1), pp 98–99; Peata McLeod, brief of evidence, undated (doc E26), p 4; Whitiora Rangimarie McLeod, brief of evidence, 22 June 2006 (doc R15), p 2; Te Whetu McLeod, amended brief of evidence, 29 June 2006 (doc R17(a)), p 2; doc U2, pp 74–75

17. Claims Wai 208, Ngāti Kāhu Te Pura Trust; Wai 266 Ngāi Tuaiti and Tuwhiwhia; Wai 342 Ngāti He; Wai 211 Ngāi Tūkairangi. For details of these schools see R Minhinnick, 'A Report Commissioned by the Waitangi Tribunal for the Wai 627 Claim' (commissioned research report, Wellington: Waitangi Tribunal, 1999) (doc D5), pp 56–57, attachments; Taiawa Kuka, brief of evidence, 25 May 2006 (doc Q48), paras 68–76; Woodley, *Matakana Island*, p 29; Iria Whiu, brief of evidence, undated (doc G12), p 7; Rachael Willan, 'From County to Town: A Study of Public Works Encroachment in Matapihi, Whareroa and Mount Maunganui' (commissioned research report, Wellington: Waitangi Tribunal, 1999) (doc F29), pp 53–58.

TAURANGA MOANA, 1886–2006

4.2.1



Map 4.1: Public works takings discussed in this chapter

was also compulsorily taken in 1942 for a general school, Pāpāmoa Primary, situated on Māori land in Pāpāmoa 2 section 6B1A.¹⁸

In the 59 years from 1886 to 1945, there was in Tauranga a great increase in the types of public works for which land was taken, and an apparently inexorable growth in the taking of Māori land. A move away from negotiation to a more impersonal bureaucratic system, followed by some rather haphazard attempts to reintroduce more effective consultation with owners, is explored in the case studies below.

18. Rachael Willan, 'Papamoa School Site' (commissioned research report, Wellington: Waitangi Tribunal, 1997) (doc A52), pp 13–15; paper 2.524; paper 2.539; Ngahiraka McLeod, amended brief of evidence, 29 June 2006 (doc R16(a)), pp 6–9; doc 14, p 4

4.2.2 Case studies

(1) *The Tauranga to Te Puke (Welcome Bay) road, 1881–83*

The construction of the Tauranga to Te Puke (Welcome Bay) road highlights the situation following raupatu in Tauranga. In the 1880s, the Tauranga commissioners were still returning to Māori some of the land confiscated after the 1860s wars. At the same time, responding to pressure from new settlers in Te Puke (just outside our inquiry boundary), they oversaw the construction of several new roads, including the main road from Tauranga to Te Puke. It ran through Ngā Pōtiki and Ngāti Pūkenga lands along the edge of the Pāpāmoa swamp and in the foothills, occupying about 95 acres.¹⁹ The road was outside the area that was to remain confiscated, and the Government clearly intended to return the lands through which the road would run. While the decision to build the road was made in 1880, well before the process of returning the lands was completed, Commissioner Brabant's negotiations show that he regarded these areas as belonging to Māori.

Aware of the need to avoid further conflict, Brabant did not seek to impose the road on local Māori but undertook lengthy negotiations to secure their consent. It appears that at least some Māori were aware that the land taken for the road would be the property of the Crown and wanted compensation. In 1881, Brabant reported that:

the arranging for this road to go through the various blocks has been a work of much difficulty, and has taken up much of my time, the Natives, contrary to their former practice, having been strongly opposed to its being made unless they were paid for the land taken for the road . . .²⁰

According to Brabant, Tauranga Māori had previously given land for roads, but having heard that the Government had paid other iwi for the Cambridge to Rotorua road, they too now expected compensation. The Native Minister took over negotiations and, after further discussions, obtained the owners' consent to the road, 'provided the work was given to the Native owners at the County Engineer's estimate and that cultivations really damaged by the road should be fenced'.²¹ At this time, given the usual practice of taking 5 per cent of land blocks for roads without compensation, cash payments for labour and works to mitigate any damage were the only form of 'compensation' the Government would consider.²²

The road was finished by 1883. From 1884 to 1891, the Crown finally granted titles to the lands which, except for one block, excluded the land actually occupied by the road. For the Crown, this 'was an exercise in simplicity'.²³ That is, if a road was already constructed, the Crown avoided the need to return the entire land block and then retake land for the road.

19. Claims Wai 637, Wai 751, Wai 1178; Shane Ashby, brief of evidence, 22 May 2006 (doc Q23), pp 4, 7; paper 2.603, p 1

20. Marr, *Public Works Takings of Maori Land, 1840–1981*, p 105; doc s52, p 8

21. Document s52, pp 19–20

22. Marr, *Public Works Takings of Maori Land, 1840–1981*, pp 63–73

23. Document s52, p 20

4.2.2(2)

The land actually used for the road simply remained in Crown title, being ‘confiscated lands that remained confiscated.’²⁴

(2) East Coast main trunk railway, 1910s–20s

Along with roads, railways were critical to the expanding settler community in the late nineteenth century – so vital to the national interest, in fact, that they were exempt from the notification and objection procedures that applied to general public works.

Many claims in this inquiry relate to the construction of the East Coast main trunk railway.²⁵ As early as 1885 there was talk of the railway coming to Tauranga. At the hui of that year between the Native Minister, Ballance, and Tauranga Māori, Ballance was queried about the amount to be taken and compensation. Ballance’s response was reassuring on the second point at least ‘No person has the right to take Native Land without payment . . . The land is valued, and compensation must be made’. He did add that the railway was such a benefit to the value of surrounding land that some Māori had ‘freely given land without payment’.²⁶

The first takings from Māori land blocks were for the line section from Waihi to Tauranga. The authority to take the land derived from the land titles granted under the Tauranga District Lands Act 1868, which reserved the right to make roads through the land, and the 1908 Public Works Act, which extended any right to lay out roads to include railways.²⁷ Work began in 1909 after decades of lobbying by Tauranga residents. The following year, the Mount Maunganui to Te Puke section of the line began to be built. More land had to be acquired in the eastern part of the inquiry district – not only for the railway itself, but also for road diversions to serve the railway. In 1913, when the line became operational, the first proclamations of land were gazetted. Compensation was awarded in 1915.

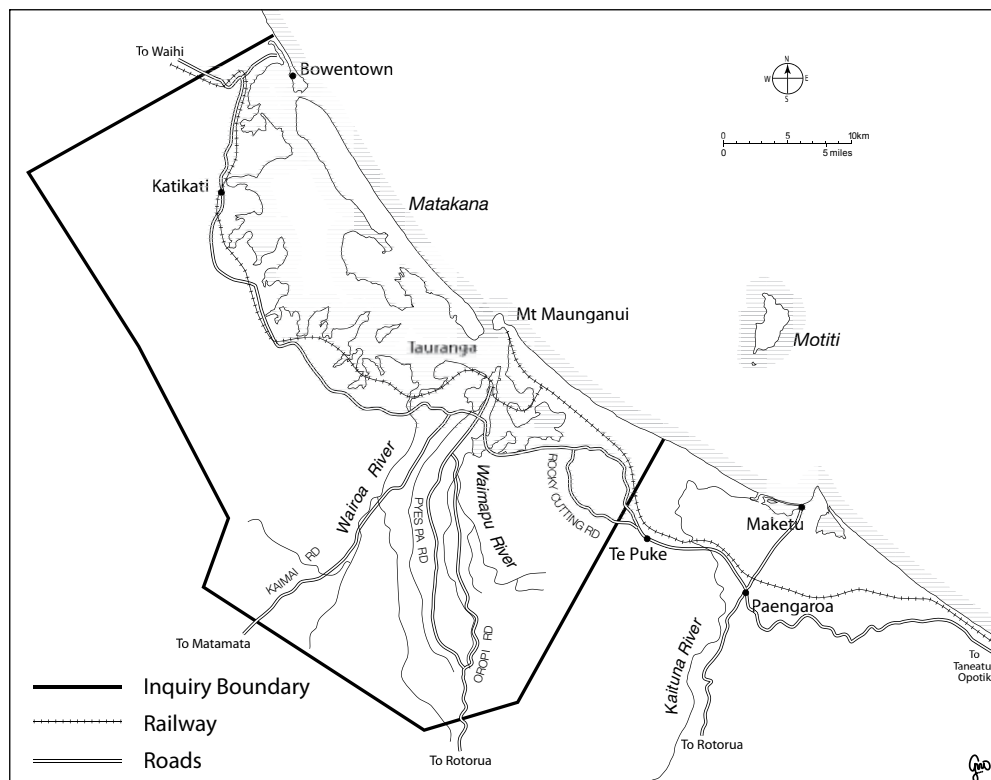
That was not the end of the takings. More land was taken to build the Te Maunga section of the line, linking the Matapihi rail-bridge with the Mount Maunganui to Te Puke line

24. Document s52, p19. Alexander, p17, suggests the reason Waitaha 2 did not have the road excluded was that it had been surveyed prior to the road being put in.

25. The claims include: Wai 42a Ngāti Kāhu, Ngāti Rangī, Ngāti Pango (the Wairoa hapū); Wai 211 Ngāti Tūkairangi; Wai 540 Ngāti Te Rangī; Wai 580 Ngāti Tapu, Ngāti Tamarawaho, Ngāti Kuku, Ngāti Tūkairangi; Wai 717 Ngā Pōtiki; Wai 947 Ngāti Kuku; Wai 672 Ngāti Hangarau; Wai 42c Ngāti Tamawhariua ki Katikati and Wai 1226 Ngāti Hinerangi. Several blocks were also affected and include, but are not limited to: (Wai 540, 717) Pāpāmoa 2 section 2B, section 5, section 6, section 7, section 8, section 9, 9A, 9B, section 10, 10B, section 11; Pāpāmoa 3A, 3B; Mangatawa 1, 2, 3, 4, 7B, 7C, 8, 9, 10, 11; (Wai 947, 580) parts lots 247, 296, 297, and 298 section 1 Town of Tauranga; (Wai 211) parts Matapihi, Hungahungatoroa 1, 2, 3, 4, Otuwahia 2, 3, Ohuki 2A, 2B, 2C, 2D, 3, Wharawhara 1A, 1B, 2, 3, Tumatānui, Oruamatua; and (Wai 672) lot 95 parish of Te Papa.

26. ‘Notes of a Meeting between the Hon. Mr Ballance and Tauranga Natives, at Whareroa, Tauranga, on the 21st February 1885’, 21 February 1885, AJHR, 1885, G-1, p 64

27. Land granted under the Tauranga District Lands Act (first passed in 1867, then amended in 1868) was subject to the provisions of the New Zealand Settlement Act 1863 and its amendments, see doc s52, p13. Section 5 of the Settlement Amendment Act 1866 extended the right of the Crown to reserve lands for roads in Crown Waste Lands (found in section 12 of the Waste Lands Act 1858), to lands taken under the Settlement Act. While this gave the Crown the right to take land for roads, there was no mention in these Acts of not paying compensation.



Map 4.3: Route taken by the East Coast main trunk railway

through the Matapihi Peninsula. Construction started in 1914, the land was proclaimed as taken in 1918 under the 1908 Public Works Act, and compensation was awarded in 1922. By 1928, the line was finished as far as Taneatua, but takings continued for several decades as extra rail and road diversions or approaches were needed.²⁸ In total, for the Mount Maunganui to Te Puke, and the Te Maunga sections, some 214 acres was taken.²⁹ One Ngā Pōtiki kaumatua describes the impact the loss of this considerable amount of land to railway had on his people as follows:

The Public Works was another one that actually killed our people. That's the railway lines and the amount of land they needed at every station. They had about six to eight acres for the railway station and they had another 20 acres for holding paddocks for cows and things like that. They used to drove a lot and then they used to park them at the different railway

28. Land was taken, for example, Pāpāmoa 2 sections 10, 9A and 9B and the Pāpāmoa 2 section 10B block in 1955: Heather Bassett and Richard Kay, 'Ngaiterangi and the Crown' (commissioned research report, Wellington: Waitangi Tribunal, 1998) (doc C1), p 130.

29. This total is from the figures supplied in doc C1, pp 121–122, 128–130. We do not have figures for the Waihi–Tauranga section of the line.

4.2.2(2)

stations overnight and the next day they carry on. But they owned all that land, so we did lose a hell of a lot with that.³⁰

After the takings, compensation was awarded. Throughout, compensation was a contentious issue. For Māori land at this time compensation was applied for by the Minister of Public Works rather than the owner and assessed by the Native Land Court, not the Land Valuation Court as for general land. In contrast to Ballance's earlier statement, the Mangatawa block takings (some 44 acres, or 18 hectares) were not compensated. The Crown grant of title to Mangatawa apparently specifically reserved the right of the Crown to take land for roads, which was extended to rail under the Public Works Act 1908. It did not restrict the amount of land to be taken. However, according to the official representing the Public Works Department, 'the general principle' had been to take up to 5 per cent, and the wording of the grant meant that it could be taken without compensation. This was similar to the provisions of the native land Acts, but these Acts also contained a time limit. Land could only be taken without compensation for 10 to 15 years from the time of the grant of title. The owners do not appear to have disputed this lack of compensation (with the exception of one who wanted compensation for two acres taken for a station) and it was accepted by the court on production of the grant.³¹

In other cases, where the grant did not specifically mention this right to take land, the Public Works Department did not attempt to claim a '5 per cent' taking without compensation.³² Owners' valuations, however, were generally far greater than the Government valuation. At the hearing in 1915, owners of the Pāpāmoa, Ōmanu, and Whareroa blocks claimed the value of the land was £20 to £25 per acre. But the valuation provided by a local government valuer was in the order of 10 to 15 shillings an acre. The court also heard from two other witnesses – an engineer and a local farmer – called by the Public Works Department to give evidence on the quality of the soil for agriculture. It seems that the land may have been used for flax growing, but the farmer had no knowledge of that and claimed it would have had little commercial value. The Native Land Court judge's decision favoured the Government valuation.³³

It was a similar story at the compensation hearings for the Matapihi and neighbouring lands in 1922, some eight years after they had been entered for construction. (The First World War may have played a part in the delay.) The Government valuation presented for Matapihi was done in 1914, but the valuer also gave his opinion on current values – which often had greatly increased owing to the presence of the railway and associated roads. The

30. Document C1, p 125

31. Ibid, pp 123, 125; Tauranga Native Land Court minute book 8, 4 October 1915, fols 355–357

32. See for example the Omanu land block which at the compensation hearing was described as not having the same provisions in the title as Mangatawa; it was therefore apparently entitled to full compensation: doc C1, p 123; Tauranga Native Land Court minute book 8, 4 October 1915, fols 357–358.

33. Document E1, p 96

owners were apparently not represented at this hearing. The court made its own inspection, and then awarded compensation on the basis of the 1914 value, plus eight years' interest at 5 per cent. So, for example, the owners of Matapihi 1B1 were awarded £11, although its 1922 value was £50.³⁴

The actual construction of the railway also affected tangata whenua. In 1908, Te Mete Raukawa protested that a Ngāti Hangarau urupā was threatened: 'the pegs of the survey are standing right upon the dead. O friends, this is a great calamity to Maoris, for the said places are important burial grounds, being old burial grounds'. The under-secretary of the Native Department wrote to the Public Works Department: 'The graveyard question is one of great sentimental importance in the Maori mind, and although I am aware that the exigencies of modern progress must receive first consideration still I hope that the matter referred to will receive favourable consideration'. As a result, the pegs were pulled up and the line moved.³⁵ This was not a consistent outcome, however. We heard from Antoine Coffin of Ngāti Kahu that wāhi tapu were disturbed when fill for the Wairoa section of the line was taken from 'a pa and burial ground of Ngāti Kahu and Ngāti Rangi hapū' at Whakaheke (Te Papa lot 91). Quarrying may also have been carried out at Mangatawa, on a terraced hill known as Maungamana, a site of great significance to Ngā Pōtiki, although this has not definitely been established.³⁶ We also heard that the last piece of land owned by Ngāti Kuku on Moturiki Island was taken compulsorily in 1911 to provide a ballast pit for the railway. At the compensation hearing in 1912, it was agreed that no one lived on the land (although the owner's representative also stated that his elders had lived there and used it for growing kūmara and collecting shellfish). The court awarded £20 in compensation, more than the two Government valuations (£5 and £11 5s), but less than the £30 sought by the owner's representative, who noted the 'good metal' on the land. It appears that there were no attempts to offer the land back after quarrying ceased in 1915, nor in 1927 when a three-year lease to the Tauranga Harbour Board ended; at the time, there was no legal requirement to do so.³⁷

34. Document C1, p128; doc U12, p39

35. Te Mete Raukawa to head of the Native Department, 17 December 1908, MA 1 1909/6, ArchivesNZ, Wellington (supporting documents to doc A38, various dates (doc A38(b)), p 534); under-secretary to under-secretary of the Public Works Department, 7 January 1909, MA 1 1909/6, ArchivesNZ, Wellington (doc A38(b), p 533); under-secretary Public Works Department to under-secretary Native Department, 14 January 1909, MA 1 1909/6, ArchivesNZ, Wellington (doc A38(b), p 531)

36. Antoine Coffin, brief of evidence, 23 May 2006 (doc Q35), p 6; Antoine Coffin, 'Ngati Kahu, Ngati Rangi, Ngati Pango, Wai 42a' (commissioned research report, Wellington: Waitangi Tribunal, 1996) (doc A37(b), pp 60, 135); H Bassett, 'Mangatawa' (commissioned research report, Wellington: Waitangi Tribunal, 1996) (doc A44), p 12

37. R Minhinnick, 'The Alienation of Moturiki, Motuotau, and Karewa Islands: Wai 540' (commissioned research report, Wellington: Waitangi Tribunal, undated) (doc A48), pp 25–28; doc U14, pp 69–70



Figure 4.3: Public Works Department quarry on Moturiki, Mount Maunganui, circa 1910s
Photographer unknown. Reproduced courtesy of Tauranga City Libraries (09–033).

(3) Ōtawa scenic reserve and Te Puke water catchment area, 1930s–40s

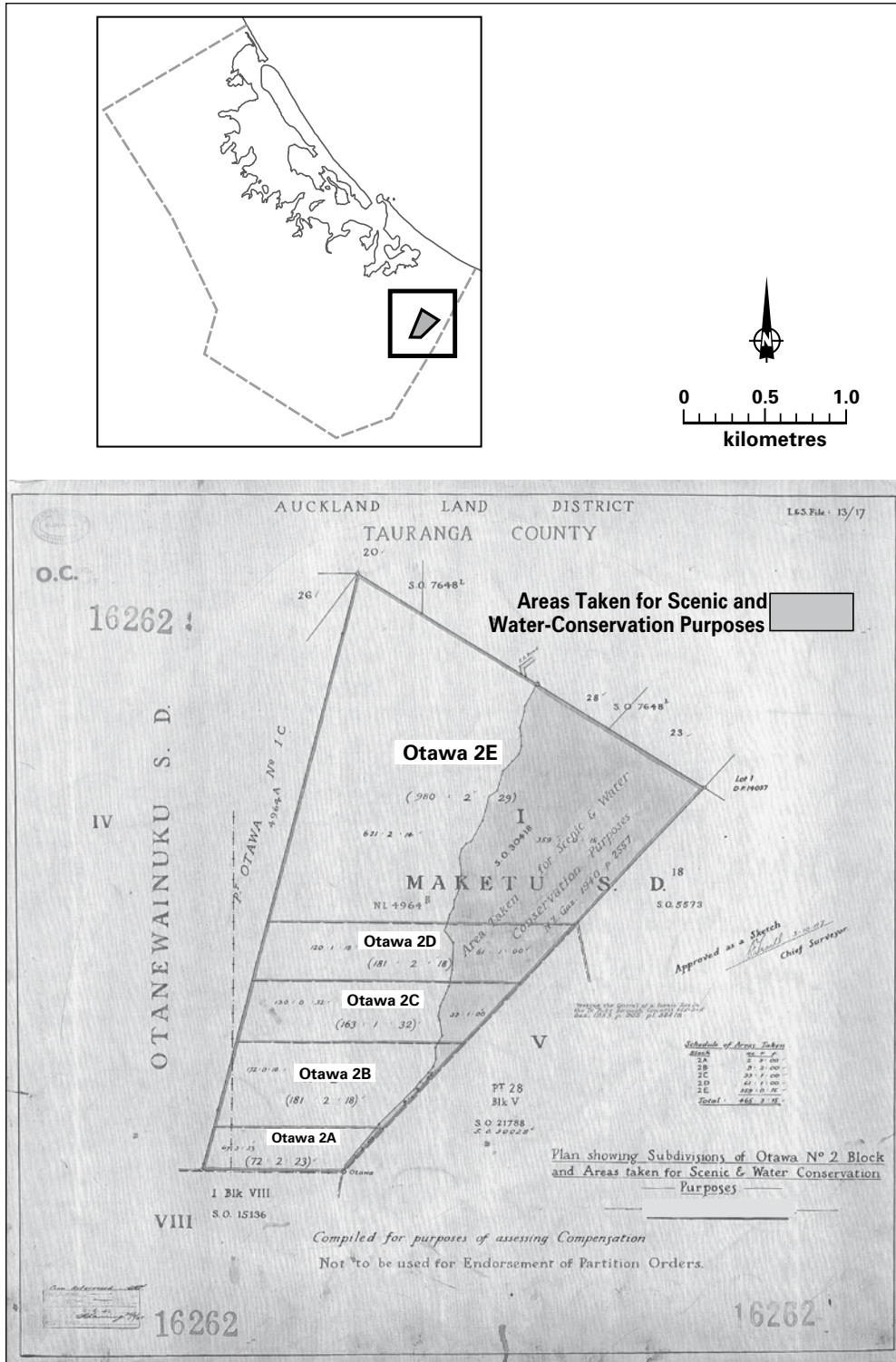
In the late 1930s, Te Puke Council and the Lands and Survey Department created a scenic reserve in the range of hills between Te Puke and Welcome Bay. This case highlights difficulties surrounding the treatment of Māori land in general public works takings.

From the early twentieth century, land was taken for scenic reserves to protect both the scenery and the water catchment areas of rivers and streams used for public water supplies. The land was acquired as for general public works: the authorities could choose to negotiate an agreement with owners or use compulsory acquisition. If the latter, a notice of intention to take would be published, then owners notified. Forty days were allowed for objections to be received and heard, and then a proclamation would be published in the *Gazette* announcing the land was taken.

The Ōtawa scenic reserve affected about 398 acres of Crown land, 285 acres of general land, and 465 acres of Māori land from the Ōtawa 2 blocks. Also affected were around 30 acres from Waitaha 1B1 and 1B2.³⁸ The council's main focus was on protecting the water catchment area of the Kirikiri Stream, the source of the borough's water supply, but at least some of the Ōtawa 2 land did not drain into the Kirikiri Stream and was included purely for scenery preservation.³⁹

38. Claims Wai 210 and Wai 664; H Bassett, 'Ōtawa Scenic Reserve' (commissioned research report, Wellington: Waitangi Tribunal, 1996) (doc A19), p 5, supporting docs p 99

39. Document A19, pp 11–12



Map 4.4: Areas taken for scenic and water conservation purposes

4.2.2(3)

Monty Ohia told the Tribunal of the importance of the Ōtawa blocks to Ngāti Pūkenga and other groups such as Ngā Pōtiki, Waitaha, and Ngāti Raukawa. ‘I grew up knowing Otawa as our ngahere for gathering kai and rongoa’ but now ‘the government has taken some of the best ngahere land’.⁴⁰ Te Keepa Smallman of Ngāti Pūkenga also stated:

I have interests in there too in the Otawa 2A block. It was mainly a spot where we all hunted for pigs and deer in recent times. Still I [*sic*] was known as our ngahere. I am told that there is a pa site in the southern part of the land that was taken.⁴¹

Following Government policy of the time, the Native Department had the responsibility of dealing with the Māori owners of the land. The under-secretary of the Native Department viewed the proposed reserve in the context of ongoing attempts by Tauranga Māori to obtain redress for raupatu.⁴² Consequently, he wished to ‘avoid action which would cause the Natives to think that the Department is party to seizing lands in a way that could be likened to confiscation’. In order ‘to avoid any feeling afterwards among the owners that their land has been confiscated’, he favoured calling an early informal meeting of owners of the larger block, Ōtawa 2, to obtain their consent.⁴³ When the local registrar of the Māori Land Court, J Anaru, raised objections, the under-secretary informed him:

the point is that it is not considered desirable to take the land compulsorily under the Public Works Act if the taking can be effected under that Act with the consent or agreement of the owners. . . . What is required is personal contact with the owners or the leading owners in the nature of an informal conference or discussion from which their agreement to the taking of the land might be forthcoming.⁴⁴

The under-secretary added that meetings were an established practice, and drew attention to several similar cases where the land court had called meetings of owners, but in the end left the method of contact to the registrar’s discretion. The registrar rejected all these instructions, apparently feeling that they would create unnecessary work. Instead, the registrar intended to strictly follow the provisions of the 1928 Public Works Act, and simply inform the owners of the proposed taking after notices of intention to take the lands had been gazetted.⁴⁵

40. Rereamomo Monty Ohia, brief of evidence, 22 May 2006 (doc Q22), pp 5–6

41. Te Keepa Smallman, brief of evidence, 22 May 2006 (doc Q24), p 10

42. Waitangi Tribunal, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims* (Wellington: Legislation Direct, 2004), p 377

43. Document A19, p 15

44. Document A19, supporting documents, p 204

45. Document A19, pp 16–17, 20; M Gillingham, ‘Waitaha and the Crown 1864–2001’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001) (doc K25), p 245; acting registrar, ‘Otawa or Waitaha 1B1 Block’ (supporting documents to doc K25, various dates (doc K25(a)), p 326); acting registrar, ‘Otawa or Waitaha 1B2 Block’ (doc K25(a), p 327)

It is unclear if all owners were properly informed. Certainly, by the time notices were sent to owners of the smaller block, Waitaha, the period for objection was nearly over. One owner, J A Asher, had mineral rights in the land and complained that:

the usual procedure . . . is to at least give the native owners, firstly, ample notice what is intended to be done, and secondly, an opportunity of being heard in defending their rights. Nothing approaching this has even been attempted.⁴⁶

The Native Department advised that Asher's mineral rights were not in fact affected, but this was not communicated until 1941, when he enquired about the progress of his objection.⁴⁷

In the meantime, however, Waitaha was proclaimed as taken in August 1939, and Ōtawa in July 1940. Compensation for the first was awarded in under a year on the Public Works Department's valuation of £13 for 22 acres (almost 9 hectares) in Waitaha 1B1, and £12 for some 18 acres (just over 7 hectares) in 1B2, figures comparable with some of the compensation for general land.⁴⁸ The owners were not represented at the hearing. The money was not paid directly to the owners, but to the Waiariki Māori Land Board under section 552 of the Māori Affairs Act 1931 which allowed the board to retain compensation money in a trust fund for beneficiaries.⁴⁹ The board did not distribute the money to the former owners until 1953.⁵⁰

Compensation for the Ōtawa lands proved more complicated. The Public Works Department, although aware that the block had been partitioned in 1931, was unable to say how much land was taken from each individual partition. The Native Land Court was therefore unable to assess compensation. Further delays were caused by the war, and the case then seems to have been forgotten for many years. It was eventually revived, but in 1958 the owners' solicitors became unwell and hearings were consequently delayed until 1961. There was little dispute over the valuations and compensation was awarded at £4216 including 21 years' interest. The money was paid in the first instance to the Māori Trustee, under section 47 of the Māori Trustee Act 1953. While the trustee located and paid the owners quickly in the case of two sections, the money for the other three sections was not distributed until 1965, some 25 years after the land was taken.⁵¹

46. Document A19, supporting docs, p 178

47. Document A19, p 18; doc A19, supporting docs, p 187

48. Compensation of £100 was awarded for 50 acres, 1 rood, 24 perches taken from sections 3, 4, and 9; £30 for 53 acres, 32 perches taken from sections 5 and 6; £10 for 14 acres, 3 roods, 24 perches taken from section 10; and £42 for 74 acres, 3 roods, 8 perches taken from section 14, all these blocks being general land owned by Pākehā: see doc A19, p 18.

49. Document A19, p 18

50. Document K25, p 246

51. Document A19, pp 21–32

4.3 PUBLIC WORKS IN THE PERIOD 1946–80

4.3.1 Overview

We begin our overview of this period with the evidence of Oketopa Pukekura, of Ngāti Hē, who described to us the impact of discovering, some time after the event, that the very last of his ancestral lands had been taken for an electricity substation:

It is hard for me as an old man to explain in words just the feeling of loss. But in losing the land, it is very emotional for me. I think of all the old people who had the land before us and who had worked on that land. I think of my two babies. The land is my connection to them. Without the land we are separated. Because this land has been taken, I don't have any more land . . . I want the farmhouse and our land back. I will go back there tomorrow if I can, as it is the resting place for me and my two babies. And it is the only land I have for my children and mokopuna. I feel empty in my heart; everything has been taken.⁵²

Many Tauranga Māori had a similar experience, as the loss of Māori land in Tauranga for public works was greatly increased, some 3263 acres being acquired from 1949 to 1980. This was in part prompted by the great national boom in post-war development plans with their associated public works projects. In the 1950s the provision of state housing, along with hydroelectricity and roading, were the three main public works activities. James Belich notes that spending on public works between 1949 and 1967, 'as a percentage of all government spending, was staggeringly high' peaking at 35 per cent in 1958 and exceeding 20 per cent each year between 1949 and 1967.⁵³ By the 1970s the Public Works Department had reached the zenith of its influence. It gave advice on all public works of national and local importance and also any private works likely to significantly affect the economy. It remained the largest construction agency in the country. At the same time, large-scale public works schemes prompted rumblings of discontent at the power of the Public Works Department and a gradual reorientation of policy. According to RJ Noonan: 'It was no longer enough to inform the public of decisions, some method of involving the public in decision-making from the very beginning of planning for a project was becoming essential'.⁵⁴

Eventually, from the mid-1970s, more consultation was introduced. Māori rights and interests in the land also gained new recognition with some resulting positive changes in public works procedures.

Tauranga, too, experienced a post-war boom, growing at a rate far outstripping other urban areas in New Zealand. Much of this growth was directed by the Government. The first public announcement for the post-war development and reconstruction of the Bay of Plenty appeared in the *Gazette* in June 1947. The extensive schedule covered public works,

52. Oketopa Pukekura, brief of evidence, 23 May 2006 (doc Q15), p 5

53. J Belich, *Paradise Reforged: A History of the New Zealanders From the 1880s to the Year 2000* (London: Allen Lane, 2001), p 315

54. Noonan, *By Design*, pp 256–257

including land development, industrial and commercial works, communications, utilities, subdivisional development, social services, defence and public administration. The schedule briefly mentioned harbour development as ‘provision of deepwater facilities at Tauranga or elsewhere to handle produce of the Kaingaroa Plains’⁵⁵

In 1950, the Government decided to build the deep-water port on the Mount Maunganui side of the harbour, a substantial undertaking which greatly affected Māori land at Whareroa. The port development was complemented by the motorway building programme which began in the late 1950s. This was a huge construction process, transforming the landscape and having a significant effect on the surrounding communities. Many of these were rural Māori hapū such as those at Wairoa, Waimapu, Maungatapu, Hairini, and Whareroa, some of whom were rezoned within Tauranga City’s boundaries. All experienced land takings for roading such as the Tauranga to Te Maunga motorway (State Highways 29 and 2), which cut land blocks in half and affected marae and urupā. The actual procedure of building the motorway was, from 1947, similar to that for railways: a middle line was gazetted, the motorway constructed, and then the land proclaimed as taken and compensation awarded. Owners were not individually notified, and there were no rights of objection. The port and motorways were constructed with material from a quarry on Mangatawa, in the process damaging a place of great significance for Tauranga Māori.⁵⁶ We look at the history of Mangatawa in more detail in chapter 8.

As public works increased, owners organised protests against them. Hinerongo Walker of Ngāti Hē told us of the reaction of owners in the early 1950s to the discovery that electricity pylons were being erected across Maungatapu 2 for a major electricity transmission line from Tauranga to Mount Maunganui. Maungatapu was an ancient pā site and place of great significance to local Māori. Consequently:

When those poles first went in there was confrontation with some of the hapū here. They had gone down to Wellington to lay their take before parliament and to protest against the setting up of those lines. There was quite a few of them that went down. There were some from Hangarau, and Tamapahore. There was a lot of support from around the moana. My dad was one that went down. But in the meantime, while they were down there, there was confrontation over here with others and the police were involved.⁵⁷

55. Notice of a Scheme of Development and Reconstruction in the Bay of Plenty, 5 June 1947, *Supplement to the New Zealand Gazette*, 1947, no 31, p 724

56. Stokes, *A History of Tauranga County*, pp 339–345; Leanne Boulton, ‘Town and Country Planning and its Impact on Tauranga Maori Communities, c1953–1990: A Summary and Analysis of the Existing Research’ (commissioned research report, Wellington: Waitangi Tribunal, 2006) (doc s6), pp 23–25. The motorway is variously numbered State Highway 2, 2A, or 29, depending on the section concerned. For the construction of State Highway 29 and Poike lands see J Easthope, ‘Research Report: Public Works Acquisitions in Poike Block: Wai 362 – a case study for the Tauranga Claims Wai 215’ (commissioned research report, Wellington: Waitangi Tribunal, 1996) (doc A34); for State Highway 2 and Te Papa lands see M La Rooij, ‘Wairoa Hapu and the Realignment of State Highway 2: Wairoa–Tauranga’ (commissioned research report, Wellington: Waitangi Tribunal, 1999) (doc F2(b)).

57. Hinerongo Taikato Walker, brief of evidence, undated (doc Q32), p 4

Owners had no formal right of objection, however, when it came to electricity infrastructure and the works went ahead. Later protests over electricity works had more success (see the Mangapapa hydroelectric case study below).

There was a considerable debate in the 1960s about the future direction of the city's development. The outcome, with obvious implications for Māori, was a decision to concentrate further growth in the east, around Pāpāmoa, Te Maunga, and the Welcome Bay area, largely on the basis that the more valuable agricultural lands were to the west.⁵⁸ New local amenities were required to cope with increasing demand. Māori land was acquired from Mangatawa for a water reservoir, the Kaimai Range around the Tautau and Waimapu Streams for water supply to Tauranga town, Pāpāmoa lands for the town dump at the edge of Rangataua bay, Hairini land for an electricity substation, and Poike lands for the Bay of Plenty Polytechnic and Tauranga no 4 High School (the last never built).⁵⁹ The airport at Whareroa was also expanded in the 1950s and 1960s, with some 62 acres of Māori freehold land being purchased in 1963.⁶⁰ Māori were also affected in the 1950s by water pipes to carry water from Tauranga to Mount Maunganui, and in the 1970s by oxidation ponds on reclaimed land in Rangataua Harbour, the associated sewerage pipeline through Pāpāmoa lands, and a telecommunications mast on Kopukairoa (later taken over by Telecom, and thus passing into private ownership when that state-owned enterprise was privatised in 1990).⁶¹

The combination of renewed Government enthusiasm for public works, the decision to develop Tauranga in the east, and the town's rapid growth had considerable consequences for Māori land on the fringes of the city. As can be seen from the above-cited examples, the 1950s, 1960s, and 1970s saw a significant increase in takings around the eastern end of the district. As to the inquiry district as a whole, the 1960s alone account for more than half the total area of land taken for public works in the entire period from 1890 to 1999.⁶² By 1980, most of the Māori land taken for public works was acquired. By the end of the period several Tauranga hapū had had the experience of multiple public works takings on the same land blocks. As Peata McLeod told the Tribunal with regard to the oxidation ponds in Rangataua Harbour: 'Those ponds are situated directly onto where we go and kōhi Mataitai

58. Document s6, pp 40–46; Stokes, *A History of Tauranga County*, p 345

59. Document A44, pp 20–36; R Willan, 'Land Taken for Waterworks' (commissioned research report, Wellington: Waitangi Tribunal, 1996) (doc A32); Gordon Te Reo Hau Ranui, brief of evidence, 22 May 2006 (doc Q7), pp 13–15; doc K25, pp 246–247; Desmond Parekura Heke Kaiawha, briefs of evidence, undated (doc Q29), p 10, (doc G24), p 2; doc E1, pp 65–86; doc A34, pp 107–132, 143

60. Document T17, attachment 1, p 2; doc s2, p 46

61. Heather Bassett, 'Aspects of the Urbanisation of Maungatapu and Hairini, Tauranga' (commissioned research report, Wellington: Waitangi Tribunal, 1996) (doc A26 and supporting documents A26(a)); Fiona Hamilton, 'Ngati He Historical Report 1950s to 1980s' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc J2(c)); doc F29; doc A34; doc E1; Anita Miles, *Kopukairoa: Tauranga Telecom Site*, Waitangi Tribunal Research Series, 1993, no 4; Colin Reeder, brief of evidence, 26 June 2006 (doc R30)

62. Michael Belgrave, Grant Young, Adam Heinz, and David Belgrave, 'Tauranga Maori Land Alienation: A Quantitative Overview, 1886–2006' (commissioned research report, Wellington: Waitangi Tribunal, 2006) (doc T16(a)), p 37

[gather shellfish] when the tide is low . . . The people were very disappointed. They had already endured the quarry and the construction of the reservoir on their land.⁶³

Although more concerted efforts were made to notify and consult owners, the majority of acquisitions were still by compulsory taking rather than by agreement. This is also the period, from 1962 to 1974, when many aspects of the public works takings were handled on behalf of Māori owners by the Māori Trustee. Māori owners consequently sometimes remained unaware of what was being taken and had little influence on events.

4.3.2 Case studies

(1) *Tauranga port, 1950s*

In the late 1940s, the Government was investigating options for a deep-water port to promote the growth of the rapidly expanding pulp and paper industry. Proposals to build the port at Whareroa in Tauranga clashed with the plans of the Māori landowners who wanted to subdivide and sell 278 acres of Whareroa land. The uncertainty ended in September 1952 when the Government compulsorily acquired about 91 acres of Whareroa, all prime waterfront land, and some five acres from Te Awa-o-Tukorako. The basis for the compensation for this taking became the focus of intense litigation, eventually being decided in the Privy Council.

Before the Crown's intervention, the plan to develop the Whareroa block promised an expedient solution to the housing needs of the owners. Since the 1930s, the Crown's attempts to improve living conditions for Māori in Tauranga were characterised by inaction and delay; by 1948, housing remained substandard.⁶⁴ What plans did exist were 'a conscious effort to disperse Maori amongst Pakeha in order to facilitate the adoption of the nuclear family and associated lifestyle.'⁶⁵ The plan for Whareroa offered a solution for Māori housing that contrasted with the prevailing Crown policy: Māori agreed to subdivide Whareroa to provide capital to develop housing in Matapihi where many owners currently lived close to the local marae. During later difficulties with the Crown, the Māori land board emphasised 'a cardinal point in its [the scheme's] favour, ie the rehabilitation and re-establishment of the Maori people from their own resources instead of monies loaned from the Crown.'⁶⁶ We shall look at what happened in Matapihi in the next chapter.

63. Document E26, pp 3–4

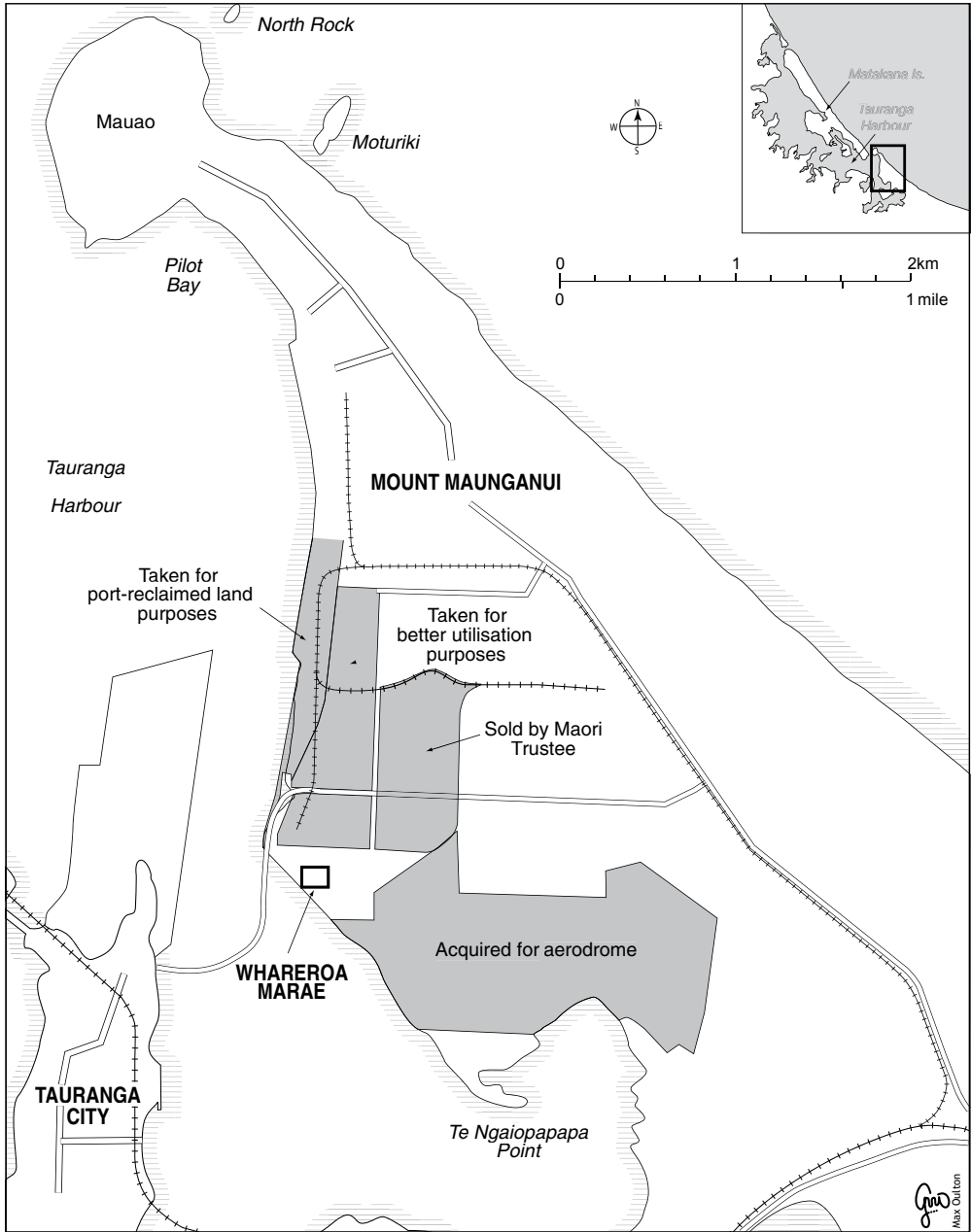
64. Tony Walzl, 'Ngati Ruahine: Land Issues Overview, 1900–2000' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001) (doc N2), pp 35, 58

65. Tony Nightingale, 'Re-housing Tauranga Maori, 1935–72' (commissioned research report, Wellington: Waitangi Tribunal, 1996) (doc A41, p 7)

66. Māori Trustee to Minister of Māori Affairs, undated, AAMK 869/606, ArchivesNZ, Wellington, p 2 (supporting documents to document A41, various dates (doc A41(a)), p 45); Kere Cookson-Ua, 'Te Awa-o-Tukorako and Whareroa Blocks' (commissioned research report, Wellington: Waitangi Tribunal, 1996), doc A27), pp 35–37

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4.3.2.(1)



Map 4.5: Māori land acquired for public works in the Whareroa area

Between May and July 1948, the owners' lawyers and the borough council, mediated by a judge of the Māori Land Court, discussed roading and subdivision while the Māori Affairs Department prepared a scheme plan in compliance with local authority requirements. The plan allowed for 600 subdivisions for residential and commercial purposes, a reserve of land for the Whareroa Marae and for current owners to assume title over some of the sites in the new subdivision. Subdivision and sale of the land was expected to net £60,000.⁶⁷ As a necessary part of this process, applications were made on behalf of the owners to vest the land in the Māori land board in July 1948.

Before subdivision of land could begin, under section 8 of the Native Purposes Act 1943 the Minister of Māori Affairs, Peter Fraser, was required to approve the vesting of the Whareroa blocks intended for subdivision in the Waiariki District Māori Land Board. He was also required to give consent for the board to sell the land and, under the Land and Counties Act 1946, consent for subdivision to sections under 10 acres. Under section 5 of the Act, the Minister could refuse to approve any subdivision scheme if it 'would in his opinion interfere with or render more difficult or costly the carrying out of any public work or scheme of development which is proposed or contemplated by the Minister of Works or any other Minister of the Crown or by any Local Authority'.

In late July 1948, Fraser contacted the Minister of Works and the Director of Forestry to ascertain whether the proposal needed amendment in light of the port plans.⁶⁸ Both departments objected, and the Director of Forestry recommended that the entire area should be acquired by the Crown.⁶⁹ The Minister then delayed granting consents for the scheme until the land required for the port was finalised. However, initial contact between Fraser and the board resulted in Fraser's assurance that, even if the Crown did require some of the land, Māori owners would not lose out as the Crown would pay the same prices that could be gained from selling the allotments to the public.⁷⁰

There was no progress for the next two years as the Ministry of Works made and then scrapped various proposals for the use of the land. In June 1950, after representations from the board that Pākehā had already been able to subdivide and sell sections in the area, the Ministers of Māori Affairs, Lands, and Forestry agreed to a committee investigation which would address how much of the land was needed for port requirements. Although the board then gained approval from the Surveyor-General for the development, the new Minister of Māori Affairs withheld his consent until the committee report was issued. Eventually, in

67. Document A27, p 35

68. Māori Trustee to Minister of Māori Affairs, undated, AAMK 869/606, ArchivesNZ, Wellington, p 2 (doc A41(a), p 45)

69. Document A27, p 36; Māori Trustee to Minister of Māori Affairs, undated, AAMK 869/606, ArchivesNZ, Wellington, p 2 (doc A41(a), p 45)

70. Māori Trustee to Minister of Māori Affairs, undated, AAMK 869/606, ArchivesNZ, Wellington, p 2 (doc A41(a), p 45)

4.3.2(1)



Figure 4.4: Timber ship at berth in the port of Tauranga, 1954

Photograph by Whites Aviation. Reproduced courtesy of the Whites Aviation Collection, Alexander Turnbull Library (PAColl-7171-63).

September 1951, the uncertainty was ended when a notice of intention to take the land for ‘better utilisation’ was issued for land in the Whareroa and Te Awa-o-Tukorako blocks.⁷¹

After the land was proclaimed as taken in September 1952, compensation for the taking had to be assessed. This proved controversial and took 10 years to resolve, going as far as the Privy Council after being considered by the Māori Land Court, the Supreme Court, and the Court of Appeal. The difficulty was whether the area taken should be valued as one block of land with subdivision potential, or as land which could be immediately sold as sections. (If the land could have been valued as sections, some of the usual deductions made for ‘profit and risk’ would have been lessened and the value would consequently have been significantly higher.⁷²) In 1958, the Privy Council upheld the Court of Appeal’s decision that the former was the case. The Minister’s delay in granting consents was not considered. In June 1961, the chief judge at the Māori Appellate Court finally decided compensation

71. Notice of Intention to Take Land for Better Utilization, 13 September 1951, *New Zealand Gazette*, 1951, no 73, p1377

72. ED Morgan, ‘The Fallacy of Whareroa’ [1963] NZLJ 643; see also RI Barker, ‘Private Right Versus Public Interest: Compulsory Acquisition and Compensation Under the Public Works Act 1928’ [1969] NZLJ 251



Figure 4.5: Mount Maunganui, with port of Tauranga wharves in foreground, 1958

Photograph by W Walker. Reproduced courtesy of Archives New Zealand: National Publicity Studios Collection, Alexander Turnbull Library (F-032755-½).

at £45,582 (including interest at 5 per cent for six and a half years) for Whareroa. The Te Awa-o-Tukorako blocks were compensated in 1964–1965.⁷³

The Government's actions in this case soured its relations with Māori. William Ohia, chairman of the Ngāi Te Rangi Tribal Executive, wrote in 1959 that the decision had 'prompted my people to search every avenue for a safeguard against a possible recurrence of a virtual confiscation of this nature over their remaining acres of land'.⁷⁴ A later report of the case from the Māori Trustee's office for the Minister of Māori Affairs stated that the Māori owners 'feel that while the decision of the Privy Council is no doubt correct in law, they were the victims of the unfortunate delays' of the Minister in granting consent to vest the land in the board. The report attempted to calculate how much profit might have been expected if the land had been sold as sections, and concluded the owners had lost a substantial amount. It reminded the Minister of the initial suggestions that Māori would not lose by

73. Document A27, pp 47, 52–53, 57

74. William Ohia to Secretary for Māori Affairs, 23 March 1959, MA 29/4/11, ArchivesNZ, Wellington (doc A41(a), p85)

4.3.2(1)

waiting, and suggested that the delay in vesting the land in the board was unjust. However, it did not consider that consent was required under the Land and Counties Act. The report concluded that ‘it might be reasonable in the circumstances’ to offer the owners £100,000 as a settlement.⁷⁵ It appears nothing came of this recommendation.

By 1959, the Crown had begun selling the Whareroa land. Having taken the most favourably situated land (at compensation of some £430 per acre) the Crown was able to achieve high prices. According to a memorandum by Māori Affairs Minister Walter Nash, in 1959 the Bay of Plenty Fertiliser Company paid £2500 per acre ‘with very little development work done’, while it was elsewhere reported that oil companies were paying approximately £5000 per acre. In 1964, Crown land was apparently selling for between £3000 and £4000 per acre.⁷⁶

The remaining land still in Māori ownership, sold in 1961 and 1964, did not realise such sums. Tidds Inland Tanker Service bought two acres in 1961, and another acre in 1964. In the same year, Tasman Pulp and Paper bought approximately 102 acres of Whareroa land.⁷⁷ The return per acre varied: Tidds paid £2000 per acre; Tasman paid £833 per acre for land zoned ‘noxious industrial’, and £100 per acre for land zoned rural. Out of this sale money came three years’ worth of rates under an agreement working out by the Māori Trustee and the local council. It appears that eventually all the land taken by the Crown was sold. The Crown has specifically acknowledged that in the case of the lands taken for better utilisation ‘the Minister failed to protect the interests of the owners.’⁷⁸

The impact of the public works acquisitions in this area is not only about lost development opportunities. The acquisitions have also resulted in Whareroa Marae becoming physically isolated. On one side of the marae are fertiliser works, a cement depot, cargo sheds, grain silos, oil tanks, plywood factories, and timber yards, the result of the ‘better utilisation takings.’⁷⁹ On another is Tauranga Airport. As discussed previously, the airport was established at Whareroa on both Māori and general land from the 1930s to the 1960s. Industrial and airport noise disrupts hui and disturbs kaumātua living nearby; fumes and fertiliser dust drift through the area.⁸⁰ We experienced this disruption for ourselves during the first week of the stage 2 hearings, which were held at Whareroa Marae. Kihi Ngatai pointed out that Māori ‘had to fight . . . to get legal [land] access to the marae and kaumatua flats. We found that offensive given that it was our land that they had built the aerodrome on.’⁸¹ Nearby, the Ōmanu urupā remains landlocked by the airport. An informal arrangement allows

75. Maori Trustee to Minister of Māori Affairs, undated, AAMK 869/606, ArchivesNZ, Wellington, pp 4–5 (doc A41(a), pp 47–48)

76. Willan, Document F29, p 33; doc A27, p 56.

77. Document F29 pp 28, 31–32

78. Ibid, pp 33–34; paper 2.641, para 4.1

79. Document A27, p 61

80. Kihi Ngatai, brief of evidence, undated (doc Q13), p 6

81. Ibid, p 7



Figure 4.6: Whareroa Marae in front of the port of Tauranga and other industrial development, 1970

Photograph by Whites Aviation. Reproduced courtesy of the Whites Aviation Collection, Alexander Turnbull Library (WA-68832).

tangihanga to proceed, but Ngāi Te Rangi look forward to this being formalised and would like to see a public road designated.⁸²

(2) State Highway 2 realignment and the Wairoa road bridge

The large motorway constructions in Tauranga were followed by various alterations to cope with the increasing traffic. The Wairoa hapū presented claims concerning one such alteration, the realignment of State Highway 2 on Te Papa lands in the mid-1960s, after a new road bridge had been built over the Wairoa River. Although the amount of land taken was small – around 3½ acres (1.4 ha) for the actual road, with another 2½ acres (1 ha) taken as uneconomic ‘severances’ – the works had a significant impact on the community, directly affecting the marae, urupā, and Māori housing next to the highway.⁸³ Moreover, the existing public works procedures for road alterations meant that owners had to wait a very long time before the takings were finalised and compensation awarded.

A road had existed on the site since at least 1870, when the old bridle track was widened. It was declared a Government road the following year. The road curved sharply, avoiding

82. Ibid, p 7; doc, R7, pp 6–7

83. Document F2(b), p 51; counsel for Wai 162 claimants, closing submissions, 24 November 2006 (doc U17), pp 17–19

4.3.2(2)

the pā, kāinga, and urupā at Wairoa. We were told that ‘it is probable that the 1870 track was cut to avoid the areas most sensitive to Ngāti Kahu.’⁸⁴ In 1915, when the Wairoa bridge was resited slightly further upriver, the approaches to the bridge were realigned. At the time, the district engineer stated that this had not affected the urupā ‘and the natives have no objection to the road being taken where shewn.’⁸⁵ The next significant work on the road occurred in 1952 when the Department of Works sought to reduce the sharp curve on the east side of the highway, acquiring 3 roods and 14.8 perches (0.3 ha) from Ngāti Kāhu to do so. Most of the takings were from block frontages, with the two sections containing the marae and urupā the most affected. An agreement with David Hurae Ngawharau allowed the department to enter the burial ground and the work was completed. Compensation negotiations did not begin until 1957; £229 was agreed, which included the agreed value of the land plus five years’ interest.⁸⁶

After severe floods in 1962 caused widespread damage, including to the Wairoa bridge, State Highway 2 was again realigned, and a new two-lane concrete bridge built. Work on the new approaches started in 1965. During construction, a private contractor used fill taken from the Pukewhanake pā site. Human remains were exposed in the process. Witness Antoine Coffin described how local Māori saw bones ‘falling on the road off the back of the truck’, and said that remains were taken by Ngāti Kāhu and reburied at Tamatawhioi urupā.⁸⁷ The *Bay of Plenty Times* reported the incident, but it is not certain if the Ministry of Works was aware of it. Although many bones were gathered and reburied, ‘as most of the bones were generally the same colour as the pumice deposit, it was likely that a great deal of koiwi was buried under the new alignment.’⁸⁸

Meanwhile, the curve in the road approaching the bridge was by now considered dangerous because of the increasing speed and weight of traffic. The Ministry designed a new approach that required land to be taken from a number of Te Papa blocks, including the marae; it also created severances, and went between the urupā and the marae. A less favourable alternative route was identified but, believing they had the Te Papa owners’ consent to proceed with their preferred route, the Ministry of Works went ahead. In January 1965, a Works labourer, who was also an owner, seems to have acted as a middleman between the Ministry and the marae committee. He was responsible for collecting the ‘consent to enter and construct’ forms from owners, which were signed by at least five of the nine members of the marae committee. La Rooij notes that some of the forms were incomplete while, on the left-hand side of the highway (where residents were mostly Pākehā), all forms were completely and consistently filled out with the benefit of legal advice.⁸⁹ The normal procedure

84. Document F2(b), p 21

85. Ibid, pp 24–25

86. Ibid, pp 25–26

87. Document A37(b), pp 52–55

88. Document F2(b), pp 99–100

89. Ibid, pp 37–40



Figure 4.7: Wairoa River bridge under construction, 1967
Photographer unknown. Reproduced courtesy of Tauranga City Libraries (00–293).

for road alterations at this time was, having obtained the owner's permission, to construct the works before taking the land. Once the works were finished the exact amount of land needed would be defined by survey and the land proclaimed as taken.⁹⁰

The two-lane highway, with pedestrian access, was completed in 1969 and the formal process of taking the land began. Although consent had already been obtained, the Ministry now took the land using the compulsory provisions of the 1928 Act. Notices of intention were gazetted, and sent to all recorded landowners by the Māori Land Court. The land was proclaimed as taken in June 1969, allowing negotiations for compensation to begin between the Māori Trustee and the Ministry. In 1971, after two years of negotiations and six years after the land was entered, final settlement was agreed at \$6034, a compromise between the trustee's and the Ministry's valuations. The realignment created several severances. Some were combined into a new lot which (as was common practice) was sold to an adjoining landowner rather than being offered back to the owners.⁹¹

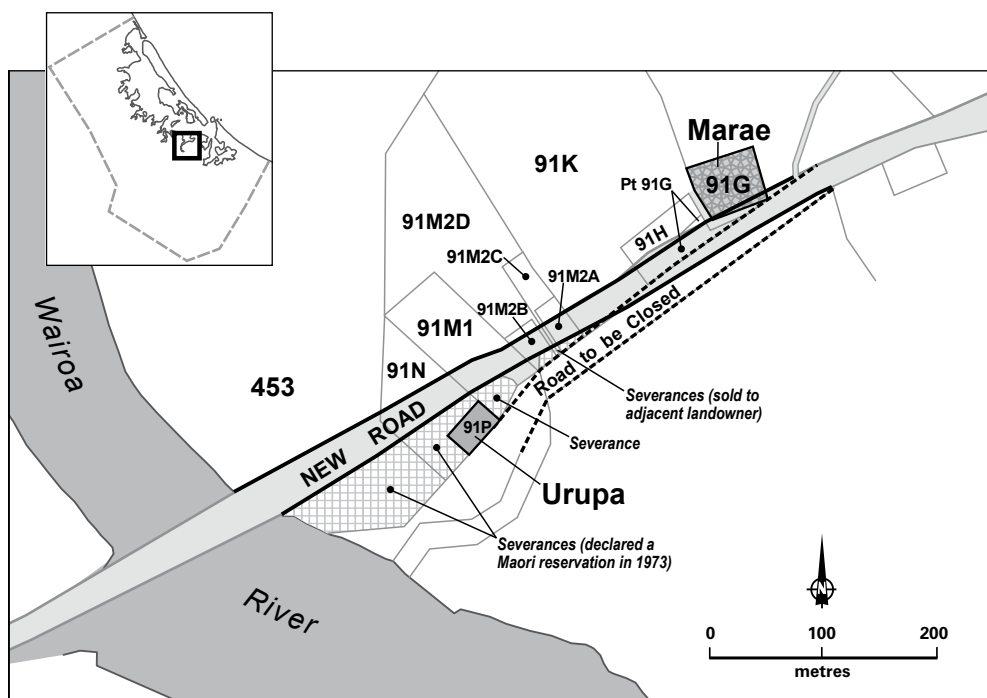
For the hapū, the realignment had several detrimental effects. It quashed marae plans to establish a tennis court and other community facilities, and created difficulties in accessing

90. Waitangi Tribunal, *The Turangi Township Report 1995* (Wellington: Brooker's Ltd, 1995), p 248; paper 2.558, app B

91. Document F2(b), pp 50–53, 57–58

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4.3.2(2)



Map 4.6: State Highway 2 realignment

the Bennett family home on lot 91H. Recalling the events of 1964, Delwyn Bennett-Howe described the Ministry’s first entry onto the land:

As a 14 year old, I witnessed my mother cry as the bulldozers ploughed up her children’s playing field, her vast gardens, her harakeke and her wairua . . . [My father] knew that the first thing they would do would be to bowl the huge cabbage tree. Many here will remember it. It was a landmark – not just any old cabbage tree. He walked straight over to the cabbage tree and clung to it. They started to push the cabbage tree over. It was so close to our house. I couldn’t believe this was happening. Mum said ‘come on koroua’, she always called him that – and he let go. He kept talking to the trees. I’d never seen him do that before. He said ‘stand tall, stand fast, don’t give up without a fight’. I remember it like it was yesterday.

I remembered saying to mum, ‘why can’t we stop this?’ It seemed so unjust. It wasn’t just any old land. It was our ancestral land. But they got it in the end.⁹²

Agreements made by the Ministry of Works to erect a hedge or fence to protect the marae’s privacy and provide road access to lot 91H were not honoured. These are continuing issues, as is noise pollution from the volume of traffic passing the marae.⁹³

92. Delwyn Bennett-Howe, brief of evidence, 13 November 1998 (doc c22), pp 2–3

93. Document F2(b), pp 37, 83

(3) Mangapapa hydroelectric scheme, 1968

Planning for the Mangapapa hydroelectric power project began in the 1950s and affected lands in the Kaimai region (the Tauwharawhara, Te Papa, and Kaimai blocks) owned by Ngāti Hangarau, Ngāti Kāhu, Ngāti Motai, and Ngāti Mahana.⁹⁴ It involved diverting water from the Mangapapa, Ngatuhua, and Opuiaki Rivers, and Ruakaka, Waitaia, Mangaonui, Awakotuku, and Tauwharawhara Streams. The water was collected in a reservoir on the Mangaonui Stream, and taken via tunnels and canals to three power stations: the Lloyd Mandeno, the Lower Mangapapa, and the Ruahihi.

A joint scheme involving Tauranga City Council and the Tauranga Electric Power Board was authorised by Orders in Council, and by the Tauranga City Council and Tauranga Electric Power Board Empowering Act 1965. The council and the power board then set up a joint body, the Tauranga Joint Generation Committee which constructed and owned the works and any land that was taken. Tauranga City Council (using powers under the Public Works Act 1928 and Municipal Corporations Act 1954) remained responsible for the actual acquisition of land.⁹⁵ It appears that, for this project, the local authority was not given the same rights as the Ministry of Works when it came to electricity infrastructure. It was obliged to follow the normal acquisition procedures for taking land.

Work began in 1967 with the construction of access roads and bridges, and a series of surveys and tests on Māori land. The following year, the city council published a notice of intention to take the land, some 5282 acres, and sent notices to 938 people identified as owners. At a council meeting in December, town councillor Vic Smith of Ngāti Hangarau objected to the proposal. The owners began organising a protest, vesting some of the lands in a trust in February 1969 to negotiate with the Tauranga Joint Generation Committee.

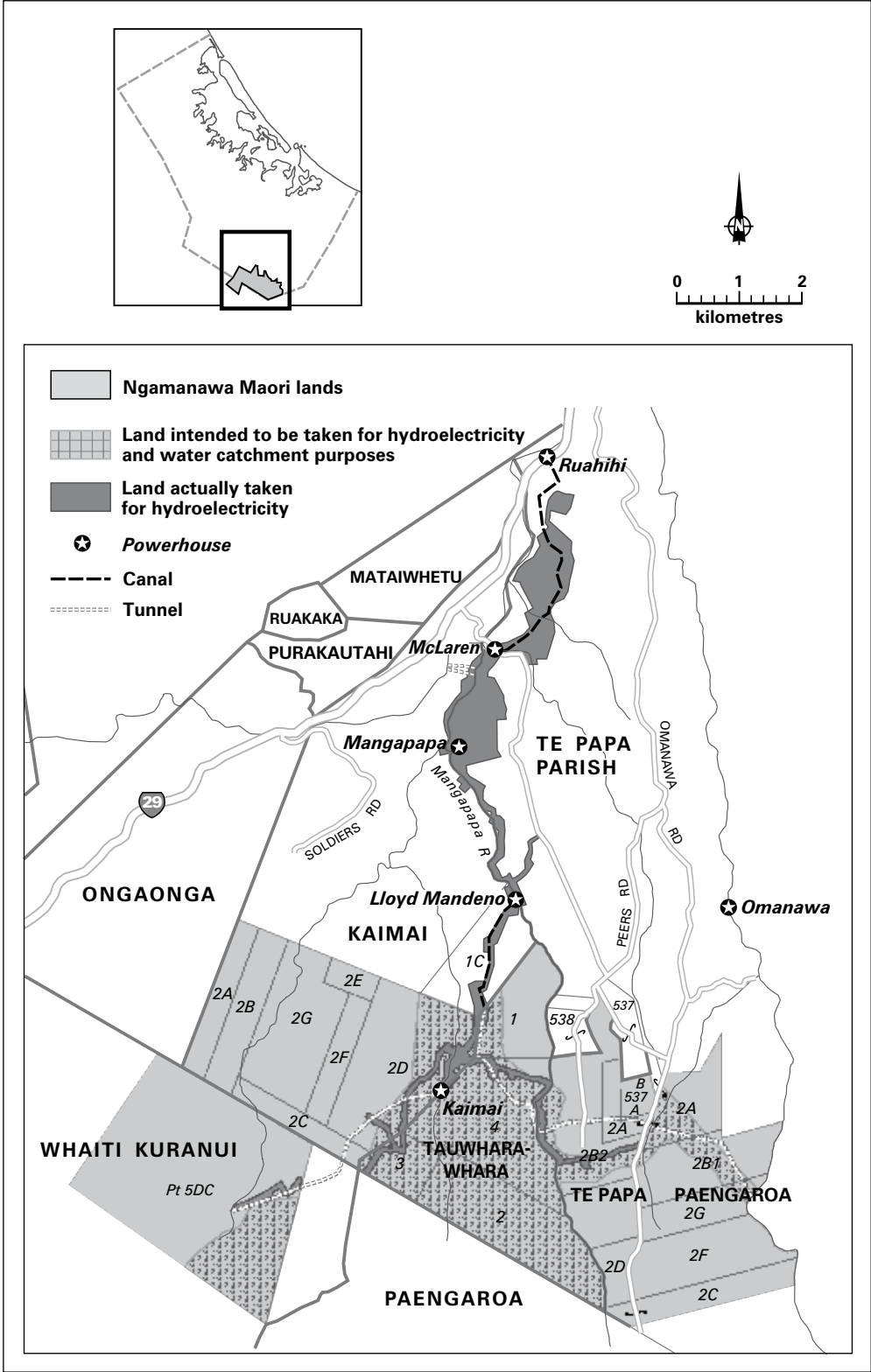
Owners told a council meeting in April 1969 that the amount of land that the committee wanted to take was excessive. In addition, the use of compulsory acquisition was discriminatory, given that committee was negotiating the taking of general land by agreement. Mary Lucas stated that the owners were ‘hurt and disgusted’ at this discrimination. Another owner, Kaikohe Roretana, spoke of Ngāti Hangarau’s relationship to the land and its history, which he said the committee had ‘disregarded in bulldozing and working through it without any respect, which is why we owners are bitter’. The committee defended its proceedings, saying that a survey to partition out the land would have been very expensive and it was too difficult to contact large numbers of owners. According to a committee spokesperson:

the procedure adopted by the committee had been the normal one when dealing with Māori land because of the difficulties of multiple ownership, the problems of finding the

94. Claim 1.1; claim 1.61; claim 1.65

95. Evelyn Stokes, *Ngamanawa: A Study of Conflicts in the Use of Forest Land* (Hamilton: University of Waikato, 1983) (doc A11), pp 46–48; doc S2, p 79

4.3.2(3)



Map 4.7: Intended and actual takings for the Mangapapa hydroelectricity scheme

PUBLIC WORKS ACQUISITIONS, 1886–2006

4.3.2(3)

Proposed taking, 1968 (by block)	Area (acres, roods, perches)	Actual taking to 1983 (by block)	Area (acres, roods, perches)
Tauwharawhara	2268 0 0	Part Tauwharawhara	61 2 7.5
Te Papa Paengaroa 2A	141 1 17	Part Te Papa Paengaroa	41 1 21.5
Te Papa Paengaroa 2B1	44 3 20		
Te Papa Paengaroa 2B1	401 2 0		
Te Papa Paengaroa 2B2	203 1 30		
Te Papa Paengaroa 2B2	138 1 30		
Te Papa Paengaroa 2B2	82 2 35		
Te Papa Paengaroa 2C	248 2 0		
Allotment 537 part Te Papa Parish	0 1 30.7		
Kaimai no 2 part	935 0 10	Part Kaimai 2	36 0 20
Kaimai no 2 part	70 0 21		
Whaiti Kuranui 5D2 part	748 2 0	Whaiti Kuranui 5D2	13 3 12.5
TOTAL	5282 3 33.7		152 3 21.5

Table 4.2: Proposed and actual takings for Mangapapa hydroelectric scheme

Source: doc A11, pp 42, 78–79; actual taking from Whaiti Kuranui 5D2, figure from doc A35, p35

owners throughout the country and the fact that in some blocks a large number of owners had died . . .

The owners responded that meetings of owners had been successfully organised for other purposes. For its part, the council said it was necessary to take a large area of land to preserve the bush cover and thereby protect the water catchment.

The owners’ protests prompted the council to consider alternatives to compulsory taking of the freehold title to the land, and the Tauranga Joint Generation Committee began negotiations. A Ministry of Works engineer was asked to determine how much land was actually required. His report, released in November 1969 and accepted by the committee as a basis for negotiations, identified only around 120 acres as essential for the scheme.⁹⁶

In 1971, the owners and trustees of the affected lands formed the Ngamanawa Incorporation. Between 1970 and 1976, the council took 138 acres of the incorporation’s land under the Public Works Act 1928 (from Kaimai 2, Tauwharawhara, and Te Papa Paengaroa blocks) and a further 14 acres from the Whaiti Kuranui 5D2 block (the incorporation later became responsible for the rest of this block).

96. Document s2, pp 85–102

A small amount of land was later returned, meaning some 144 acres were taken overall. Negotiations between the Tauranga Joint Generation Committee and the Ngamanawa trustees continued into the mid-1990s, with compensation eventually amounting to \$31,322 for the land taken and trees destroyed during construction, plus 5.75 per cent interest.⁹⁷ Construction of the Lloyd Mandeno station was completed in 1972, the Lower Mangapapa station in 1979 and the Ruahihi station in 1981.⁹⁸ The subsequent collapse of the Ruahihi Canal and consequent environmental disaster is dealt with in chapter 7.

4.4 PUBLIC WORKS IN THE PERIOD 1981–2006

4.4.1 Overview

By the later twentieth century, the tide was turning against the wide powers of the State to acquire land for public works, but it was not until the Public Works Act 1981 that legislation attempted to rein in powers of compulsory acquisition, marking the start of ‘a strong swing of the pendulum in the direction of the private property owner.’⁹⁹ The aim of the 1981 Act was to encourage takings by agreement. General notification and objection procedures were strengthened. Objections were heard by planning tribunals (now the Environment Court) whose reports were binding on local authorities, and (in a 1987 amendment) on the Minister of Works.¹⁰⁰ Most significantly, the power of compulsory acquisition was restricted to a list of ‘essential’ works (although this provision was repealed in 1987).¹⁰¹

At the same time, Government began to withdraw from its central role of undertaking public works. It transferred many of its public works activities and assets to state-owned enterprises, which were companies owned by the Crown. In the 1990s, some were sold, becoming wholly private companies. The Ministry of Works and Development was abolished in 1988 and its former construction functions all but disappeared. Land Information New Zealand became responsible for administering legislation relating to public works, in particular the sections of the Public Works Act relating to the offer-back of land to former owners.¹⁰²

97. R Willan, ‘Hydro-Electricity in the Wairoa River Catchment: Land Acquisition’ (commissioned research report, Wellington: Waitangi Tribunal, 1996) (doc A35), pp 14, 32–33, 35; doc A11, pp 63, 71–72

98. Document A11, pp 39–40

99. P Salmon, *The Compulsory Acquisition of Land in New Zealand* (Wellington: Butterworths, 1982), p 8

100. R Davies, *History of Public Works Acts in New Zealand, including Compensation and Offer-Back Provisions* (Wellington: Land Information New Zealand, 2000), pp 18–19

101. This restriction (set out in section 22) was apparently undermined by another provision which enabled the Governor-General to declare, by Order in Council, any specified work to be an essential work. But, in fact, no such order was ever made. In any case, the restriction was controversial and section 22 was repealed under the Public Works Amendment Act 1987.

102. Davies, *History of Public Works Acts in New Zealand*, pp 64–65

The move towards fewer compulsory acquisitions has continued, although the Resource Management Act 1991 empowers companies that are deemed to be ‘network operators’ to make application for compulsory acquisitions.¹⁰³ It is clear that any attempt to take land compulsorily has become more controversial. Part of the reason for this, it has been suggested, is that today, a private business seeking to compulsorily acquire land may attract even less public sympathy than the State.¹⁰⁴

These trends have been mirrored in Tauranga. A private company, TrustPower (partly owned by a community trust), now owns and manages the hydroelectric power stations, and state-owned enterprises such as Transit and Transpower have dealt with roads and electricity lines in the district since the 1990s.¹⁰⁵ The city continues to grow very quickly but, with the major infrastructure in place, most public works relate to upgrading what is already there. Combined with the emphasis on seeking agreement for land acquisition this has meant that much less Māori land, some 15 acres (6 ha), has been compulsorily acquired for public works from 1980 to 1999. Eleven acres (4.85 ha) were acquired in the first decade and two in the second.¹⁰⁶ Māori land remains under significant pressure, however. In the 1980s, land at Pāpāmoa and Mangatawa was used for a gas pipeline, although we received little evidence on the circumstances.¹⁰⁷ Māori land was also purchased for the expansion of the city refuse-disposal site at Pāpāmoa, the owners reluctantly agreeing to sell because of the proximity of the first dump. Wiparera Te Kani of Ngā Pōtiki told us, ‘situating the dump on our land had a major impact on us. In effect it drove us away.’¹⁰⁸ The two-lane State Highway 2 at Te Maunga is currently being altered to cope with increasing volumes of traffic and provide alternative and safer access to the highway. These alterations, however, require the last piece of the Kakau whānau’s land, Pāpāmoa 2 8A. There have been lengthy negotiations, but the case remains unresolved. We also heard evidence regarding consultation and some agreements on the Southern Pipeline project, a new sewage-disposal project.¹⁰⁹

4.4.2 Case study: transmission line, 1990s

In the 1980s, Tauranga’s ageing electricity infrastructure was identified as in need of upgrading. A new electricity transmission line for Tauranga was eventually constructed along the boundary of Māori land in Matapihi, raising issues of consultation, and highlighting the ongoing legacy of the failure to compensate for an earlier transmission line.

103. These include State-owned enterprises and wholly private companies.

104. Davies, *History of Public Works Acts in New Zealand*, pp 83–84

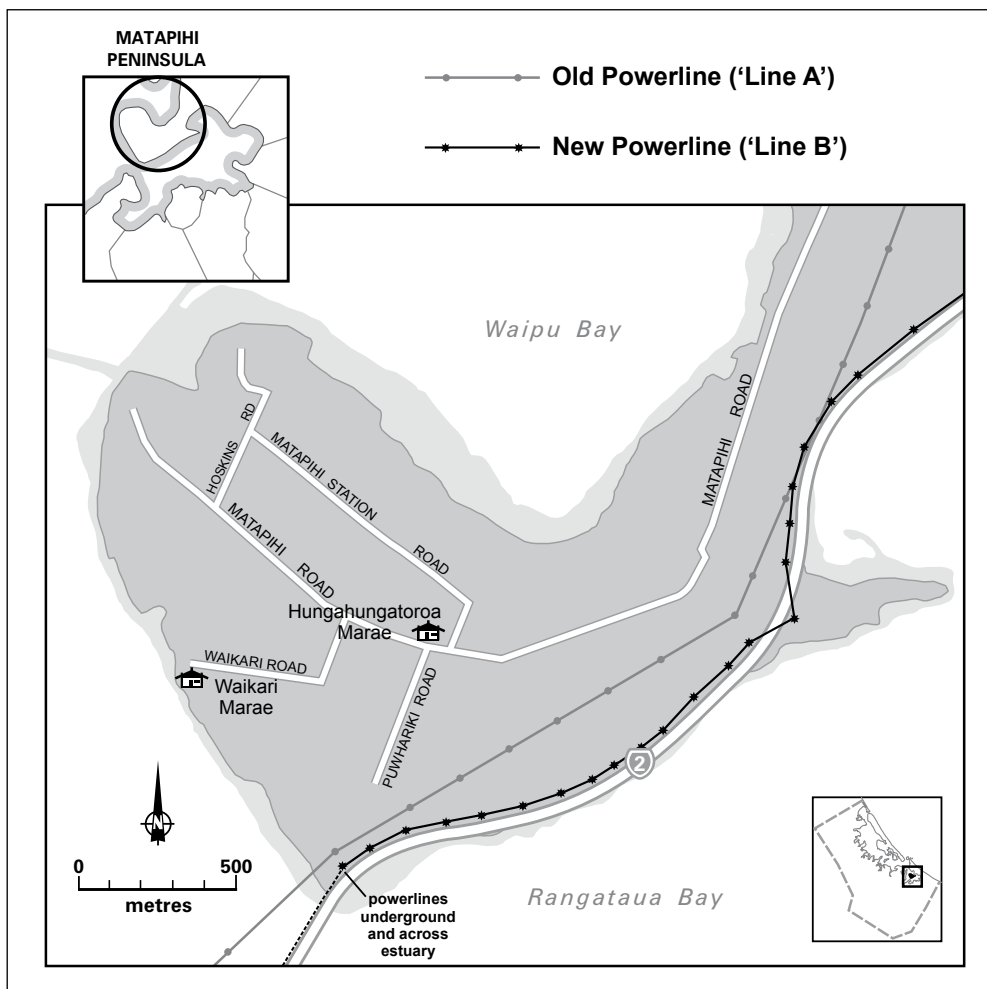
105. For the creation of TrustPower in the 1990s, see doc s2, p102; doc A35, pp 48–50.

106. Document T16(a), p 31

107. Document E1, pp 89, 92–93

108. Wiparera Te Kani, brief of evidence, undated (doc E10), p 8

109. Barry Somers, brief of evidence on behalf of Tauranga City Council, 27 September 2006 (doc T6)



Map 4.8: Powerlines over Matapihi

In 1982, the Electricity Department favoured an inner harbour route for a new transmission line as the least environmentally damaging and cheapest. It was not until 1991 that state-owned enterprise Transpower (which had replaced the Electricity Department) and the Tauranga Electric Power Board agreed to construct a second line. Transpower consulted with Māori landowners and, discovering their opposition to the preferred route, sought an alternative. They then proposed to put the line alongside the Maungatapu to Matapihi motorway.

This new choice of route led to the Ngāi Tūkairangi Orchard Trust raising concerns about the level of consultation and the proximity of the proposed line to their shelterbelts. A series of meetings were held, but negotiations broke down as the trust tied the acceptance of any 'line B' to the removal of the original 1952 line ('line A'), which went through lands that had subsequently been developed as orchards, and compensation for the old line. By 1997, the orchard trust wanted assurance that any new line would not affect shelterbelts, as well as the

removal of line A, compensation of \$150,000, easements to be for a maximum of 40 years, and Transpower to meet all costs. Transpower could not give a firm assurance regarding a timetable for the removal of line A, nor would it meet all the other conditions. The situation was exacerbated by Transpower's confusion over whether to consult and negotiate with the trust or local hapū. Negotiations having failed, Transpower went ahead with the construction of line B, although we did not receive precise information on when this happened or whether there were any formal objections.¹¹⁰ The situation had not changed in 2006 when Mahaki Ellis, of Ngāi Tūkairangi, stated to the Tribunal that line A still went through the orchard and '[n]othing has changed. There has been no further discussion with Transpower and no compensation has been paid.'¹¹¹

4.5 CONCLUSION

For successive New Zealand governments, the transformative power of public works was an article of faith. They energetically expanded their powers of compulsory acquisition across an increasingly diverse range of works, believing that central government should be the planner and undertaker of major infrastructure works. The same powers were extended to local government in order to provide local amenities. This changed after 1981. However, by this time substantial amounts of land had been taken from Tauranga Māori for public works, and some of their most iconic sites, urupā, marae, and food-gathering places damaged or otherwise adversely affected. Often the acquisitions occurred without the consent of the owners, and sometimes even without their knowledge. The questions raised by this experience are explored further below.

4.6 LEGAL SUBMISSIONS: CLAIMANT, CROWN, AND LOCAL AUTHORITY

We turn now to legal submissions made by counsel for claimants, Crown and the local authorities, summarising their main arguments.

4.6.1 Claimant submissions

Claimant counsel made a submission on behalf of all the claimants on issues common to all the public works claims, arguing the following points.

110. Document F29, pp 79–84

111. Mahaki Ellis, brief of evidence, undated (doc Q9), pp 20–21; Matiu Dickson, brief of evidence, undated (doc Q12), pp 6–7

4.6.1

- ▶ There are tensions between article 1 of the Treaty, which provides for the Crown's right to kawanatanga, and article 2, which guarantees Māori tino rangatiratanga over their lands. Citing the *Turangi Township Report 1995* finding that article 2 means compulsory acquisition should occur only 'in exceptional circumstances and as a last resort in the national interest', counsel argued that the public works regime should have limited compulsory acquisition of Māori land to situations where 'there are no other options available and the viability of the nation or community is threatened if the land is not acquired'. If public works did meet this criteria and a compulsory taking must occur, the Crown should have ensured that it created the least possible impact on the owners.¹¹²
- ▶ Rather than attempting to overcome the difficulties caused by multiple ownership of Māori land, the Crown's policies and legislation for most of this period encouraged taking authorities to behave in a way that discriminated and was markedly unfair to Māori. Indeed, Māori land was targeted for public works because 'as a result of ownership complications', it was 'frequently the less developed land' and was therefore cheaper.¹¹³
- ▶ The definition of public works broadened until eventually it could accommodate 'almost any possible use a local authority or central government could conjure up'.¹¹⁴ Further, local authorities had increasing powers of compulsory acquisition but, to the detriment of Tauranga Māori, the Crown failed to require them to take account of Treaty of Waitangi obligations.¹¹⁵
- ▶ Consultation was often minimal, or lacking entirely, because there was a perceived difficulty in contacting owners of Māori land. This in turn encouraged taking authorities to use compulsory procedures more often than with general land.¹¹⁶
- ▶ Notification requirements for public works takings of Māori land were far less stringent than for general land. Therefore, in many cases, owners did not know of takings and consequently made no objection.¹¹⁷
- ▶ Compensation procedures were discriminatory, being at times heard in a different court than general land. Claims were initiated by taking authorities or the Māori Trustee rather than owners, and the court considered only the economic value, rather than any cultural value the land might have. The presence of wāhi tapu, the amount of land left to the hapū, and 'any other relevant factor' should be 'given weight' in the calculation of compensation.¹¹⁸

112. Claimant counsel, generic submissions on public works, 7 December 2006 (doc U25), pp 11, 14, 32; Waitangi Tribunal, *The Turangi Township Report 1995* (Wellington: Brooker's Ltd, 1995), p 286

113. Document U25, p 29

114. *Ibid*, pp 19–20

115. *Ibid*, pp 29–32

116. *Ibid*, p 20

117. *Ibid*, p 19

118. *Ibid*, pp 14–15

- ▶ Taking authorities usually acquired a freehold title when a lesser title, such as leasehold, would have been more in accordance with Māori values and also would have enabled the easier return of land when no longer required. The Public Works Act 1981 still does not require leasehold to be considered.¹¹⁹
- ▶ It was common for more land to be taken than was necessary, and land was often not used for its intended purpose.¹²⁰
- ▶ Land no longer required for public works was almost never offered back to owners, although technically it could have been. Even after 1981, when offer-back became a legislative requirement, the policy of asking market price excluded many Māori owners, and the perceived difficulties in re-vesting Māori land meant authorities continued to fail to offer the land back.¹²¹

4.6.2 Crown submissions

The Crown in general disagreed with these arguments and made the following submissions.

- ▶ ‘It must be accepted that from time to time, the Crown has obligations under Article 1 of the Treaty to acquire land compulsorily in the public interest to provide public works.’ *The Turangi Township Report 1995* finding on restricting compulsory acquisition was unreasonable and ‘sets the bar too high.’¹²² In making this argument, counsel drew on the decision in *New Zealand Māori Council v Attorney-General*, which established a test of ‘reasonableness’ in relation to Treaty principles. Instead, in balancing articles 1 and 2, the Crown should be ‘measured in the development and use of compulsory acquisition powers’ and pay fair market compensation. In addition, its duty to Māori under article 2 was to consider the implications for Māori of any compulsory acquisition. This duty means the Crown should adequately consult with Māori and, where possible, protect Māori rights and interests in land, the loss of which would have major adverse social, cultural, and economic impacts for Māori.¹²³
- ▶ The Tribunal also needed to consider changing national priorities. New Zealand legislation kept the general premise that fair compensation must be paid for land taken. However, providing a basic infrastructure was so important that works such as roads and railways were exempt from certain protections such as notification and objection procedures. This was acceptable at the time. Today, with the infrastructure largely in place, that overriding need is gone, and infrastructure is now subject to the same requirements as other public works.

119. Ibid, pp 17–19

120. Ibid, pp 8–9

121. Ibid, pp 20–21

122. Crown counsel, closing submissions: issue 4, 8 December 2006 (doc v28), pp 4–5

123. Ibid

4.6.2

- ▶ Public works and economic development went hand in hand. For example, the port was vital to Tauranga's financial prosperity which has benefited all, including Māori.
- ▶ The inquiry district is dominated by Tauranga City and the need for public works was greater in a city. As the inquiry district was relatively small, the proportion of land taken would be inevitably be greater than in a large rural area.
- ▶ For some types of public works acquisitions, such as road and rail, anything other than freehold title would have been completely unsuitable. Pipelines and powerlines have, in fact, usually been by way of easement. For other takings, the Crown acknowledged that where other options have been taken this has often been on the initiative of the owners. The Crown did not address the specific point of the necessity of creating the 'least impact' on the owners and the consequences of taking a freehold title for returning the land.
- ▶ There were indeed lesser requirements, until 1974, to notify owners of Māori land not registered under the Land Transfer Act. For other Māori land the notification requirements were the same as for general land, and the evidence is that these requirements were generally followed.¹²⁴
- ▶ There is evidence that, in practice, there was more consultation with Māori over public works than was legally required.¹²⁵
- ▶ Compensation procedures, whereby owners were not responsible for initiating claims, were a recognition of the difficulties of multiple ownership, and by implication intended as a protection for Māori. Generally there were not unreasonable delays, and if there were there is usually insufficient evidence to determine the cause. Moreover, delays were compensated by the payment of interest.¹²⁶
- ▶ Previous laws had not required compensation to take into account the extent of land left to Māori, or the cultural significance of the lands acquired, but current practice shows that an exchange of land is more readily considered in compensation for a land taking.¹²⁷
- ▶ There have not been a large number of takings where the land is no longer required. The Crown did not explicitly address the point of cost putting the return of land out of reach of former owners but did offer cases where land has been successfully returned.¹²⁸
- ▶ The evidence does not support the allegation that Māori land was targeted for public works in preference to non-Māori land in the Tauranga district.¹²⁹

124. Document u28, pp 7, 30. We assume the Crown is referring to the Land Transfer Act 1915.

125. Ibid, p 5

126. Ibid, pp 18, 43

127. Ibid, pp 18–19, 43

128. Ibid, pp 63–65

129. Ibid, pp 19–24

- ▶ The evidence shows that ‘as a general rule’ taking authorities did not take more land than necessary, although the one exception is conceded, as detailed below, on this point. The Crown did not address the claim that land was not used for its intended purpose.¹³⁰
- ▶ The Crown did not address the issue of the delegation of its powers to the council, or other bodies, in depth, merely noting that under the Public Works Act 1928 local authorities had to demonstrate they ‘had complied with statutory procedures.’¹³¹

4.6.3 Local authority submissions

Counsel for the three local authorities in the inquiry district made specific submissions on the responsibility of local authorities vis à vis the Treaty. These will be extensively set out and analysed in chapters 6, 7, and 8. Here, we summarise counsel’s argument as it relates to public works:

- ▶ Local authorities are independent of the Crown, are not a Treaty partner, and therefore do not have the same kind of ‘pure or direct’ Treaty obligations as the Crown. Councils are ‘creatures of statute and the extent of their obligations to recognise the Treaty are completely governed by legislation.’¹³²
- ▶ This is shown by the contrast in processes between the planned new Southern Pipeline, a new sewerage pipe between Maleme Street and Te Maunga Wastewater Plant, and the Matakana and Pāpāmoa sewerage pipelines. As required under the Resource Management Act 1991, Tauranga City Council has negotiated, and continues to negotiate, with Māori over the establishment of the Southern Pipeline. The other pipelines were established under the Public Works Act 1928 and, according to claimants, showed a ‘disregard for tangata whenua and their concerns.’ Counsel submitted that, ‘an absence of statutory requirements to recognise Māori interests is responsible for this.’¹³³
- ▶ The Crown was responsible for the public works regime: ‘in judging history . . . the Tribunal should be mindful that the ultimate power for deciding how things were done lay with the Crown.’ The current regime is a far cry from past legislation and local authorities are ‘actively fulfilling their Treaty responsibilities to Tauranga Māori through the legislative framework provided’. Whether the framework itself is adequate in Treaty terms is for the Tribunal to judge.¹³⁴

130. Ibid, pp 60–61

131. Ibid, p 8

132. Counsel for local authorities, closing submissions, 12 December 2006 (doc U39), pp 4–5

133. Ibid, pp 32–34

134. Paper 2.641, paras 4–5

4.7 CROWN CONCESSIONS

During the final week of the stage 2 hearings held at Hangarau Marae from 11 to 15 December 2006, Crown counsel submitted, on the instructions of the Minister in Charge of Treaty of Waitangi Negotiations, an additional memorandum containing a number of concessions. We quote in full those concerning public works:

The Crown acknowledges, however, that public works takings have caused grievance to some Tauranga Māori, and that in certain circumstances, the Crown failed to adequately notify, consult or provide adequate compensation to the owners of Māori land. In particular, the Crown acknowledges that:

- ▶ In relation to the Whareroa lands, taken for ‘better utilisation’, the Minister failed to protect the interests of the owners;
- ▶ In relation to the construction of power lines over Māori owned land, the Crown failed to adequately notify or provide compensation to some owners;
- ▶ In relation to Kaitemako [*sic*] B and C the Crown knowingly took more land than was required for the public work concerned. By not consulting the owners, the Crown failed to provide them with the opportunity to negotiate the amount to be taken.
- ▶ The Crown acknowledges that these actions were in breach of the Treaty and its principles, and that some Tauranga Māori have suffered prejudice as a result.¹³⁵

4.8 THE PUBLIC WORKS REGIME AND THE TREATY: TRIBUNAL DISCUSSION, ANALYSIS, AND FINDINGS

4.8.1 Introduction

Previous Tribunal reports have considered compulsory acquisition for public works with regard to both the actual terms of the Treaty and the Treaty principles of reciprocity, partnership, active protection, and equal treatment. The *Te Maunga Railways Land Report* (1994), *The Ngai Tahu Ancillary Claims Report 1995*, *The Turangi Township Report 1995*, *He Maunga Rongo: Report on Central North Island Claims* (2008), and, most recently, the *Wairarapa ki Tararua Report* (2010), have firmly established the Tribunal view of the public works regime and the Treaty. We concur with the general findings of these previous inquiries and consequently do not revisit them in detail, but rather summarise and use these findings as a benchmark for measuring Crown actions in Tauranga.¹³⁶

¹³⁵. Paper 2.641, pp 2–3

¹³⁶. Waitangi Tribunal, *Te Maunga Railways Land Report* (Wellington: Brooker's Ltd, 1994); Waitangi Tribunal, *The Ngai Tahu Ancillary Claims Report 1995* (Wellington: Brooker's Ltd, 1995); Waitangi Tribunal, *The Turangi Township Report 1995*; Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, revised ed, 4 vols (Wellington: Legislation Direct, 2008); Waitangi Tribunal, *Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010)

4.8.2 Previous Tribunal findings

First, on matters of general principle, previous Tribunal reports have found that compulsory acquisition is a breach of the ‘plain meaning’ of article 2 of the Treaty which guarantees Māori possession of their lands for as long as they should wish and, in the Māori text, tino rangatiratanga over those lands.¹³⁷ It is possible that, if consulted, Māori might have consented to set aside some of their article 2 rights for the purpose of public works. The Crown, however, did not provide proper political representation for Māori when key public works legislation was passed and made no attempt to consult Māori or obtain their consent.¹³⁸ Such consultation would have been possible at the time and ‘together the Crown, and settler and Māori local authorities could have agreed the circumstances in which the nation’s need would allow for compulsory takings’.¹³⁹ Far from recognising iwi and hapū authority, however, the Crown acted to suppress it. The opportunity for Māori to exercise tino rangatiratanga over their lands as hapū was largely lost when the Crown individualised land titles in the later nineteenth century. The problem was compounded in the twentieth century as for many decades the Crown continued to ‘stymie’ Māori attempts at autonomy and did not recognise a ‘tribal position’ on such matters as public works.¹⁴⁰ The establishment of compulsory acquisition for public works in New Zealand without consultation or consent was, then, a serious breach of the Treaty.¹⁴¹ We agree and would add that, as in other parts of the country, there is no evidence that Tauranga Māori were consulted about early public works legislation.

Secondly, as Māori did not consent to restrict their article 2 rights, Treaty principles require the following four main measures: avoidance of the use of Māori land for public works if possible; genuine consultation and attempts to reach agreement on public works projects; the use of compulsory acquisition only in exceptional circumstances and as a last resort in the national interest, and the taking of lesser interests such as leaseholds rather than freehold title.¹⁴² We will explore each of these in turn with regard to the situation in Tauranga, focusing particularly on the context of increasing Māori landlessness in the district. We also look at local authority powers of compulsory acquisition and the current public works regime. In the process we will answer our key question: has the public works regime protected Māori interests in the Tauranga Moana District in accordance with the Treaty of Waitangi?

137. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 819

138. *Ibid*, p 837

139. *Ibid*, p 860

140. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim* (Wellington: Waitangi Tribunal, 1988), p 47

141. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 837, 872

142. Waitangi Tribunal, *The Turangi Township Report 1995*, p 365; Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report*, p 11

4.8.3 The need to avoid using Māori land for public works if possible

(1) *The decline in Māori landholding*

About 4961 acres (2008 ha) of Māori land, it has been estimated, was acquired for public works purposes in the period from 1886 to 2006. This was against a background of declining Māori landholding: from some 75,000 acres (30,000 ha) in 1886, Māori landholdings had decreased to 32,204 acres (13,038 ha) by 2006.¹⁴³ Public works takings started to increase rapidly in Tauranga after 1945 and, as Māori landholdings continued to diminish, the impact of each taking was correspondingly greater. Most of the claims before us are indeed related to public works from this post-war period. Statistics on the landholdings over time of each hapū are incomplete. However, it is clear that by 1886 some hapū and iwi – for example, Waitaha, Ngāti Motai and Ngāti Mahana, Ngāi Te Ahi, Ngāti Ruahine, Ngāti Tamarawaho, and Ngāti Hangarau – had very little land indeed. As counsel for these hapū have submitted, they have consequently felt a great impact from public works on what were already very slight landholdings.¹⁴⁴

The Government was not unaware of this situation. By the 1930s the Native Department, recognising the diminished state of Māori landholdings, did sometimes oppose public works acquisitions. In 1938, the department recommended against a proposal to compulsorily acquire all of the Matapihi Peninsula for a harbour bridge and highway. The department advised that the majority of the 669 owners were ‘virtually landless within the meaning of the Native Land Act’. It was possible that they would ‘consider the action as directed “against the Maoris” and thus give them cause for further grievances.’¹⁴⁵ In 1952, the Minister of Māori Affairs, after protests by Māori owners in Maungatapu, suggested that an alternative route for the Tauranga to Mount Maunganui transmission lines should be considered, if one could be found ‘without too much inconvenience.’¹⁴⁶ It would appear, however, that the opinion of the Native Department (and later, Māori Affairs), when in competition with Public Works, did not usually prevail in Government circles. Moreover, the rush for growth in Tauranga after the Second World War may have prompted even less concern for Māori interests for some years. In the late 1950s, when the Tauranga to Te Maunga motorway and bridge projects were being built, the under-secretary of Māori Affairs told representatives of Ngāi Te Rangi hapū that, although he sympathised and understood their attachment to the land, they all had to accept change and, ‘[t]here is no special protection for Maoris or other citizens of this country which can be invoked.’¹⁴⁷

143. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 403

144. Document U33, p 19; counsel for Wai 465 claimants, closing submissions, undated (doc U19), p 3; doc U5(a), p 4; doc U1, p 92; doc U11, p 57

145. Committee chairman to the engineer, Public Works Department, 23 September 1938, MA 1 30/3/130 pt 2, ArchivesNZ, Wellington, pp 1–2 (supporting documents to doc A39, various dates (doc A39(a)), pp 39–40)

146. Document A26, p 11

147. Minutes of meeting held at Matapihi School, 8 April 1959, MA 29/4/11, ArchivesNZ, Wellington, p 2 (doc A38(c), p 848)

For many decades there was indeed no legislative requirement for the authorities to consider the further adverse effects that acquiring land for public works might have on the current state of Māori landholding. It is not surprising, therefore, that little evidence has been presented that this was considered as a factor when designing public works or that authorities looked for alternative sites in preference to using Māori land. The situation changed somewhat with the Town and Country Planning Act 1977 and the Resource Management Act 1991, both of which required authorities to have regard for Māori relationships to ancestral land when planning public works (see chapters 6 and 8 for further details on these Acts and their practical effects). We note, however, that Anthony Averill, property services manager for Tauranga City Council, on cross-examination was uncertain whether the past land losses of Māori would be considered when the council was considering the siting of public works.¹⁴⁸

(2) Treaty analysis and findings

It is well established that the Crown had a duty under the Treaty to ensure that Māori retained sufficient land for their economic and cultural needs.¹⁴⁹ As Māori landholdings were reduced, this duty of active protection became more pressing. That is, it became even more important to protect the little that was left to Māori, particularly as the remaining land was often that most highly regarded for cultural and spiritual reasons. The Tūrangi Tribunal, therefore, found that ‘the Crown should not seek to acquire Māori land without first ensuring that no other suitable land is available as an alternative’. The *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim* states, with reference to ancestral land, ‘[t]he principles of the Treaty require that planning should have regard to the retention of lands in Maori ownership.’¹⁵⁰ Planning legislation in the last 40 years goes some way towards this, so that in 2002 the Privy Council observed (on the taking of land for a road) that it would ‘accord with the spirit of the legislation’ to prefer any reasonably acceptable alternative that did not affect Māori land which the owners wished to retain.¹⁵¹

As we have seen, however, the urbanisation of Tauranga proceeded for decades without any consideration of Māori land poverty in the area. Development was concentrated in the eastern harbour area, the very region where much of the remaining ancestral land was located. The 1968 decision to direct further development towards the east intensified an already existing situation. While some acquisitions may have been unavoidable, the Crown should still have required taking authorities to consider alternative sites that did not require Māori land and resources. We find that the failure to do this is a breach of the Crown’s duty

148. Document 4.7, p 45

149. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 3rd ed (Wellington: GP Publications, 1996), pp 201–206

150. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim*, p 88; Waitangi Tribunal, *The Tūrangi Township Report 1995*, p 365

151. *McGuire v Hastings District Council* [2002] 2 NZLR 577 (PC) at 594

4.8.3(3)

of active protection. Compounding this breach is the fact that in Tauranga the Crown was the main cause of the large Māori land losses of the nineteenth century.

(3) Was Māori land targeted?

Claimants have expressed concerns that, far from actively protecting Māori land, the Crown has done quite the opposite and has targeted Māori land in preference to general land for public works. This has been specifically alleged in the case of the Hairini substation, Pāpāmoa primary school, and the use of Matapihi land for a motorway, railway, and transmission lines.¹⁵² Cathy Marr's research suggests two main reasons why the authorities might have targeted Māori land: first, it was often the most undeveloped and therefore the cheapest land in the district, and secondly, compulsory acquisition – which was standard practice for acquiring Māori land for much of the twentieth century – was easier than negotiating agreements, the course usually taken with general land.¹⁵³

While it is probable that some individual takings were affected by factors such as Marr suggests, the few comparative studies researched for this inquiry do not suggest a general pattern of targeting in this district. For example, the takings for water catchment purposes for Te Puke and Tauranga in the 1930s and the period from the 1950s to the 1970s show large amounts of all types of land being taken: general, Crown, and Māori. For Tauranga Airport, 120 hectares (close to 300 acres) of Māori land was acquired, compared with 112 hectares (about 277 acres) of general land.¹⁵⁴ For the port, about 100 acres (40 ha) of undeveloped Māori land was taken. However, approximately 27 acres (11 ha) of general land, subdivided into sections, was also acquired.¹⁵⁵ The Crown and local authority witnesses have submitted that the siting of many works, such as telecommunications towers, airports, water catchment reserves, hydroelectric power stations, and quarries, would be largely determined by geographical or geological factors. In the case of roads, rail, and transmission lines, the need to take the shortest route was most important, not whether the land was undeveloped or easier to acquire.¹⁵⁶ Many of the takings in Tauranga were for precisely these kinds of works. In particular, we received evidence about the consideration of different sites for a port before Tauranga Harbour was settled on, and how Tauranga Airport was originally on land which proved too vulnerable to the sea before moving to its current site.¹⁵⁷ In most cases, however, we were not provided with evidence as to whether there were other, equally suitable, sites that might just as well have been used. Without comprehensive comparative research and a thorough investigation into possible alternative sites and routes there is insufficient

152. Document U19, p 11; doc U12, pp 27–28; doc U8, p 11

153. Marr, *Public Works Takings of Maori Land, 1840–1981*, pp 126–127, 169, 194

154. Document T17, pp 2–4; doc S2, pp 37, 39–41

155. Document A27, pp 35–37; 'Order in Council Consenting to Land Being Taken for Better Utilization in Block VII, Tauranga Survey District, 10 September 1952', *New Zealand Gazette*, 1952, no 60, p 1473

156. Document U28, pp 20–22

157. Document S2, p 52; doc A27, pp 18, 31–32

evidence to conclude whether there was a pattern of choosing Māori land in preference to other land. Consequently, we make no finding on this issue. We would, though, point to our findings on land development issues, in the previous chapter, and make the observation that if Māori land *were* taken simply because its less-developed state meant lower compensation, then that would be compounding an existing breach.

(4) *Were Māori sites of significance avoided?*

Much of the land retained by Māori after raupatu contained sites of significant cultural value, including urupā. The disturbance of urupā during the course of public works is a particular source of grievance for Tauranga Māori. The Crown was aware of Māori concerns and had an official policy of avoiding urupā. However, apart from land taken for roads and rail under the 5 per cent provisions, there was no legislative protection for urupā from public works until the Public Works Amendment Act 1948. In practice, without the support of legislation, the Crown's policy of avoiding urupā provided minimal protection. It appears officials would usually only inquire with the Native Department rather than local Māori about the presence of wāhi tapu. In many cases, there were no inquiries at all.¹⁵⁸

In Tauranga, as elsewhere, the earliest roads were made after direct consultation with Māori. Marinus La Rooij's research suggests that the original 1870s road near Wairoa Marae was designed to avoid both the urupā and marae.¹⁵⁹ For much of the twentieth century, however, officials appear to have made little effort to discover the presence of wāhi tapu before starting work, instead responding to the complaints of tangata whenua after work had begun. For example, in 1909 the line of the East Coast Main Trunk railway was altered to avoid a historic Ngāti Hangarau urupā after complaints from Te Mete Raukawa. In 1922, the urupā on the Panepane block was fenced off at the request of local Māori when the land was taken for harbour protection. On the other hand, the Tribunal heard evidence of the disturbance of urupā at many locations, including Whakaheke because of railway construction, Mangatawa because of quarrying, Maungatapu because of motorway construction, and at Pāpāmoa because of the sewerage pipeline. By the 1940s, the Public Works Department was making some inquiries regarding urupā before acquiring land for public works, but in the case of Mangatawa it was soon revealed how inadequate these could be. Although the resident engineer reported that the land to be taken for a quarry on Mangatawa did not contain burial grounds, human remains were soon uncovered once quarrying began. After complaints, a somewhat superficial investigation was held and the Crown showed little hesitation in enlarging the quarry area on the basis that the historic site had already been significantly disfigured.¹⁶⁰

158. Marr, *Public Works Takings of Maori Land, 1840–1981*, pp 69–71, 179–180

159. Document F2(b), p 21

160. Under-secretary, Public Works Department to under-secretary, Native Department, 19 February 1909, MA 1 1909/6, ArchivesNZ (doc A38(b), p 530); under-secretary, Public Works Department to under-secretary Native Department, 14 January 1909, MA 1 1909/6, ArchivesNZ (doc A38(b), p 531); under-secretary to under-secretary

4.8.3(4)



Figure 4.8: The Maungatapu Causeway under construction, 1958. Matapihi is top of photo, Maungatapu bottom foreground. Maungatapu Marae is on the shore, left of construction.

Photographer unknown. Reproduced courtesy of Tauranga City Libraries (04–626).

In addition to physical damage, wāhi tapu have also been affected in other ways. For example State Highway 29 is very close to Te Pahou urupā and has separated that urupā from Hairini Marae. The realignment of State Highway 2 affected Wairoa urupā and also separated it from the nearby marae. In this case, the realignment was done to make the road safer by reducing a sharp curve in the approach road to a bridge, but there is little evidence of an adequate investigation of alternatives to avoid the marae and urupā altogether (see sec 4.3.2).¹⁶¹ The Tauranga to Te Maunga motorway seriously affects Maungatapu Marae which, despite an earlier agreement, was not moved away from the motorway by the Department of Works. Although there were protests, the Minister of Works declared that as the motorway line had been changed (to be slightly farther away from the marae), he had ‘no legal or

Public Works Department, 7 January 1909, MA 1 1909/6, ArchivesNZ (doc A38(b), p 533); Te Mete Raukawa to head of the Native Department, 17 December 1908, MA 1 1909/6, ArchivesNZ (doc A38(b), p 534); S Woodley, *Matakana Island*, p 64; doc Q35, p 6; doc A37(b), pp 60, 135; doc A44, pp 12–19; doc A26, pp 12–13; acting resident engineer to district commissioner of works, 30 May 1952, PW62/86/3/2 (documents in relation to Mangatawa, undated (doc E34), p 3); resident engineer to district commissioner of works, 19 September 1952, PW62/86/3/2 (doc E34, p 6); report district commissioner of works to commissioner of works, 17 May 1957, PW62/86/3/2, pp 1–2 (doc E34, p 9)

161. Te Kapuhuia Reweti, brief of evidence, undated (doc G17), p 3



Figure 4.9: Maungatapu Marae, 1958

Photographer unknown. Reproduced courtesy of Tauranga City Libraries (00–125).

moral obligation to remedy the matter.¹⁶² Both Maungatapu and Wairoa Marae are exposed to view and traffic noise. Airport noise and pollution from heavy industry affects Whareroa Marae, while Tamapahore Marae, sited very close to the Mangatawa quarry, was affected by the blasting operations for many years (see sec 4.3.2).¹⁶³ The prejudice to wāhi tapu and other taonga is not limited to urupā and marae. In chapters 7 and 8, we further consider the impact of public works on tūpuna maunga, waterways, and the harbour.

(5) *Treaty analysis and findings*

It is clear from the evidence that the Crown understood the depth of Māori feeling on the subject of urupā at least (if not all wāhi tapu). However, for much of the period under consideration the official policy to avoid urupā was not a high priority. Consequently, in many instances, local officials paid only perfunctory attention to urupā. The location of some works showed remarkable insensitivity and indeed, even at the level of the Minister of Works there was sometimes more concern with the legalities than a sense of ‘moral obligation’ or wider duty of care. The Crown’s awareness of Māori concerns on this issue makes its indifference all the more reprehensible.

We agree with the *Ngawha Geothermal Resource Report 1993* that the Treaty’s guarantee to Māori of rangatiratanga over their taonga means that there must be ‘a high priority for Maori interests when proposed works may impact on Maori taonga’. We find, therefore, that

162. Document A26, p 13

163. Document Q32, p 3; Huriana McLeod Taite, brief of evidence, 22 June 2006 (doc R18), pp 5–6

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in siting public works insensitively and in failing to use their best efforts to safeguard wāhi tapu from damage or other adverse effects, the Crown breached the Treaty and caused prejudice to Tauranga Māori.¹⁶⁴

4.8.4 The need to seek agreement

(1) *Were there public works acquisitions by agreement or purchase, and what was the level of consultation?*

Rather than take land compulsorily, it was possible for the authorities to seek agreement from the owners to acquire the land under legislation such as section 27 of the Public Works Act 1905 and section 32 of the 1928 Act. Marr's research concludes that, nationally, it was standard practice to negotiate such agreements with general landowners. However, for Māori land the authorities resorted to compulsory acquisition from the outset, owing to the perceived difficulties of seeking consent from Māori landowners. As described above, the complicated system of landownership imposed by the Crown on Māori had led to multiple ownership, absentee owners, and out-of-date records of owners and their addresses. There was a change of policy around the mid-twentieth century, with more concerted attempts being made to seek agreement for Māori land. But without the backing of legislation until the later twentieth century (such as the requirement to call meetings of owners from 1974), the implementation of such policies was flawed and inconsistent.¹⁶⁵

In Tauranga it appears that little attempt was made to negotiate agreements with Māori landowners until the 1930s. With the exception of the Welcome Bay road in the 1880s, most of the early takings show no evidence of prior negotiations. A change of policy is apparent in the 1930s when Joseph Heenan, under-secretary of Internal Affairs, wrote, regarding Tūhua, that the Government was 'against taking compulsorily, land from the natives'. Heenan described the process needed to acquire the island by agreement. The Government would need to issue an order prohibiting private alienations, make applications for succession orders whereby owners discovered to be deceased could be succeeded, have meetings with the owners about selling, and also call a meeting of owners to seek consent formally for the acquisition.¹⁶⁶ In this case, the owners refused to sell, and in the end the Government did not move to compulsory acquisition. As described by Heenan, the process for getting agreement was very long. In Tauranga, as elsewhere, compulsory acquisition therefore remained the favoured option for many officials for some time to come. In 1939, the under-secretary of Native Affairs wrote that it was 'not considered desirable to take the land compulsorily' for the Ōtawa scenic reserve, and made clear that a meeting of owners was both possible

164. Waitangi Tribunal, *Ngawha Geothermal Resource Report 1993* (Wellington: Brooker & Friend Ltd, 1993), p 138

165. Marr, *Public Works Takings of Maori Land, 1840–1981*, pp 135–136, 193–194, 198–199, 201

166. Woodley, *Tuhua (Mayor Island)*, pp 18–20, 28

and preferable. The local registrar of the Māori Land Court, however, refused to take on the work involved in ‘chasing up consents’, and the land was compulsorily acquired.¹⁶⁷

After the Second World War the policy of seeking consent to a taking gradually became more widespread. In 1946, there was a compulsory acquisition for the Mangatawa quarry with no prior negotiation, whereas in 1957 and 1963 (after resistance by the owners to the idea of purchase), there were negotiations and agreements for leases. The airport purchases in 1961 are another example of takings by agreement.¹⁶⁸ However, it was only vigorous protests from Māori which initiated negotiations over the Wairoa hydroelectricity scheme in 1968. In the latter case, the electricity committee responsible for the takings was ‘advised by its legal advisors that it would be almost impossible to acquire Māori land by negotiation’ because of the problems with multiple ownership. This led the committee to use compulsory acquisition from the beginning with Māori land, whereas the nine owners of the general land affected were afforded negotiations and takings by agreement.¹⁶⁹

For most of this period, the options for landowners were in fact very limited, and not all agreements to sell were made by willing sellers. By the time owners were consulted, the authorities had usually already made the decision on where to site a public work and owners had little power to resist. In some cases in Tauranga the threat of compulsory acquisition was used by the Public Works Department to extract an agreement to the taking. For example, in 1975 when negotiations over the Tauranga Secondary School no 4 stalled, the commissioner of works was reluctant to move to compulsory measures, stating, ‘the compulsory taking of Maori land is a very delicate matter and most unlikely to be approved in the present political climate, particularly as all the alternatives have not been exhausted’. Two years later however, the authorities issued notices of intention, thereby beginning the process of compulsory acquisition.¹⁷⁰ It was a similar case with the Mangatawa Reservoir in 1977. The owners thereafter agreed to the takings.¹⁷¹ The evidence of Delwyn Bennett-Howe of Ngāti Kāhu concerning the realignment of State Highway 29 encapsulates the situation for owners:

there had been months of to-ing and fro-ing between mum and dad and Mr Falconer who was the responsible official. Dad would say they couldn’t have it, and Falconer would say, the government needs it, and, in the nicest possible way he was going to take it anyway.¹⁷²

The inability to have any influence on public works planning led to growing protests by the general population which eventually resulted in a more consultative approach. From

167. Document A19, pp14–16; under-secretary to registrar, 13 June 1939, MA-MLP 1 228 1920/32, ArchivesNZ, Wellington (doc A19, p 204)

168. Document A44, pp15–18; doc T17, p 4, attachment 1

169. Document s2, pp 79, 82–83

170. Document A34, pp 118, 121

171. Document A44, pp 28–31

172. Document c22, p 3

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the late 1970s, significant public works were subjected to more public scrutiny as they were required to be marked on district plans, and a process of submissions and objections during the planning phase was instituted. It is not clear, however, that the authorities always employed the new processes constructively to recognise and respond adequately to the concerns of Tauranga Māori. For example, Māori objections (along with many others) to the oxidation ponds in Rangataua Harbour and the associated sewerage pipeline in 1975–1978, failed to prevent the works or to make any substantial changes to protect specifically Māori interests.

There was further change with the introduction of the Public Works Act 1981. The new Act placed a strong emphasis on the need to negotiate agreements. This, combined with a modern planning regime which requires Māori interests to be considered, means that negotiated agreements are now standard practice for Māori land as for general land. The Tribunal heard evidence of recent successful negotiations for public works projects, such as leases for stormwater and recreation reserves on Māori land, and it is evident that significant efforts are now made to consult and to seek agreement, although these efforts may not always be successful.¹⁷³

(2) Treaty analysis and findings

The authorities were clearly reluctant to seek agreements from Māori owners because of the difficulties caused by the Māori land system. For many decades the Crown made little attempt to overcome these difficulties and treat Māori equally when it came to negotiating agreements for public works. Instead, taking authorities preferred the easier method of compulsory acquisition. As the *Hauraki Report* stated:

The Crown at times in the past had adopted a cavalier attitude to the taking of Maori land, and took advantage of the inherent problems associated with the administration of multiply owned Maori land, a system devised over time by the Crown itself.¹⁷⁴

We agree with the *Hauraki Report* that the onus was on the Crown to overcome the difficulties of the system; the ‘weight and resources of the Crown, as compared to the limited capacities of private citizens must be taken into account.’¹⁷⁵ The Crown’s failure in the past to make ‘every reasonable effort made to redress the imbalance’ and ensure that Māori received ‘fair and equal treatment with their fellow non-Maori citizens’ was therefore a breach of the article 3 rights of Māori and the Treaty principle of equity.¹⁷⁶

On the larger question of consultation in general, the limited consultation and negotiations that were, on occasion, conducted by authorities before the 1970s did not adequately

173. Anthony Thomas Charles Averill, brief of evidence on behalf of Tauranga City Council, 29 September 2006 (doc T10), pp 3–5

174. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 3, p 1097

175. *Ibid*

176. *Ibid*; Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 846

fulfil the Treaty principle of partnership between Crown and Māori, nor the Crown's duty to make informed decisions. *The Napier Hospital and Health Services Report* found that if an executive decision has Treaty implications, the Government must be sufficiently informed to be able to act consistently with Treaty principles. If it does not have sufficient information, there is a duty of consultation. Consultation must be open and meaningful, and the Crown should be willing to change its mind on the basis of information received. We support the *Napier Hospital and Health Services Report's* findings that:

the active protection of Maori rangatiratanga, and of Maori people in general, requires the Crown to inform itself adequately in order to exercise its powers of sovereignty fairly and effectively. Partnership can scarcely proceed in ignorance of the views and wishes of the Maori partner.¹⁷⁷

The Crown has acknowledged that public works projects which affect Māori land are just such an arena where it has a duty to 'adequately consult' Māori. However, we find that the Crown has breached its duty of active protection of tino rangatiratanga in failing to do this for most of the twentieth century. It must be added that consultation does not necessarily imply agreement, and in the case of public works the Crown's Treaty obligations are not limited to consultation alone. The partnership envisaged by the Treaty, together with the guarantee to Māori of absolute possession of their lands, means that Māori should have had high-level influence on the treatment of Māori land under public works legislation and policy. But it is clear that the system was designed and carried out by settler governments and local authorities primarily to serve the interests of their own constituencies, with a low priority for Māori concerns. Consequently, we find that the Crown breached the Treaty principle of partnership both in the public works regime itself and in its implementation in Tauranga.¹⁷⁸

(3) Was the notification and objection procedure adequate and fair?

Before 1981, the authorities tended not to consult and reach agreements but to use compulsion in acquiring Māori land. If the authorities decided to acquire land compulsorily there was a process of:

- ▶ issuing a publicly available plan of the works with the names of owners attached;
- ▶ publishing a *Gazette* notice of intention to take the land;
- ▶ notifying individual landowners;
- ▶ allowing 40 days for owners to make objections;
- ▶ holding a hearing of objections; and
- ▶ issuing a proclamation formally taking the land.

¹⁷⁷ Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 67

¹⁷⁸ Document u28, p 4

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The authority responsible for the taking heard the objections, until criticism of the lack of independence implied by this practice led to the Public Works Amendment Act 1973 which established the independent Planning Appeal Board, reconstituted as the Planning Tribunal from 1977, and the Environment Court from 1996.¹⁷⁹ A significant difference for Māori land-owners was that from 1909 to 1974 there were lesser notice requirements for Māori land which was not registered under the Land Transfer Act 1908. Owners of such land did not have to be individually notified of a proposed taking, and a notice in the *Kahiti* (or later the *Gazette*) was deemed sufficient.¹⁸⁰ However, we received little evidence on the effect of this discriminatory provision in Tauranga.

Before the 1960s, there is evidence that there was sometimes little attempt to make sure that *all* owners received notification, particularly if records were out of date. On occasion the authorities asked the Māori Land Court to notify owners, but did not check to see that this had been carried out. These practices are apparent in the case of the Tauranga to Mount Maunganui transmission lines put up by the Electricity Board in the 1950s. It was later found that the Electricity Board could not rely on the Māori Land Court to notify owners, as the legislation specifically required the taking authority to be responsible for notification. The Crown has conceded that, in this case, owners were not notified as required. In one other case – that of the water pipe put through the Poike blocks in 1952 by the Mount Maunganui Borough Council – legislative requirements were definitely not fulfilled, with the Māori Land Court subsequently finding the council had created a trespass.¹⁸¹ In general, however, the legally required process of notification and objection appears to have been adhered to in the majority of compulsory acquisitions examined by this Tribunal. On the other hand, until the Māori Affairs Amendment Act 1974 made it a requirement, there was a very inconsistent use of existing mechanisms in the native land legislation, such as meetings of owners, to notify those affected by the proposed works. Such meetings would have gone some way towards overcoming problems of notifying multiple owners.¹⁸²

The usual notification and objection process did not apply to defence works, and major infrastructure works such as railways, some roads, motorways, ‘water-power’ (meaning hydroelectricity) and associated electrical works including transmission lines, and irrigation. These works had their own procedures, such as the centre-line proclamations for railways and motorways, which generally gave less notice to owners and no rights of objection. For example, the procedure for railways under the Public Works Act 1908 was to proclaim a middle line of the railway, make maps and plans showing the line available for public inspection, then, at any time, enter and construct the railway, before finally proclaiming the exact amount of land taken. Owners could be notified either before or after this

179. Marr, *Public Works Takings of Maori Land, 1840–1981*, p161

180. *Ibid*, p138

181. Document J2(c), pp117–119, 122–123; paper 2.641, para 4.2; doc A34, pp19–22

182. Marr, *Public Works Takings of Maori Land, 1840–1981*, p138

final proclamation so that they could claim compensation. There was therefore no individual notice required before the taking, and no opportunity to object. These procedures were extended to motorways from 1947. Electricity works were also exempt from the normal procedures under section 10 of the Public Works Act 1928. Under sections 311 and 312 of the same Act the works were authorised by Orders in Council, and the Public Works Department then had the right to enter and start construction without the permission of, or individual notice to, the owners. Section 276 stated that any land to be needed for ‘water power’ was to be taken under section 254: the land was taken by proclamation without any prior notice or right of objection. Under section 43(7) of the Public Works Amendment Act 1948 individual owners were required to be notified ‘as soon as may be’ after the centre-line proclamation for transmission lines, but there was still no right of objection.¹⁸³ For all these works, Ministry of Works policy from the mid-twentieth century was to seek consent from owners to enter and begin construction, although this was not legislatively required, and did not always occur in practice.¹⁸⁴

In Tauranga, these provisions were highly significant, affecting many works such as the East Coast Main Trunk Line, motorways such as Tauranga to Te Maunga, the hydroelectric scheme, transmission lines, and the Hairini substation. While local owners might become aware of these schemes, it is likely that, in some cases, absentee owners did not. And although on occasion owners might influence the outcome of an acquisition, they usually had no formal rights of objection.

A further complication for Māori owners was the involvement of the Māori Trustee in compulsory acquisitions. Some Māori land was vested in land boards for development schemes and was therefore under the control of the trustee. As in the case of the Hairini substation and the port takings for better utilisation, the trustee was notified of the taking but often did not consult the owners. We heard evidence in these cases that at least some owners did not find out about the taking until after the event and consequently missed any opportunity to object.

(4) Treaty analysis and findings

The Tribunal’s 2008 report on central North Island claims, *He Maunga Rongo*, has found that there was discrimination against Māori landowners in the notification and objection process which breached the right to equitable treatment. The practice of giving less notice to Māori landowners, and therefore less opportunity for objection, was discriminatory. In addition, the lack of an independent forum for hearing objections until the changes of the 1970s meant that any objections were unlikely to receive an adequate hearing. In Tauranga, we have seen that these systemic problems had a prejudicial effect in some cases where not all owners were notified. The Māori Trustee’s involvement also had an unfortunate effect

183. Ibid, p 139

184. Paper 2.558, attachment B; Waitangi Tribunal, *The Turangi Township Report 1995*, p 248

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as some owners were kept in the dark concerning public works on their land. There is also little evidence of successful objections. We therefore support the findings of *He Maunga Rongo* that ‘the impact of multiple ownership on notice requirements was in breach of the Treaty’ and that ‘the Crown did not provide fair and adequate opportunities to object, nor a fair and effective process for evaluating objections, before 1973–1974.’¹⁸⁵

Moreover, the lesser protections for owners in the case of large infrastructure works (the removal of the right of notification and objection) have had significant prejudicial effects to Māori landowners in Tauranga. The Crown submitted that such measures were considered necessary and were acceptable to the population at the time. However, once again, there is no evidence that the Crown considered the Treaty implications of such stringent measures, consulted with Māori, or considered Māori interests. We agree with the *Turangi Township Report 1995* that such provisions were ‘draconian’ and, as they reduced yet further any requirement to consult directly with Māori on matters affecting their land, such provisions contravened the Treaty.¹⁸⁶

We welcome the Crown’s concession that, in the case of transmission line construction over Māori land, it ‘failed to adequately notify or provide compensation to some owners.’¹⁸⁷

(5) Was the compensation process adequate and fair?

After the notification and objection process, the land was proclaimed as taken and compensation awarded when required. Some of the early roads and railways in Tauranga were not compensated. In some cases, these works were on land which, having been confiscated by the Crown following raupatu, was subsequently excluded from Crown-granted titles of land returned to owners. While the legal mechanisms were different from the ‘5 per cent’ provisions, the intention and effect was the same: Māori were obliged to accept public works on their land without compensation. In many cases, these lands were occupied and owners were directly affected by the works. We have seen that, in the case of the Welcome Bay road, the Government would only agree to the owners’ employment on the road and certain mitigation works. We do not accept the Crown’s submission that owners did not seek compensation. The evidence strongly suggests otherwise.¹⁸⁸ Matapihi Road, and a paper road next to the Otumoko and Ohuki 2 blocks, were not compensated for the same reasons.¹⁸⁹ Some other roads (as mentioned in section 4.2.1) were taken under the 5 per cent provisions, while the original land title to Mangatawa apparently enabled railway takings without compensation in that block.

For works where compensation was legally required, the evidence suggests that it was generally paid. There were, however, serious delays in the process. Not all delays were the

185. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 866

186. Document U28, pp 9–10; Waitangi Tribunal, *The Turangi Township Report 1995*, pp 301–302

187. Paper 2.641, para 4.2

188. Document S52, pp 6–8; doc U28, p 3

189. Document F29, p 88; doc T6, attachment 2; doc C1, p 123

fault of the Crown. The two world wars, the lack of surveyors to survey the land taken (this was identified as a significant problem by the Ministry of Works in the 1960s),¹⁹⁰ and delays by owners – all, at times, hindered payment of compensation. On the other hand, the different treatment of Māori land, delays built into the system of taking land, certain practices of the Public Works Department, and the difficulty of negotiations over values, were major causes of delay.

Much delay stemmed from the different treatment of Māori land. As we have seen, Māori landowners were not identified early in the acquisition process and few attempts were made to negotiate agreements with them. They were therefore obliged to wait for the formal process of proclamation and compensation to take place.¹⁹¹ In Tauranga, as elsewhere, this could be a very lengthy wait. This was particularly true of infrastructure works, such as railways, motorways, and transmission lines. These works were constructed before proclamations were issued which defined the exact amount of land taken, thereby enabling the compensation process to begin. In some cases the Ministry of Works moved very slowly to proclaim the land as taken even when the works were finished. For example, in 1967 the motorway through the Poike blocks had been finished and in use for ‘a number of years’ when the Ministry of Works, after prompting by the Māori Trustee, gazetted the land as taken.¹⁹² In another example from the same motorway, work began on Hairini 2A2 in 1959 and the owners had to move off the land. Eleven years later, in 1971, the land was finally gazetted as taken.¹⁹³

After a proclamation taking the land, an application for compensation could be made. From 1887 to 1962, the taking authority was responsible for making the application for Māori land. The legislation was more prescriptive for local authorities on this matter. Section 104 of the Public Works Act 1928 stated that the Minister ‘may at any time’ apply for compensation after the Order in Council or proclamation taking the land was gazetted, while for local authorities it was ‘not later than six months’. On occasion the relevant authority was slow to apply. The Whareroa takings for better utilisation, for instance, were proclaimed in 1952, but compensation was not applied for until 1954. More usually, however, the delay came after the application was made. Sometimes problems were clearly caused by Public Works Department practices. At the compensation hearing for the water catchment takings in 1940 in the Ōtawa block, Judge Harvey criticised the department’s common practice of ignoring partitions of land which, although registered in the Māori Land Court, had not been surveyed and were therefore not registered under the Land Transfer Act. The court refused to make compensation awards until the Public Works Department presented details of the amount of land taken from each individual partition rather than

190. Paper 2.558, attachment B, ‘Land Acquisition for Government Works: Notes by Commissioner of Works on General Procedure’, p 2, mentions the lack of surveyors as perhaps ‘the worst source of delay’.

191. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 850

192. Document A34, pp 35, 43

193. Document A26, pp 21–22

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simply the total amount of land. Compensation was finally decided in 1961.¹⁹⁴ In the case of the motorway through the Matapihi blocks, Judge Brook detailed the many times the case had not been prosecuted because of the failure of the department to attend hearings and provide relevant information in the period from 1962 to 1965. Indeed, nearly eight years elapsed between the Ministry of Works first entering the land, in July 1958, and compensation finally being awarded in March 1966.¹⁹⁵

Most often, however, it was the negotiations over the award that were the major cause of delay. It was not unusual for negotiations over compensation to become very protracted owing to the difficulty of coming to an agreement over differing valuations. From 1962 to 1974 the Māori Trustee was responsible for initiating compensation claims and negotiating awards for multiply owned Māori land.¹⁹⁶ In Tauranga, the trustee was involved in many significant public works: most of the motorway and highway takings, and the port and the water catchment takings from 1965 to 1974, all of which took many years to resolve. In the case of Hairini 2A2, mentioned above, after the land was proclaimed in 1971 it then took a further two years for compensation to be agreed between the Public Works Department and the trustee on behalf of the owners. For other Hairini and Maungatapu blocks taken for the motorway it took three years to agree compensation, while it was eight years for the Matapihi blocks and 15 years for some Poike blocks taken for State Highway 29.¹⁹⁷ Often the trustee seems to have acted conscientiously, and the evidence is clear that they found the Ministry of Works difficult to deal with. In 1973, trustee staff despaired of reaching a settlement over Maungatapu B, with one official writing that negotiations:

have been going on for far too long. We seem to have an almost endless exchange of correspondence and there seems to be a great reluctance on the part of the taking department to reach a compromise figure. The taking laws are difficult enough and obnoxious to the owners without having a prolonged argument over compensation.¹⁹⁸

Marr's research suggested that, nationally, the Ministry of Works 'became very adept at taking advantage of all technicalities and in challenging all efforts to gain compensation.'¹⁹⁹ It is, however, difficult to determine on the evidence presented how much delay in Tauranga may be attributed to deliberate attempts by Works to avoid payment of compensation.

The trustee's own proceedings were not quick, and it is unclear in some cases why the trustee persisted with negotiations rather than having compensation awarded by the Land Valuation Court. There is, however, insufficient evidence to state whether the trustee's

194. Document A19, pp 9, 20–23. See also document A34, p 43 for confusion caused by the Ministry of Works ignoring partitions in Poike and gazetting land using incorrect appellations.

195. Document C1, p 131

196. Marr, *Public Works Takings of Maori Land, 1840–1981*, pp 142–143

197. Document A26, pp 21–24, 32–33

198. *Ibid*, p 33

199. Marr, *Public Works Takings of Maori Land, 1840–1981*, p 209

involvement disadvantaged Māori, either in time taken for negotiation or in the amount accepted. Owners were again directly involved in negotiations from 1975, but compensation often still took a number of years to agree. One of the most extreme examples of delay, the Pāpāmoa sewerage pipeline easement which took some 20 years to resolve, did not involve the trustee.²⁰⁰ However, while the trustee was responsible for negotiations owners were divorced from the process and were not usually able to influence the trustee's negotiations. The trustee was not obliged to communicate with owners and generally made little attempt to do so until compensation was agreed.

Delays in compensation had a financial impact as land price inflation could erode the value of the settlements. Compensation was awarded on the basis of the value of the land at a certain date – either the date of entry, or the date of proclamation. The court would also award interest on the compensation, usually at a rate of 5 per cent, although this was sometimes raised. This interest was often insufficient to offset the inflation of land prices in the district. In 1972, the district officer of the Māori Trustee's office commented on 'the rank injustice of the whole procedure' in the case of a Hairini block taken for the motorway. Owners had been deprived of their land for some four years before being offered compensation; compensation was being offered in 1972 on the basis of 1966 values 'notwithstanding or recognising the rampant inflation which has since taken place. . . . in stable times interest may be adequate but this is not the case today.'²⁰¹

In addition to the financial impact of delay, claimants have questioned the basis on which the land was valued for compensation. In New Zealand, as elsewhere in former British colonies, the principle behind compensation is 'equivalence'. That is, compensation 'cannot and must not exceed the owner's total loss. The owner is to be paid neither less nor more than his loss. This principle is at the root of compensation, because to do otherwise would be unfair on both parties.'²⁰²

The owner's loss is calculated according to the price that might be acceptable to a 'willing seller and willing buyer' with complex formulae having been developed to assess that price. Compensation was either agreed between the parties or, for general land, determined in the Compensation Court, later the Land Valuation Court. From 1887 to 1962 compensation for Māori land, however, was determined in the Native Land Court. Each party could provide their valuations, and the court would decide the award. From 1896 onwards valuations for the taking authority were provided by the Government Valuation Department.²⁰³

200. N Blackburn, 'Further Nga Potiki Land Alienation and Public Works Takings' (commissioned research report, Wellington: Crown Forestry Rental Trust, May 2000) (doc 11), pp 24–25, 28

201. Document A26, p 29

202. Squire L Speedy, *Compensation For Land Taken and Severed* (Auckland: Legal Research Foundation, 1978), p 4

203. Marr, *Public Works Takings of Maori Land, 1840–1981*, pp 112–113, 141–142; Public Works Act 1876, pt 3, ss 33–50

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With insufficient comparative data we do not know whether the compensation awarded in Tauranga was unusually low for Māori land when compared with general land. We do note, however, the Māori Trustee's 1950s estimate that Whareroa Māori should have been paid £100,000 for the land taken there²⁰⁴ – more than twice what they actually received. We also heard evidence that, when divided up among many owners, compensation was usually insignificant for the individuals concerned and had implications for the further loss of Māori land. Occasionally, compensation was applied to communal purposes. In 1959, the Māori Affairs Department advised the chairman of the Ngāi Te Rangi tribal executive that compensation could be used for communal purposes if a meeting of owners was held and it was agreed. In the 1970s, compensation from water catchment takings contributed to marae renovation projects at Waimapu, Hairini, Hūria, and Waikari.²⁰⁵ Usually, however, payments were made to the many individuals who owned shares in a land block. In many blocks owners numbered in the hundreds, and once the money was dispersed in this way it was unlikely that owners would be able to combine and buy other land to replace that which had been taken. Certainly no evidence was presented that they ever did so.

The economic criteria which have generally been used to decide compensation did not value specifically Māori interests, such as loss of access to traditional food resources, the cultural significance of ancestral land, and the impact of landlessness. There was also no provision for recognising when the very last of an owner's ancestral lands were being taken. For example, the hydroelectric schemes, water catchment takings, and the oxidation ponds in Rangataua Harbour all affected the ability of Māori to access traditional resources, but none of this was recognised. Landowners on Mangatawa were compensated for the commercial value of the rock taken from the quarry, but the cultural importance of the area was unrecognised. Some of the owners of Kaitimako B and C (taken for a substation in 1967) lost the final remnant of their lands owing to the taking, but were compensated according to the land's agricultural value alone.

Claimants have also questioned the almost exclusive use of monetary compensation. We note the statement of counsel for Linda Grey regarding the taking of Kaitimako B and C in 1967: 'You cannot compensate these whanau for the loss of these resources and their heritage. Financial compensation does not assist those whanau that were made landless and have lost that precious link to their whenua.'²⁰⁶

From the nineteenth century, an exchange of land instead of compensation was in fact possible in some circumstances under the public works and land Acts, with Crown-owned land being offered in place of the land taken.²⁰⁷ There was increasing political sympathy

204. Māori Trustee to Minister of Māori Affairs, undated, AAMK 869/606, ArchivesNZ, Wellington, pp 4–5 (doc A41(a), p 48)

205. Minutes of Meeting Held at Matapihi School, Tauranga, 8 April 1959, MA 29/4/11, ArchivesNZ, Wellington, p 2 (doc A38(c), p 848); doc A32, pp 37–39

206. Document U19, p 14

207. Marr, *Public Works Takings of Maori Land, 1840–1981*, pp 65, 87, 119; Public Works Act 1908, s 86

for the idea of exchanging land from 1940s onwards, but the provision was little used until the 1970s. From 1976, taking authorities were empowered to actually buy land and build a replacement house rather than only use surplus lands.²⁰⁸ The 1970 taking of Waoku 2A for water catchment purposes is one of few examples put to this inquiry where land was exchanged. It is notable that while the taking authority, Tauranga City Council, was willing to exchange land, the Māori owners had an uphill struggle to convince the Māori Trustee that this should be attempted. It is unfortunate that in this case the land finally agreed on as suitable for exchange included land which had recently been compulsorily acquired from another hapū.²⁰⁹

As we have seen above, there have been changes in the compensation regime in more recent years, with:

- ▶ the removal in 1974 of the Māori Trustee as statutory agent for the owners and the consequent restoration of direct owner involvement in negotiations;
- ▶ an increasing willingness to consider the provision of alternative lands instead of monetary compensation; and, above all
- ▶ the change to negotiated agreements rather than compulsory acquisition.

There remains, however, no mechanism for recognising specifically Māori interests in monetary terms.

(6) Treaty analysis and findings

There are several areas of concern with regard to compensation: takings without compensation; delays in payment of compensation; the value of compensation awards; and the Māori Trustee's role. In 1990, *The Ngati Rangiteaorere Land Claim Report* stated that taking land without compensation 'turned an acquisition into a confiscation. Whatever the merits of compulsory acquisition, as a last resort, there can be no justification for the failure to pay compensation'. *He Maunga Rongo* also found that, while settlers may have agreed that the need to provide for roads and railways in New Zealand justified a reduction in compensation rights, 'Maori did not consent . . . If Maori land was to help the development of an infrastructure for the benefit of all, then it had to be by negotiation, with consent, and with compensation'. We agree with these findings and, noting that the Crown has accepted that it should pay 'fair market compensation' for public works, find that some of the land reserved for early road and rail takings was effectively uncompensated takings similar to the land taken under the 5 per cent provisions.²¹⁰

He Maunga Rongo also found that the compensation regime before 1974 discriminated against Māori in making less provision for early consultation about compensation with

208. Marr, *Public Works Takings of Maori Land, 1840–1981*, pp189–190; Davies, *History of Public Works Acts in New Zealand*, p 44

209. Document K25, pp 248–250. See also doc F29, p 68, for an early exchange of land (1922) taken for the railway.

210. Waitangi Tribunal, *The Ngati Rangiteaorere Claim Report 1990* (Wellington: Brooker and Friend Ltd, 1990), pp 48–49; Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 841; doc U28, p 4

4.8.4(6)

Māori landowners compared with general landowners. Instead, Māori land came under a regime whereby, before 1962, taking authorities applied for compensation on behalf of Māori owners, and from 1962 to 1974 the Māori Trustee was the statutory agent for the owners. This regime had prejudicial effects for Māori, greatly reducing their ability to participate in and influence compensation decisions, and contributing to delays. This is certainly also the case in Tauranga, where the different treatment of Māori land, combined with lengthy bureaucratic procedures and, on occasion, negligence on the part of taking authorities, led to many cases of unreasonable delay in the awarding of compensation. There was also sometimes a failure to properly compensate these delays because of the payment of inadequate interest. We agree that this breached the Treaty principle of equity and the duty of active protection.²¹¹

There has also been a breach of the Treaty principle of partnership and duty of active protection in the neglect to consider the appropriateness of the compensation regime for Māori. The payment of compensation to individual shareholders, and the lack of opportunities to exchange land, did not acknowledge the particular difficulties of Māori land title and led to further loss of Māori land. In many cases an exchange of land may have been more appropriate than monetary compensation and, as the *Ngai Tahu Ancillary Claims Report* has suggested, ‘gone some way towards maintaining the tribal estate.’²¹² Such considerations are particularly important in the Tauranga area, where so little land remains to the tangata whenua. As the Wairarapa ki Tararua Tribunal has stated: ‘Even where not much land was taken, the sense of loss is often not proportional to the rood and perches that were involved. Especially where whanau landholdings are minimal, monetary compensation is really no compensation at all for the loss felt.’²¹³

Moreover, the way in which land has been assessed for compensation purposes is based solely on European principles and models, without any influence from Māori views or consideration of how Māori interests might be valued. These failures of the regime continue today. We welcome the Crown’s concession that, in certain circumstances, it failed to provide adequate compensation to the owners of Māori land and that, in relation to the Whareroa lands taken for ‘better utilisation’, the Minister failed to protect the interests of the owners.²¹⁴

211. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 849–850

212. Waitangi Tribunal, *The Ngai Tahu Ancillary Claims Report 1995*, p 365

213. Waitangi Tribunal, *Wairarapa ki Tararua Report*, vol 2, p 800

214. Paper 2.641, paras 4–5

4.8.5 The limitation of compulsory acquisition to exceptional circumstances as a last resort in the national interest**(1) What were the limits on the use of compulsory acquisition?**

The history of compulsory acquisition in New Zealand is one of expansion for many decades, followed by contraction. In the nineteenth and early twentieth centuries the definition of public works grew as new technologies such as electricity became available and the State's role in providing infrastructure and public services increased. Every new public work added to the legislation was accompanied by the right of compulsory acquisition. Consequently, not only works of national interest but also regional or local works – even those of a minor nature and for which multiple suitable sites would have existed – were enabled by compulsory taking provisions. The public works that we investigated were, in fact, generally of significant national and local interest. The port, airport, railway, and motorway works, the quarries which enabled those works to be built, and the hydroelectric power stations, were all nationally important. Other works, such as local roads, schools, water, sewage and waste disposal, and scenic reserve and telecommunications takings, were of considerable local consequence, and indeed often overlapped with national interests in such areas as the provision of education, clean water and sanitation, communications, and land for conservation.

The scope of compulsory acquisition provisions reached its greatest extent with legislation such as the Finance Act 1945, which gave the Government the power to take land for 'subdivision, development, improvement, regrouping, or better utilization,' and indeed 'any work or undertaking which the Governor-General by Order in Council declares to be a public work for the purposes of this Act.'²¹⁵ The contemporary justification for extending the definition of public works in this way is unclear. Parliamentary debates suggest this section of the Act passed in part because of the Crown's pressing need to subdivide and sell land to returned servicemen, but it also explicitly allows takings for industrial and commercial purposes.²¹⁶

The Whareroa port lands were taken under the 'better utilisation' provisions. Such broad powers were later identified as opening the system to potential abuses of power, that is, for land to be taken without any discernible public-benefit justification. Crown counsel cited a 1969 legal article that supported the lack of objection procedures for such works as motorways, owing to their national importance. Counsel presented the article as indicative of contemporary attitudes towards public works legislation. The same article, however, was generally critical of much public works legislation and discussed the 'justifiable resentment' of citizens such as those at Whareroa who saw the Crown take their land under such 'vague' provisions as 'better utilisation' only to develop and sell it for a profit rather than use it for

215. Finance Act 1945, ss 29, 30; Marr, *Public Works Takings of Maori Land, 1840–1981*, pp 134–135

216. Walter Nash, 6 December 1945, NZPD, 1945, vol 272, p 492

4.8.5(2)

public works.²¹⁷ Indeed all the Whareroa takings were subsequently sold by the Crown for industrial and commercial use.

Compulsory acquisition, then, was available for an increasing variety of works until 1981 and was, as discussed previously, probably used more frequently for Māori land than for general land. Also, except in the case of some urupā and marae, in most cases there was no attempt to seek alternatives to Māori land as this was very rarely one of the considerations for public works planners. Few works in Tauranga were prompted by exceptional circumstances such as war or other emergencies (the rifle range at Pāpāmoa and the land taken for the airport during the Second World War being the exceptions), and there is no evidence that any attempt was made to negotiate agreements for these lands. Since the Public Works Act 1981 the use of compulsory acquisition has been greatly reduced, although there is no legislative provision to restrict compulsory acquisition of Māori land to works of national importance.

(2) Treaty analysis and findings

Article 2 of the Treaty guaranteed Māori possession of their lands for as long as they should wish and to protect their tino rangatiratanga over those lands. The *Te Maunga Railways Land Report* identified the central public works issue as being that '[o]n the face of it, a Crown right to compulsory acquisition . . . cuts right across the guarantee of Maori rangatiratanga.'²¹⁸ The question is, therefore, was the need for compulsory acquisition such as to justify breaking that guarantee? Previous Tribunals have found that breaking the Treaty in this way cannot be justified in the name of 'public interest' or 'convenience', but might be allowable in 'exceptional circumstances and as a last resort in the national interest.'²¹⁹

The reasons for this finding can be summarised as follows. First, the Treaty was in the nature of a solemn promise or guarantee. The Crown cannot unilaterally break the Treaty without calling into question the honour of the Crown and the value of its promises. Moreover, the particular guarantees in article 2 were and are greatly valued by Māori. The strength of the limits proposed by the Tribunal are a measure of the value of keeping these promises. Secondly, the need for using compulsory acquisition for Māori land has not been established. *He Maunga Rongo*, citing examples of nineteenth-century agreements between Māori and the Government for public works, concluded that it is 'ahistorical . . . to assume that the national interest necessarily required or requires compulsion.'²²⁰ Certainly in Tauranga there was for many decades little effort to seek consent from Māori for public works.

217. RI Barker, 'Private Right Versus Public Interest: Compulsory Acquisition and Compensation Under the Public Works Act 1928' [1969] NZLJ 251; doc U28, p5

218. Waitangi Tribunal, *Te Maunga Railways Land Report*, p 50

219. Waitangi Tribunal, *The Ngai Tahu Ancillary Claims Report*, p11; Waitangi Tribunal, *The Turangi Township Report 1995*, pp 285–286; Waitangi Tribunal, *Wairarapa ki Tararua*, vol 2, p781

220. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 836

We note that the Crown has continued to reject the Tribunal's findings. The Crown argues that all developed societies accept the need for compulsory acquisition because, clearly, landowners will not always voluntarily give up their land for the 'good of the community as a whole'. Also, the particular evolution of the New Zealand legislative regime was supported by the population, and the Crown's obligation to govern means that from 'time to time' it will have to use compulsory acquisition, and the limit proposed by previous Tribunals 'sets the bar too high'.²²¹ We agree that previous Tribunal findings are, as *He Maunga Rongo* states, 'no light constraint'.²²² However, the Crown's assertions regarding the good of the community as a whole and its support for the legislation are not persuasive when the interests of a large section of that community, namely Māori, were overridden. Māori were rarely involved in any debate on the inclusion of Māori land in compulsory acquisition provisions. Indeed, we received little evidence that Māori had any influence on the Government policies and priorities which underpinned the introduction and extension of compulsory acquisition powers, or supported them. Moreover, the Crown has not addressed the fundamental issue of the value it places on the guarantees made in article 2 of the Treaty. These guarantees demand a higher regard than has been hitherto given them by the Crown.

In conclusion, the authorities in Tauranga did not generally take Māori land as a last resort. They rarely looked for alternative sites, and only occasionally sought to negotiate agreements with Māori before resorting to compulsory acquisition – although this improved in the later twentieth century. In the latter context, we note the case of Kaitimako B and C, and welcome the Crown's concession that it failed to provide the owners of those blocks with the opportunity to negotiate the amount of land to be taken.²²³

As to the national interest, while we acknowledge that will change over time, clearly some of the takings in Tauranga were for local works, but the legislation allowed Māori land to be taken in either case.²²⁴ Lastly, very few takings were made in exceptional circumstances. We agree with the findings of previous Tribunals on the need to limit compulsory acquisition to exceptional circumstances and as a last resort in the national interest. None of the past takings in Tauranga investigated by this Tribunal meet this test, and we therefore find that the Crown has fallen far short of the necessary standard and has thereby breached the Treaty principle of partnership and its duty of active protection of the tino rangatiratanga of tangata whenua over their lands.

221. Document U28, pp 3–45

222. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 849

223. Paper 2.641, para 4.3

224. *Ibid*, p 868

4.8.6 Taking less than the freehold title

(1) *The Crown's preference for the freehold*

In almost every case of public works investigated by this Tribunal, the Crown took the freehold title to the land rather than a lesser interest such as a leasehold or easement. Even in cases where land was gifted for schools, it was standard practice for the Crown to acquire the freehold. For most types of taking, the Tribunal received no specific evidence on why the Crown maintained this policy, although it would appear to have been inherited from British public works legislation. Section 25 of the New Zealand Public Works Act 1870 declared that, unless otherwise specified, once land had been proclaimed as taken it became 'absolutely vested in fee-simple' in the Crown. Similar provisions are found in the twentieth-century public works Acts, including the 1981 Act (section 26).

For roads and rail, the legislation stated that the terms 'road' and 'railway' included the 'soil' or land over which they ran and, on being proclaimed as taken, they were vested in the Crown or local authority.²²⁵ The Crown believes that for works which formed a continuous line crossing the lands of many individuals there was an obvious practical problem with leasehold, and has submitted that any alternative tenure which resulted 'in the administration of manifold tiny leases' would be unacceptable.²²⁶ This position, however, does not address the possibility of easements whereby the Crown created a right of way over the land, while the freehold title remained with the owners. Easements were commonly used for electric lines, and water and sewerage pipelines which, although not touching the surface of the land, also involved creating a continuous line through many land blocks. Lesser interests, including easements, have also been taken for roads and rail in countries such as the United States.²²⁷ Recent cases such as that of the Kakau whānau, whose land at Pāpāmoa is needed for roading purposes, may have been able to benefit if the New Zealand Government had similar policies.

For public works which involved discrete parcels of land, the legislation did envisage at least the possibility of acquiring less than the freehold, although this was only in the context of an agreed acquisition. Under the Public Works Act 1905 section 27, 'the Minister or local authority may enter into agreements to take the estate and interest of any person in any land required for public works . . . or to purchase any such estate or interest, upon such terms and conditions as he or it thinks fit'.

225. See Public Works Act 1908 ss 101, 102, 185, 187; Public Works Act 1928 ss 110, 111, 214; Public Works Act 1981, ss 121, 122; Government Roading Powers Act 1989, s 44; Local Government Act 1974, s 316

226. Document U28, p 27

227. The Tribunal's *Ngai Tahu Ancillary Claims Report 1995*, p 366, mentions New Mexico in the United States where easements rather than the freehold are used for roads in the case of Native American lands. The United States has also used easements for rail, particularly across Native American lands: see DC Wright, 'The Shifting Sands of Property Rights, Federal Railroad Grants, and Economic History: *Hash v United States* and the Threat to Rail-Trail Conversions', *Environmental Law*, 38 (2008), pp 711–766, esp pp 748–749. See also TE Root, *Railroad Land Grants From Canals to Transcontinentals*, Monograph Series no 4 (Section of Natural Resources Law, American Bar Association, and The National Energy Law and Policy Institute, University of Tulsa College of Law, 1987), pp 28–38.

Section 32 of the Public Works Act 1928 contained similar wording, while section 16 of the Public Works Amendment Act 1948 added ‘or to take on any lease of land’ to these terms. This explicit reference to leasehold may have reflected an increased interest in alternative tenures, although Marr’s research suggests it was not until the 1970s that taking authorities considered leasehold with any frequency.²²⁸ It appears that, failing agreement between owners and the taking authority, there was no mechanism whereby a lesser interest could be taken and terms imposed. This remains the case today.

The public works examined by this Tribunal suggest that Tauranga conforms to the national pattern suggested by Marr. Apart from the 1936 agreement to ‘lease or purchase’ land for the airport, all other such arrangements date from the 1960s onwards. For example, landowners negotiated leases for the Mangatawa quarry expansion in 1958 and 1963 and the Mangatawa reservoir in 1978–80. Leasing was also considered in 1969 for the hydroelectric works. As Crown counsel acknowledged, the evidence shows that it was the opposition of Māori owners to attempts to acquire the freehold that initiated discussions about alternative tenure, rather than any initiative of the Crown. Moreover, owners could be disadvantaged in the negotiations, the Crown using the threat of compulsory acquisition in Mangatawa to effectively compel owners to agree to less favourable terms. Leasing may have become more common since the introduction of the Resource Management Act 1991; we heard evidence of two leases of land for stormwater reserves negotiated in 1993 with Māori owners by Tauranga City Council.²²⁹

(2) Treaty analysis and findings

The Crown created a regime which favoured taking the freehold title for public works. Placing its own interests and convenience to the fore, the Crown did not consider the consequences of this for Māori, nor did it attempt to minimise the impact of takings for landowners. In many cases, if compulsory acquisition was absolutely unavoidable, then leasehold or other types of lesser interests would have been a more acceptable treatment of Māori land than taking the freehold. As we explore further in chapters 8 and 9, the deep attachment of Māori to their ancestral land means that former owners have a continuing interest in that land, even when it is being used for public works purposes. An easement or leasehold would have recognised this continuing attachment, in some cases could have provided a benefit to owners in the form of continuing rental income, and would have made it easier to return lands when they became surplus to requirements.

The *Te Maunga Railways Report* stated that ‘we do not believe that the Crown needs to acquire the freehold in order to carry out public works’, while the *Ngai Tahu Ancillary Claims Report 1995* similarly found that if the Crown wanted to use Māori land for public works ‘it should do so by acquiring a lease, licence or easement’. We agree with these Tribunals and

228. Marr, *Public Works Takings of Maori Land, 1840–1981*, pp 188–189, 191

229. Document s2, p 38; doc A44, pp 16–19, 28–31; doc A35, p 23; doc T10, p 3

4.8.6(3)

find that, in routinely taking the freehold title, in only considering alternative tenure when forced to do so by owners, and in continuing to reject the possibility of easements for roads and rail, the Crown has failed to fulfil the guarantee of tino rangatiratanga to Māori, and its duty of active protection.²³⁰ Also, as discussed previously, in the past Māori were more likely to be subject to compulsory provisions than general landowners. Consequently, we find that Māori had fewer opportunities to negotiate agreements for leasehold, and were thus denied equitable treatment.

(3) *The return of surplus lands*

The principle that land could only be used for the purpose for which it was acquired was a well-established protection against the misuse of public works provisions. Once that use had finished, surplus land would be offered for sale; in the first instance to whoever currently held the land from which the surplus land was originally taken, then adjacent owners, then to the public. As R Davies states, ‘the land was to be offered to the person holding the balance of the land in the original title. This would be the former owner only if he or she remained at the same address when the Crown or local authority was required to make the offer.’²³¹

The disposal procedure, therefore, was based on the principle that those living nearest to the surplus land had the greatest interest in it. Such provisions were found in New Zealand public works Acts from 1863, but were gradually weakened so that, by the mid-twentieth century, legislation enabled the Crown to change the use of land and also dispose of it freely. There was, however, an alternative system established for Māori under the Native Purposes Act 1943 and the Māori Affairs Act 1953 which enabled the taking authority, if it was ‘deemed expedient’, to apply for surplus land originally taken from Māori to be revested in Māori, either those nominated by the applicant, or deemed by the Māori Land Court as entitled to the land. This would normally be the owners or their descendants. The continuing interest of former owners in the land was thereby recognised, although it is unclear what impact these two Acts had in practice.²³²

General public works legislation acknowledged the interests of original owners or their descendants in the surplus land (even if they no longer owned the surrounding or adjacent land) in the Public Works Act 1981. Section 40 and 41 of that Act created a requirement for surplus land to be offered back first to the original owner or ‘the successor of that person’. On the other hand, under the 1981 Act and its 1982 amendment, the use of land could still be changed and there were many exemptions; for instance, if the character of the land had

230. Waitangi Tribunal, *Te Maunga Railways Land Report*, p 81; Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995*, p 11

231. Davies, *History of Public Works Acts in New Zealand*, p 50

232. Marr, *Public Works Takings of Maori Land, 1840–1981*, pp 147–148; Davies, *History of Public Works Acts in New Zealand*, pp 49–51

substantially changed and if returning the land would be ‘impracticable, unreasonable or unfair’. This remains the case today.²³³

In Tauranga we did not receive any comparative evidence enabling us to judge the offer-back rates for Māori and non-Māori land. We did, however, hear some evidence of surplus land not being offered back but rather sold or retained for other uses. A severance created by the State Highway 2 realignment was sold to adjoining owners, as was common practice, rather than offered back to former owners. Some of the land taken from Te Papa 533 by the Tauranga City Council for water catchment purposes was also sold to an adjoining owner. Land taken for a ballast pit on Moturiki Island is now a council recreation reserve, while the Poike quarry is disused but still owned by the Tauranga Harbour Board.²³⁴ At Whareroa, land taken for ‘better utilisation’ was onsold to private enterprise – with the Crown realising, in the process, prices that were from five to 10 times the compensation that had been paid. The prejudice to Whareroa Māori was thus considerable.

In certain cases, taking authorities have let out or otherwise commercialised land taken for public works. For example, on land taken for water catchment purposes pine forests have been planted and some of the land is leased for farming. Pine forests were planted for erosion control near the harbour and are now exploited commercially. Private companies rent land taken for airport purposes. Such cases have caused claimants to question whether the land use has in fact changed and should therefore have been offered back to the owners.²³⁵ In these cases, however, the Crown has submitted that the uses are not inconsistent with the reason for taking the land, and the lands are not surplus.²³⁶ The issue here appears rather that the landowner has not shared in any direct economic benefit gained from the land. As we have seen above, while joint ventures and leaseholds are more common today, this represents a substantial change of procedure.

With regard to the site gifted for the former Maungatapu Native School, claimants have suggested that its use changed when all native schools became absorbed into the general school system in the late 1960s and they have suffered prejudice in that they have ‘lost a facility in which they can provide Maori based learning for their children.’²³⁷ While we accept the Crown’s submission that the site continues to make a substantial contribution to Māori education with a roll of 42 per cent Māori and three te reo Māori immersion units, the native schools were established under a particular system and for particular purposes. Even if they cannot be described as surplus, their use has certainly varied now that they are general schools, and it is unknown if those who gifted the land for the schools would have

233. Originally the wording was ‘impractical’ but this was amended to ‘impracticable’, meaning not capable of being put into practice, in 1982: see Marr, *Public Works Takings of Maori Land, 1840–1981*, p 150; Davies, *History of Public Works Acts in New Zealand*, pp 52–62.

234. Document F2(b), pp 59–62; doc A32, p 53; doc A48, pp 22–28; doc A34, p 138

235. Document Q7, p 15; doc Q48, paras 52–54, 56, 58–59; doc F29, p 36

236. Document U28, pp 64–65

237. Document U7, p 20

4.8.6(4)

wished to see that change. Certainly the incorporation into the general school system was not voluntary. It is also undoubtedly the case that many former native school sites, including Maungatapu, were acquired without compensation, a situation which did not pertain to general schools.²³⁸

A few pieces of land have been returned, although this has never been a straightforward process. The original native school at Maungatapu on the Te Mara-a-Tatahou block was closed in either 1889 or 1895. The land was not returned until 1913 when it was given back in exchange for another piece of land for a new native school. The owners reoccupied the land, but the reversioning was not formalised until 1957.²³⁹ The Pāpāmoa rifle range, a Second World War defence taking which was used for grazing for many years, was offered back under the 1981 Act. Although there was discretion to offer land back at less than market value (under section 2A of the Public Works Amendment Act 1982), the usual practice has been to ask for market price. Negotiations over the rifle range stalled over price until eventually the lands were returned at nil cost in 1989. As we saw in chapter 2, however, the larger part almost immediately fell prey to developers, and at the time of our hearing claimants were trying hard to find some viable way of holding on to the small remaining area. In the case of the Pāpāmoa general primary school, between 1977 and 1986 the original school was shut and the land let for grazing. It should have been offered back then, and indeed almost was. As the school buildings had substantially changed the character of the land, it was eventually exempted from being offered back under the 1981 Act. The school is no longer considered surplus, having been let to the Bay of Plenty Polytechnic.²⁴⁰

Two other cases, the Hairini substation on Kaitimako lands and the Mangatawa quarry, are ongoing. Preliminary negotiations over the substation were at a standstill in 2006, the price and the amount of land to be returned being at issue. The Crown submitted that they would await the outcome of this inquiry before restarting negotiations. The original five acres taken for the now disused quarry are in the possession of Transit New Zealand, a Crown entity, and the Crown submitted that Transit would be proceeding with the offer-back process.²⁴¹

(4) Treaty analysis and findings

There is, we have seen above, a strong Māori interest in the return of lands when they are no longer needed for public works, and to fulfil its Treaty obligations the Crown should have enabled this to happen. Once again, however, we conclude that the Crown placed its own interests to the fore and usually ignored those of Māori owners. It may have been more efficient from the Government's point of view to change the use of lands when the

238. Document U28, p 65

239. Document A26, pp 70–71

240. Document A52, pp 19–21

241. Document U28, p 64; doc U19, pp 6, 14

site was needed for another public work, to avoid another compulsory acquisition, but this did not take the interests of former Māori owners into account. Neither did the disposal of lands without preference to former owners. We therefore support the finding of previous Tribunals that claimants were prejudicially affected by the Crown's omission of stricter offer-back provisions in the 1928 and 1981 Public Works Acts, and find that this also applies in Tauranga Moana.²⁴²

On the question of returning Māori land at market price, the *Te Maunga Railways Land Report* considered this issue at length and found that the Crown, as the stronger, more powerful partner, has an obligation to Māori which means that it should be 'pro-active' in returning surplus lands:

The Crown has the discretion to decide on what terms it may be returned when no longer required for any public purpose. We believe that it is inherent in the fiduciary obligation of the Crown under the Treaty of Waitangi that this discretion be used positively, to ensure that Maori are not prevented from having their ancestral land returned to them by the requirement to pay full market value as a condition of return.²⁴³

We agree entirely. We also agree with the Tūrangi township Tribunal which found that the Crown should make provision for surplus public works land to be returned 'at the earliest possible opportunity and with the least cost and inconvenience to [the former] Maori owners'. A failure to do so, said the Tribunal, was 'inconsistent with the Crown's Treaty obligation under article 2 actively to protect Maori rangatiratanga over their ancestral land' and caused prejudice to the owners in question.²⁴⁴ The often hugely increased land valuations in the Tauranga area make it very difficult for the former owners to buy back land offered to them at market price, yet the Crown has shown reluctance in the past to return lands at less than market value. Prejudice to Tauranga Māori has resulted, and we believe the effects of that are ongoing.

We welcome the Crown's concession that in the case of Kaitimako B and C, it 'knowingly took more land than was required for the public work concerned', and that by not consulting with the owners, it had 'failed to provide them with the opportunity to negotiate the amount to be taken.'²⁴⁵

242. Waitangi Tribunal, *The Turangi Township Report 1995*, p 320. We note that the Ngāti Tūrangitukua Claims Settlement Act 1999 was passed in 1999, following the Tribunal report and a Tribunal remedies hearing and report. In this settlement Act, the Crown made an unreserved apology acknowledging its failure to act according to Treaty principles, and to consult with Ngāti Tūrangitukua, and that it failed to respect their mana whenua, failed to honour assurances and undertakings that it had given, and failed to actively protect wāhi tapu.

243. Waitangi Tribunal, *Te Maunga Railways Land Report*, p 67

244. Waitangi Tribunal, *The Turangi Township Report 1995*, p 320

245. Paper 2.641, para 4.3

4.8.7 Local authorities, public works, and the Treaty

(1) *The Crown's involvement in local works*

One further aspect of public works takings to consider is the Crown's delegation of the powers of compulsory acquisition to other bodies such as local authorities. Many public works in this district were undertaken by local authorities which, by the later nineteenth century, had the power to take Māori land for local works following the procedures laid down in the public works Acts.²⁴⁶ In Tauranga, local bodies included Tauranga city, district and county councils, and the Tauranga Harbour Board. Significant works in which local authorities were involved include: the hydroelectric project; Tauranga water catchment and scenic preservation takings; refuse and sewage disposal at Te Maunga; the Poike waterpipe and the Mangatawa reservoir; Harbour Board takings for the Poike quarry and harbour works; and the airport. Some of these works were joint ventures with Government departments such as the Electricity Board which, together with Tauranga City Council, formed the Tauranga Joint Generation Committee to construct hydroelectric power stations in the 1960s. The Government and the local council also jointly managed Tauranga Airport until the 1990s.

Even if a local authority was the principal body responsible for a taking, central government still played an active role. Local authorities often had to rely on ministers to take land on their behalf, as with the Ōtawa scenic reserve taking which was the outcome of cooperation between Te Puke Council and the Lands and Survey Department. The latter took the land which was later vested in the councils, both parties sharing the costs of compensation.²⁴⁷ Councils also often required a loan from the Government. From 1926, Government loans to local authorities were made via the Local Authorities Loan Board, which required certain compliance procedures involving central government oversight. Where necessary, the Government also supported local works through passing empowering legislation, as in the case of the Rangataua oxidation ponds. As Marr states, 'it is often very difficult to clearly disentangle central and local government responsibilities and administrative practice when public works takings were involved'.²⁴⁸

In most cases brought before this Tribunal, the local authority appears to have fulfilled the legislative requirements. The exception to this is the waterpipe laid across Poike lands in 1952. There does not appear to have been a robust monitoring procedure in this case as it was not until 1975, when it wanted to lay a new pipe, that the deficiencies in the local council's proceedings were discovered and it was found to have created a trespass with the original pipeline.²⁴⁹

246. Marr, *Public Works Takings of Maori Land, 1840–1981*, pp 86–87, 122–123

247. Document A19, pp 11–12, 30

248. Marr, *Public Works Takings of Maori Land, 1840–1981*, p 131

249. Document A34, pp 16–21

(2) Treaty analysis and findings

Many local works in Tauranga had substantial direct Crown involvement, and the Crown's responsibility in these cases is clear. But what is the Crown's responsibility when the local authority is the principal body involved in a public works taking? As counsel for the local authorities pointed out, local authorities are not Treaty partners, but are 'creatures of statute and the extent of their obligations to recognize the Treaty are completely governed by the legislation.'²⁵⁰ The Crown preferred not to address the issue of local authority takings in this inquiry beyond stating that 'the Crown required the local authority to demonstrate that it had complied with statutory procedures.'²⁵¹ We agree that there were certain safeguards regarding the compliance of local authorities with the legislation, although given the Poike case cited above we have reservations as to their effectiveness. In any case, we have seen that the legislation itself and the procedures were flawed, and consequently many local authority takings will have not have been in accordance with the Treaty.

Previous Tribunals have found the Crown cannot avoid responsibility for Treaty breaches simply because it is the local authorities which have carried out the public works. The Manukau Tribunal found that 'the Crown cannot divest itself of its treaty obligations or confer an inconsistent jurisdiction on others.' The Tūranga Tribunal also found that:

While the Crown has conceded that it has responsibility for designing and monitoring the legislative system for public works takings, it has also stated that 'it [the Crown] is not responsible for the acts or omissions of local authorities or statutory bodies.' We do not accept that the Crown could devolve responsibility in this manner, given that it has itself empowered local authorities to take land for public works in the first place.²⁵²

Finally, the Wairarapa ki Tararua Tribunal has recently stated that 'in principle, there is no material difference' whether it is the Crown or a local authority which has taken land for public works.²⁵³ We agree, and find that the Crown is ultimately responsible for any Treaty breaches and consequent prejudice to Māori deriving from local authority takings in Tauranga, whether that fault is a result of flaws in the legislative framework or local authorities' failure to comply with that legislation.

250. Document U39, pp 4–5

251. Document U28, p 8

252. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim* 2nd ed (Wellington: Waitangi Tribunal, 1989), p 73; Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 627

253. Waitangi Tribunal, *Wairarapa ki Tararua*, vol 1, p 51

4.8.8 Does the current regime comply with the Treaty?

(1) Changes to the regime

Some of the causes of grievance regarding the procedures to be followed for public works were rectified in the later twentieth century. From the 1970s, Māori owners were properly notified of public works via meetings of owners, an independent body (now the Environment Court) was set up to hear objections, and owners' direct involvement in making compensation claims was restored. From the late 1970s, there was also a limited possibility of objecting to major works such as motorways when they were designated on a district plan. The Public Works Act 1981 continued some of the harsher provisions for centre-line proclamations, but this changed with the Resource Management Act 1991 which gave extended notification and objection provisions to works formerly exempt.²⁵⁴ The Public Works Act 1981 also introduced the requirement to offer lands back to former owners, even if they no longer owned surrounding lands and, most importantly, renewed the emphasis on negotiated agreements, with compulsory acquisition for all lands becoming a last resort. About 15 acres (6 ha) of Māori land in Tauranga have been acquired for public works from 1980 to 2006, a marked decrease on the 3263 acres (1321 ha) acquired from 1950 to 1979. It seems likely that some of this decrease was an effect of the 1981 Act.²⁵⁵ There have also been encouraging signs, which we explore in chapters 6 and 7, that Māori interests and the protection of Māori land are now being considered in the forward planning for the district.

On the other hand, there have been continuing problems with the return of surplus lands; the many exemptions, the continued ability to change the use of land to another type of public work, and requirement to pay market value preventing many returns. A review of the 1981 Act was conducted in 2000, and there has been wide consultation with Māori. We heard evidence of the submissions to that review from Matiu Dickson of Ngāi Tūkairangi, a member of the consultation group Te Roopu Arataki.²⁵⁶ No new legislation has as yet resulted. A public works amendment Bill sponsored by the Māori Party has recently been before Parliament. It addresses many of the issues to do with the return of surplus lands, but makes no mention of the Treaty or its principles, the need to protect remaining Māori landholdings, restricting the ability of authorities to use compulsory acquisition for Māori land, ensuring the least possible interest in the land is taken, and taking account of Māori interests when valuing land for compensation.

We have also described how the Crown has devolved power to new authorities. These are the state-owned enterprises created by the Government to manage and provide many essential services such as electricity, gas works, and telecommunications. Currently,

254. Salmon, *The Compulsory Acquisition of Land in New Zealand*, pp 52–53; doc U28, p 15

255. Waitangi Tribunal, *Te Maunga Railways Land Report*, pp 53–55; doc T16(a), p 31

256. Land Information New Zealand, *Review of the Public Works Act: Issues and Options* (Wellington: Land Information New Zealand, 2000); Land Information New Zealand, *Review of the Public Works Act: Summary of Submissions* (Wellington: Land Information New Zealand, 2001); doc U12, p 27

such businesses may be designated as ‘requiring authorities’, that is, under the Resource Management Act 1991 they are able to request that the Minister of Lands compulsorily acquire land on their behalf. Counsel for Ngāti Hangarau and Ngāti Ruahine, however, have stated their concern that as these companies are not the Crown, Māori have lost ‘the ability to treat with their partner’ on the management of the environment and other issues to do with their former lands.²⁵⁷ With regard to such land we note that the new companies have sometimes proved willing to renegotiate terms of access for Māori, as in the case of Telecom and Kopukairoa. We further explore the ability of Māori to have any ongoing role in the management of such lands in chapters 8 and 9. A second issue raised by claimant counsel is that as Crown assets have been transferred to these companies they are no longer available for Treaty settlements. We note that after consultation during 1992 the Mangapapa hydroelectric power scheme was privatised in December 1993. The Ngāti Ruahine claim, which specifically requested that assets in this scheme not be transferred out of Crown ownership, had already been lodged some months previously, in June 1993. It appears that the existence of the Ngāti Ruahine claim was not considered before privatisation went ahead.²⁵⁸

(2) Treaty analysis and findings

The current regime is a considerable improvement on the past, but real weaknesses remain with regard to the treatment of Māori land, and the regime cannot be considered satisfactory. There is a continuing risk of unnecessary loss of Māori land to public works, and lack of recognition of Māori values and interests in the planning and implementation of public works programmes. With regard to the creation of state-owned enterprises and the management of lands, while it is not necessary for the Crown to be directly involved in public works, we reiterate that the Crown remains ultimately responsible for the public works regime and must consider whether that regime complies with the Treaty.

The transfer of assets to state-owned enterprises is another issue. The *Te Ika Whenua – Energy Assets Report 1993* considered such transfers under the Energy Companies Act 1992 and found that it is inconsistent with the Crown’s Treaty obligations to transfer assets which were under claim to third parties, thereby prejudicing settlements.²⁵⁹ We consequently find that the Crown breached the Treaty in continuing with the privatisation of the Mangapapa hydroelectric scheme without due consideration of the Ngāti Ruahine claim.

257. Davies, *History of Public Works Acts in New Zealand*, pp 74–75; doc U38, p 16

258. Ngāti Ruahine claim (Wai 362), claims 1.17, 1.17(d). The Ngāti Hangarau claims (Wai 503 and 672) were first lodged in 1995 and 1997, claims 1.23 and 1.38.

259. Waitangi Tribunal, *Te Ika Whenua – Energy Assets Report 1993* (Wellington: Brooker and Friend Ltd, 1993), p 37

4.8.9 Summary

This chapter has considered some 120 years of public works in Tauranga. We have found that the Treaty gave a high degree of protection to Māori property rights and interests but that, for most of the nineteenth and twentieth centuries, the Crown made little effort to protect these interests under the various public works policies and legislation. In Tauranga it is evident that the public works regime rarely took the history of Māori land loss, nor the current needs and interests of tangata whenua, into account. The differing procedures for Māori land developed by the Crown were to the detriment of Māori owners, disadvantaging them in negotiations over public works and resulting in a denial of agency to Māori. Moreover, such procedures magnified the adverse effects of a regime which, generally speaking, tended to reduce the necessary safeguards against the arbitrary use of compulsory acquisition. This tendency has been reversed from the 1980s, and agency restored to Māori owners, although, as we have seen, there are still some significant flaws in the current regime.

4.9 MAIN CONCLUSIONS AND FINDINGS IN THIS CHAPTER

The main points to be taken from this chapter are as follows:

- ▶ Public works legislation was introduced into New Zealand without consultation or consent from Māori.
- ▶ Certain aspects of the legislation, such as centre-line proclamations for railways and motorways, and the procedures for electricity infrastructure, were particularly harsh and in themselves a breach of the Treaty. These procedures were frequently used in Tauranga and affected much Māori land.
- ▶ Until the later twentieth century, Māori land was treated differently under the legislation. This difference led to discrimination in the procedures for notification, objection, and compensation.
- ▶ The expansion of Tauranga to the east was done without consideration for the history of raupatu and the fact that much of the remaining Māori land was situated in the east. Māori were not involved in key public works and planning decisions in Tauranga and their interests and concerns were not protected.
- ▶ From 1886 to 2006, at least 4961 acres of Māori land was taken for public works in Tauranga. This was a substantial part of their remaining estate, the loss of which caused serious prejudice to Tauranga Māori.
- ▶ Many wāhi tapu of Tauranga Māori have been effectively destroyed by public works, and marae and urupā have been adversely affected, having a detrimental effect on Māori community life.

- ▶ In order to fulfil the Treaty's guarantees the Crown should have restricted the compulsory acquisition of Māori land to 'exceptional circumstances, in the last resort in the national interest'. Instead, for most of the twentieth century, compulsory acquisition was available for a very broad range of works, leading to unnecessary loss of Māori land.
- ▶ The Crown's public works policy and legislation have not protected Māori in accordance with the Treaty of Waitangi.

CHAPTER 5

**LOCAL GOVERNMENT, 1886–1987:
URBANISATION, RATING, AND TOWN AND COUNTRY PLANNING**

It is an axiom of the British Constitution that where there is taxation there ought to be representation; but the Maoris who are to be taxed for the construction of these roads have not that representation which, according to the principles of English law, they ought to have if they are to be placed upon a level with the European subjects of the Queen.

Matthew Green, member of the House of Representatives for Dunedin East, 1882¹

[Rates] used to nibble at land like mice but have grown into tigers.

Solicitor for Ngāi Te Ahi, 1971²

5.1 INTRODUCTION

Māori land rating has been a controversial issue in Tauranga Moana since the 1870s, and remains so today. To see why, we need to look not only at rating itself but at the closely related topics of urbanisation and local government. Town and country planning is also implicated because, in more recent times, rates have been affected by zoning.

Through legislation, the Crown has delegated to local bodies the tasks of levying rates, providing services, and managing town and country planning. Our overarching concern is whether, in doing so, it has established a legislative regime that requires those local bodies to take account of the unique nature of Māori land and to act in accordance with the principles of the Treaty of Waitangi. To assist our investigation, we shall ask a number of more specific questions. For example, did the Crown deal fairly with Māori in the way it introduced rating on their land? Have Māori received equitable treatment in terms of services

1. Matthew Green, 30 August 1882, NZPD, 1882, vol 43, p 715

2. Tauranga Māori Land Court minute book 40, 13 November 1979, fol 273 (Fiona Hamilton, 'Ngai Te Ahi Historical Report' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2000) (doc G1), pp 149, 169)

received? To what extent have changes in zoning resulted in increased rates charges on Māori land?

First, though, we need to establish some basic facts. What was the context for the rating of Māori land in the Tauranga area, and what are the assumptions behind the practice of rating?

5.1.1 The development of urban communities and rating in New Zealand

In nineteenth century New Zealand, all settlements of any size were on or near the coast. Some had been planned, some developed more haphazardly. Early colonial New Zealand was not, however, highly urbanised: by 1874, two-thirds of the population still lived in communities of fewer than 500 people.³ Those who did live in towns were mostly Pākehā.

With the 1880s came a period of economic depression. At the same time, immigration slowed, and population growth levelled off and even declined for a short period. Despite this, by 1891 settlers made up around 94 per cent of the population (their numbers having reached parity with Māori only some 30 years earlier).⁴ The development of manufacturing and processing boosted the growth of urban centres and also led to increased demand for raw materials, which in turn stimulated growth in rural areas. By 1926, more than half the population of New Zealand lived in the main urban centres, and another 14 per cent were in secondary and minor urban centres. Māori however – including Tauranga Māori – were still largely rural. As Evelyn Stokes notes, ‘The pattern of Māori settlement around Tauranga Moana established by the 1920s was one of many rural marae with a cluster of households around each and some scattered households on family farms, mainly dairy units.’⁵

The depression of the 1930s was followed by a post-war economic revival during which the trend towards urbanisation intensified. It was during this post-war period that Tauranga and Rotorua both rose to become major secondary centres. In 1951, the *New Zealand Herald* commented that small villages on the outskirts of Tauranga were being ‘swallowed up’ by the urban area. In 1954, it reported: ‘An astonishing commercial boom, bigger than anything it has known before, has brought Tauranga 7,500 new residents in the past five years, increasing the population by over 60 per cent.’⁶

3. Cyril Knight, ‘Towns and Cities, Growth of’, *Te Ara – The Encyclopaedia of New Zealand* 1966, 22 April 2009, <http://www.teara.govt.nz/en/1966/towns-and-cities-growth-of/1> (accessed 11 March 2010)

4. Claudia Orange, ‘Flags and Nations, 1839–1952’, in *Frontier of Dreams: The Story of New Zealand*, edited by Bronwyn Dalley and Gavin McLean (Auckland: Hodder Moa, 2005), p 125; David Green, ‘The Explosive Frontier, 1852–1884’, in *Frontier of Dreams*, p 154

5. Evelyn Stokes, *Tauranga Moana: The Impact of Urban Growth* (Hamilton: Centre for Māori Studies and Research, University of Waikato, 1980) (doc A15), p 9

6. *New Zealand Herald*, 1951, October 1954 (Evelyn Stokes, *A History of Tauranga County* (Palmerston North: Dunmore Press, 1980), pp 328, 330)

By 1976, 84 per cent of all New Zealanders were living in urban areas,⁷ although Māori did not really join the urban drift (or become absorbed willy-nilly into expanding urban boundaries) until the late 1950s. In 1950, only around 30 per cent of Māori lived in urban areas. By 1966, that figure had jumped to 62 per cent, rising to almost 80 per cent by 1986.⁸

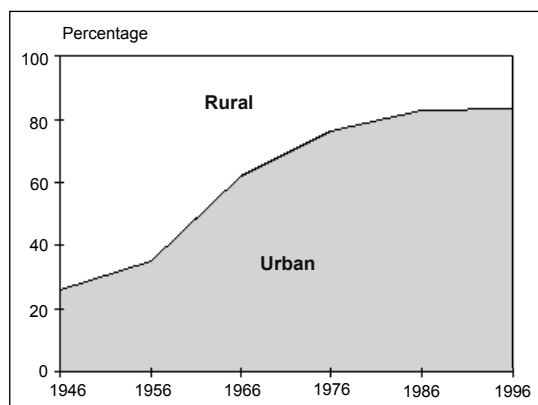


Figure 5.1: Māori urbanisation, 1945–96

Throughout this process of urbanisation, a primary driver has been economic development. All Western economies have, since the British industrial revolution, viewed urbanisation as favourable to economic growth. The prioritising of economic development is a recurrent theme throughout this chapter – although that is not to deny that urban centres also have a social and cultural function. Environmental issues are addressed later in our report.

5.1.2 Local authorities and the rationale for rating

Local authorities as we know them – that is, democratically elected by the local population – are a comparatively recent idea, having their origins in 1830s Britain. The Municipal Corporations Act, passed by the British Parliament in 1835, established local authorities with elected councils to oversee local affairs.⁹ That was doubtless the model in Lord John Russell's mind five years later when, as Colonial Secretary, he wrote to the New Zealand Governor, William Hobson, instructing him to 'promote as far as possible the establishment of municipal and district governments for the conduct of all local affairs, such as drainages, bye-roads, police, the erecting and repair of local prisons, court-houses, and the like'.¹⁰

In 1842, New Zealand's fledgling government passed the Municipal Corporations Ordinance, duly aimed at making provision for 'the good order health and convenience of the inhabitants of towns and their neighbourhoods' by setting up local bodies. There was

7. Māori urbanisation figures as given by Statistics New Zealand, 'New Zealand: An Urban/Rural Profile: Historical Context', undated, <http://www.stats.govt.nz/publications/businessperformanceenergyandagriculture/urban-rural-profile/historical-context.aspx> (accessed 19 January 2010); 'The Urban System; Cities, Towns and the Links Between Them 1891–1961', in *New Zealand Historical Atlas*, edited by Malcolm McKinnon (Auckland: Bateman, 1997), p165

8. Paul Meredith, 'Urban Māori – Urbanisation', Te Ara – the Encyclopedia of New Zealand, updated 4 March 2009, <http://www.teara.govt.nz/en/urban-maori/1> (accessed 18 January 2010)

9. Tom Bennion, *Maori and Rating Law*, Rangahaua Whānui Series (Wellington: Waitangi Tribunal, 1997), p 3; Graham Bush, *Local Government and Politics in New Zealand*, 2nd ed (Auckland: Auckland University Press, 1995) p1

10. Bennion, *Maori and Rating Law*, p 3; Russell to Hobson, 9 December 1840, BPP, vol 3, p 148

explicit recognition in the preamble to the ordinance that it was beneficial for people to participate in local affairs and, moreover, that local residents were best placed to make decisions about governance and the provision of services within their area.

That legislation was soon followed by a second Municipal Corporations Ordinance in 1844, the Public Roads and Works Ordinance 1845, and the Constitution Act 1846 (UK) which established the provinces of New Munster and New Ulster – Tauranga being part of the latter.¹¹ When the New Zealand Constitution Act 1852 (UK) was passed, New Ulster and New Munster were replaced by six new provinces, and Tauranga became part of the Auckland province.

In the event, none of these early attempts at instituting local government seems to have met with a great deal of success, perhaps because of a lack of local capacity. As the settler population increased, however, so did the establishment of local bodies. Road boards, for example, had been set up almost everywhere by the end of the 1860s. Then, from 1870, 22 harbour boards were created nationwide within eight years and there was a proliferation of special purpose boards dealing with matters such as hospitals, rivers, drainage, and nuisances of various kinds (especially rabbits).

Meanwhile, the Counties Act 1876, which followed the abolition of the provinces, had resulted in 63 county councils. These included the Tauranga County Council, which initially also covered the Rotorua area. That legislation was followed by the Town Districts Act 1881 which provided for town districts as an intermediate layer between the counties and the road boards.¹² In 1882, the Borough of Tauranga came into being, following several previous unsuccessful petitions from the town's residents. It was an independent local body, separate from both the county and the highway districts, and responsible for providing the town's roads and amenities.¹³

By 1886, the idea of having democratically elected local bodies was well established – or at least as far as the settler population was concerned. Māori were not widely eligible to participate in local body elections before the early 1900s: to vote, one needed to be an identified owner or occupier of land, named on a valuation roll. In the early days of the colony, much Māori land still did not have individually identified owners or occupiers as it was held in multiple ownership.¹⁴

While the nature and number of local bodies has varied since 1886, the basic aim of encouraging local people to take responsibility for the provision of local works and services has remained. Central government has contributed to the cost of providing some services, but local bodies have always needed to raise additional funding in order to carry out their

11. Bennion, *Maori Land and Rating Law*, p 4

12. Bush, *Local Government*, pp 7–13; Stokes, *A History of Tauranga County*, p 195; Marinus La Rooij, “‘That Most Difficult and Thorny Question’: The Rating of Maori Land in Tauranga County” (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc P14), p 6

13. Stokes, *A History of Tauranga County*, pp 194–196; Municipal Corporations Act 1876, s 31, pt x1

14. Bennion, *Maori and Rating Law*, pp 11, 15

functions. This has generally been done by levying a rate on local inhabitants, although the basis of that rating has varied.

The practice of rating has also reflected central government objectives. In the interests of improving national productivity, legislation has favoured those rating mechanisms perceived as most likely to promote land development. And from the mid-twentieth century onwards, the national trend towards urbanisation has often seen, as in Tauranga, dramatic increases in land valuation and accompanying rates rises.

Alongside these national macro-economic trends and objectives, local town and country planning objectives – especially those related to the development of urban infrastructure – have had a major impact on land value, rates, and options for future development.

In short, rating issues in the Tauranga district, both historically and today, are inextricably linked both to wider developments such as agricultural production and urban expansion, and also to the aims and operation of local government and of town and country planning schemes.

5.2 THE ISSUES TO BE EXAMINED

In light of this background, the evidence we heard, and the submissions of the claimants, the Crown, and local authorities, we have chosen to focus this chapter on three central issues.¹⁵

5.2.1 Valuation

Given the need to find money to pay for local works and services, and accepting that central government is unlikely ever to cover the full cost, on what basis can local authorities raise finance? Several options are possible, including a per capita ('poll') tax, a targeted ('user pays') rate, or a rate based on the value of land. If the latter is chosen, there are again several options for setting rates, such as using the annual rental value of the land, or the unimproved value, or the capital value which includes any improvements. A further variation is 'land value', which has been described as capital value less buildings and fences.¹⁶ Section 5.3 therefore looks at valuation and asks:

- ▶ What systems of valuation have been used in New Zealand?
- ▶ Have valuation systems taken due account of the nature of Māori land, Māori land tenure, and Māori attitudes to land?

15. This chapter deals with the period from 1886 to 1987. From 1988 onwards, local government underwent major structural reforms; these are examined in chapter 6 which focuses particularly on contemporary planning and rating issues, and Māori representation more recently.

16. J A B O'Keefe, *The Law of Rating* (Wellington: Butterworths, 1975), p 27

5.2.2

5.2.2 Rating legislation

Sections 5.4 and 5.5 examine rating legislation and its effects on Tauranga Māori from 1871 to 1924 and from 1925 to 1950. Section 5.7 reviews the period from 1950 to 1987. Throughout, we explore several critical questions.

- ▶ Did the Crown deal fairly with Māori in the way it introduced rating on their land?
- ▶ Have Māori had sufficient representation to enable their views to be heard?
- ▶ Has rating and valuation legislation taken due account of the particular nature of Māori land and the tenure system under which that land is held?
- ▶ Should allowance have been made for the contribution already made by Māori in terms of land confiscated or taken for public works, or indeed other community facilities provided by Māori?
- ▶ Has rating pressure resulted in the permanent loss of Māori land and, if so, to what extent can the Crown be held responsible?
- ▶ How has rating affected Māori aspirations for using their land, and to what extent is the Crown responsible for any negative impacts?

5.2.3 The planning regime

Section 5.6 shifts the focus away from rating legislation to the town and country planning regime, and how it has affected the usage and rating of Tauranga Māori land. This is also a major theme in the case studies presented later, in section 5.7.2. In particular, we consider:

- ▶ How have urbanisation, town and country planning, and zoning affected Māori?
- ▶ Have Māori received equitable treatment in terms of services received – and, if not, to what extent can the Crown be held responsible?

5.3 VALUATION: THE BASIS OF RATING

In New Zealand, different bodies have taken different approaches to raising taxes to cover the costs of local services. Harbour boards have sometimes charged on the basis of cargo tonnage, some pest destruction boards have used stock numbers, and occasionally there have been local petrol taxes based on a charge per gallon or litre of fuel.¹⁷ Local bodies have also imposed ‘user pays’ charges for particular services such as sanitation, water supply, and libraries – and, since 1979, local councils have had the right to fix a ‘uniform annual general charge’, unrelated to any specific functions.¹⁸

But by far the largest part of all rating by local councils has been the rating of land, based on land valuation. In the opinion of J A B O’Keefe, an expert in rating and valuation:

17. J A B O’Keefe, *The Law of Rating*, p 14

18. Bush, *Local Government*, p 71. We shall discuss these uniform annual general charges in the next chapter.

‘Practically every rating problem is a valuation problem.’¹⁹ As he wrote in 1975: ‘The legal concept of rating in New Zealand is that rating liability is based upon land tenure, and rates upon land value.’²⁰

But how should land value be ascertained? There is an important distinction between *valuation* – the process of determining what a particular piece of land might be worth if used to best advantage (that is, taking into account its potential) – and *assessment*, the process of determining what the same land is currently worth under its actual usage. In 1914, the *New Zealand Official Year-Book* expressed the view that valuers should be ‘unrestricted in [their] means of ascertaining facts necessary to enable [them] to make valuations’, and should be ‘diligent in securing evidence of values’. However, as O’Keefe has observed, valuation has political and sociological overtones; he believes that not all ‘ingredients of worth’ have necessarily been taken into account. Further, there is the question of purpose: property has sometimes been valued differently depending on whether the valuation was for rating, stamp and estate duties, compensation, or loan purposes.²¹ In short, many factors come into play.

5.3.1 The value of land: Māori and Pākehā perspectives

In Pākehā terms, the focus of valuation has always been on economic worth above all. For Māori, there are many other factors to consider. James Rolleston described some of them for us, drawing also on important discussion by Justice Durie and Pita Rikys.²² From a traditional viewpoint, land is Papatūānuku, the earth mother, so is in some sense an ancestor that also provides spiritual sustenance. Land is a taonga handed down from generation to generation. It is a point of tribal identity – a visual history, one might say, where different landmarks and wāhi tapu remind the ‘reader’ of past events and exploits. It is a point of personal identity, providing hapū members with a tūrangawaewae, a place to stand. These aspects of ‘land value’ in turn link to others. Māori, as tangata whenua, will often see themselves as custodians of the land, not owners of something that can be permanently alienated. The land has been handed down from the past and is to be preserved for future generations. It is not necessarily there to be developed. In some instances, non-utilisation is acceptable and desirable. One such example might be areas with wāhi tapu, which include (but are

19. O’Keefe, *The Law of Rating*, p 21

20. *Ibid*, p 51

21. *The New Zealand Official Year-Book 1914* (Wellington: Government Printer, 1914), p 897; O’Keefe, *The Law of Rating*, pp 20–21; Bryan Gilling, *Government Valuers: Valuation New Zealand, 1896–1996* (Wellington: Valuation New Zealand, 1996), p 40; A H McLintock, ‘Land Valuation’, *Te Ara – The Encyclopaedia of New Zealand* 1966, 23 April 2009, <http://www.teara.govt.nz/en/1966/land-valuation/1> (accessed 18 January 2010)

22. James Francis (Hemi) Rolleston, brief of evidence, 19 May 2006 (doc Q1); Hemi (James Francis) Rolleston and Jolene Patuawa, ‘Submission Report on the Rating of Māori Land in Tauranga’, 2004, pp 8–10 (doc Q1, app). The latter document quotes from Justice Durie’s unpublished paper ‘Custom Law’ written in January 1994, and also from Pita Rikys, *The Valuation For and Rating of Maori Land* (Waiheke: Te Ngutu o Te Ika, 2001).

not limited to) burial sites, battle sites, places where ancient schools of learning were held, sites associated with traditional religious ceremonies, and water sources used for healing or death rites.

Even in terms of economic value, Māori may have a different view of what constitutes worth. With coastal land, for instance, Pākehā might prize a panoramic sea view whereas Māori may place greater value on having access to a traditional fishing place.²³

There is another important distinction between Māori and Pākehā understandings of the value of land. Value usually presupposes an open market, but historically, in periods when only the Crown could buy, this became a fiction.²⁴ A further factor affecting market value is that much Māori land was, and is, in multiple ownership. Many existing Māori land blocks in Tauranga, for example, have more than 60 owners.²⁵ We have already discussed in chapter 2 how multiple ownership could affect the alienation of blocks. Perceived complications over the process of alienation could also affect market value.

5.3.2 The mechanics of valuation are established

Despite all these factors, New Zealand's rating legislation, policy, and practice have taken an overwhelmingly European view of land, and valuations have been calculated accordingly. Initially, some parts of the country used an annual value – that is, the rent at which a property would let from year to year after certain specified deductions were made. Others rated on the basis of capital value (the value of the land plus any improvements).

In 1876, the Government passed a Rating Act which introduced provisions for appointing valuers and compiling valuation rolls. Each local body was to appoint one or more valuers whose role was to assess and record the rateable value of all rateable property within that district. The Act also signalled a general shift to the use of annual value, although the formula to be employed also required capital value to be considered.²⁶ It was a shift that did not meet with universal approval. Joseph Shephard, the member for Waimea, later commented that 'the change to letting value was very much objected to' in his province because it gave 'an unfair advantage to unimproved lands.'²⁷

A few years later, the Rating Act 1882 sought to standardise the use of capital value, although rating on annual value was still permissible. Cecil de Lautour, another South Island member, predicted that a shift to capital value would be detrimental to Māori, saying: 'the annual value of Native lands particularly is altogether inconsiderable as compared to what it will be when you rate them on the fee-simple value.'²⁸ In the Legislative Council,

23. Rolleston and Patuawa, 'Submission Report on the Rating of Māori Land in Tauranga', p 9 (doc Q1, app)

24. As observed by the Stout–Ngata commission. (Gilling, *Government Valuers*, p 53).

25. Document Q1, p 15

26. Rating Act 1876, ss 2, 4

27. Joseph Shephard, 30 August 1882, NZPD, 1882, vol 43, p 726

28. Cecil De Lautour, 30 August 1882, NZPD, 1882, vol 43, p 704

others too argued against the use of capital value. James Williamson, of Auckland, was of the view that ‘we should levy the rates on the unimproved value, and not unduly tax the man who makes improvements on the land.’²⁹

On the other side of the argument, James Fulton (the member for Taieri) was one of those who thought the change a positive one, arguing that it would ‘catch a number of properties which are now unoccupied and lying idle, and make people turn them to some use.’³⁰ Richard Seddon argued a special case for goldfields. The root of his argument is interesting in the context of Māori land, in that it related to the nature of tenure: ‘owing to the tenure on which it is held, it cannot be valued in the same way as property in other parts of the colony where the population is more settled and a fairer value can be fixed.’³¹ In other words, he recognised that tenure issues had a direct bearing on land valuation, and argued that the matter should be taken into account in the case of gold fields. None of the members, however, picked up on the argument to make a parallel case for Māori land.

Other concerns about valuations were also being aired. T W Lewis, the under-secretary for the Native Department, had discovered in 1883 that Māori land had been valued for rating purposes at up to three times its market value and he instigated supervision by the Native Department to address the problem.³² Professional valuers were virtually non-existent at the time, there was no coordination between districts, and there were perceptions that valuations may not always have been impartial. Estimates of values, the *New Zealand Official Yearbook 1914* later noted, had varied ‘to a dangerous degree’ from one local authority to the next.³³ In 1896, Parliament therefore passed the Government Valuation of Land Act, under which a Valuation Department – the first of its kind in the world – was established and control of valuation became largely centralised.³⁴

Also in 1896, the Rating on Unimproved Value Bill was introduced to the House, generating heated debate. Its supporters considered that rates based on improved value were akin to an additional income tax, likely to deter effort and investment. Those in the opposing camp argued that rating on *unimproved* value would put an unfair share of the rates burden on people whose land had yet to be developed (or, indeed, was not capable of development) – land which thus yielded little or no income out of which rates could be paid. At the time, much of that undeveloped land was still, of course, in Māori hands.

Arguing from a different viewpoint, Ropata Te Ao, for Western Māori, thought that as a matter of principle the Bill should anyway have first been ‘submitted to the chiefs of

29. James Williamson, 7 September 1882, NZPD, 1882, vol 43, p 848

30. James Fulton, 30 August 1882, NZPD, 1882, vol 43, p 730

31. Richard Seddon, 30 August 1882, NZPD, 1882, vol 43, p 732

32. Alan Ward, *A Show of Justice: Racial ‘Amalgamation’ in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1973), p 284

33. *The New Zealand Official Year-Book 1914*, p 895; O’Keefe, *The Law of Rating*, p 19

34. Government Valuation of Land Act 1896; O’Keefe, *The Law of Rating*, p 19; A H McLintock, ‘Land Valuation’, *Te Ara – The Encyclopaedia of New Zealand* 1966, 23 April 2009, <http://www.teara.govt.nz/en/1966/land-valuation/3> (accessed 19 January 2010)

New Zealand, with a view to ascertaining their opinion. Hone Heke, for Northern Māori, was strongly against the Bill. He complained, too, about other ‘former legislation’ (unspecified) that had, he said, prevented any land-owning Māori in the North Island from ‘utilising his property to any advantage to himself’, thus making it difficult for such an owner to pay rates and taxes. In the event, the Act passed but provided for an element of choice – ratepayers could vote on whether or not they wanted their local council to adopt rating on the basis of unimproved value.³⁵

However, Māori were not widely eligible to vote in local body elections or polls at this time (unlike national elections, where Māori men had had universal suffrage in the Māori electorates since 1867 and Māori women since 1893).³⁶ It was not until the Native Land Rating Act 1904 that the Crown made provision (in section 7(1)) for Māori landowners, or their ‘nominated occupiers’, to be listed on valuation rolls (which in turn formed the basis for local electoral rolls). Around the turn of the nineteenth century, therefore, Māori still had very little opportunity to influence the choice of rating method in their area.

How was rating being carried out in Tauranga by the early twentieth century? In 1901, Tauranga County ratepayers were invited to express their opinion on which method of valuation they would prefer (see fig 5.2), and voted 90 to 13 in favour of rating on unimproved value. Tauranga township pursued a different path: some 12 years later, the Borough of Tauranga was still rating its 450 ratepayers on an annual rental value basis.³⁷ By the late 1930s, the most common basis for rating nationwide was on unimproved land value, with rating on capital value not far behind in popularity. A few local bodies were still rating on annual rental value, and some were using acreage (see fig 5.3).³⁸

The ability of councils to exercise some choice over what type of valuation they used as the basis for rating continued with the Valuation of Land Act 1951, which consolidated

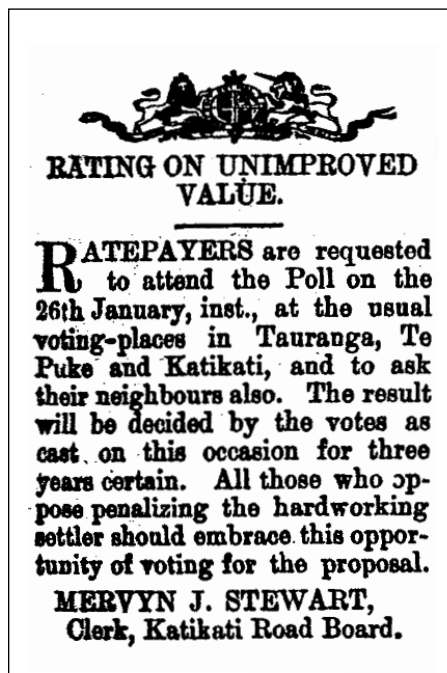


Figure 5.2: Example of an advertisement for the 1901 poll on methods of valuation (this one from the Katikati area), and making particular reference to the interests of ‘the hardworking settler’.

Reproduced courtesy of paperspast.natlib.govt.nz.

35. Bennion, *Maori and Rating Law*, p 2; Ropata Te Ao and Hone Heke, 3 July 1896, NZPD, 1896, vol 92, pp 615–636; Rating on Unimproved Value Act 1896, ss 5–11

36. Bennion, *Maori and Rating Law*, p 15

37. *Bay of Plenty Times*, 23 January 1901, p 3; *The New Zealand Official Year-Book 1914*, pp 879, 889

38. Bush, *Local Government*, pp 28–29

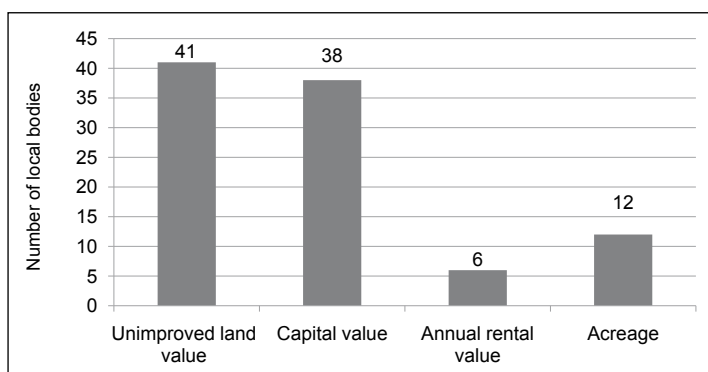


Figure 5.3: Bases of rating used by local bodies, late 1930s

earlier legislation. (Indeed, the discretion remained in force until the Rating Valuations Act 1998.) But as Peter Rikys has noted, the inherent assumption of the 1951 Act was that ‘all land is likely to be used for its best economic use (thus setting its optimum value)’ and that it would be available for sale.³⁹

Meanwhile, in 1917, a case was brought before the Supreme Court that would have far-reaching implications for Māori landowners. Those bringing the case challenged the valuation of a piece of Māori land which was subject to alienation restrictions. It was vested in a Māori Land Board and rented out, and could be sold only with the consent of the Governor in Council. The plaintiffs argued that the restriction limited the saleability of the land, which in turn affected its value. The court found, however, that a ‘mere restriction on alienation’ was irrelevant when ascertaining rateable value, because the land was still saleable and because ‘upon the purchaser getting his title all those restrictions, imposed only for the protection of the Native, come to an end and the purchaser holds absolutely.’⁴⁰ In passing judgment, Justice Hosking did concede that the cost of obtaining title might be higher than for European land. If such was the case, he said, then it was a question of fact for which the valuer should make allowance. He did not concede that there was a question of principle involved. This judgment was to adversely affect the valuation of Māori land for the next seven decades until the ruling was revisited in a case brought by the Mangatū Incorporation (see ch 6).

5.3.3 Differentials

In March 1951, land values were revised in Tauranga County. This had the effect of significantly raising some valuations which, it was feared, might force productive farms to become uneconomic. Such perceptions triggered the introduction of local legislation, a year later, to enable the Tauranga County Council to differentiate the rates it levied. The move followed

39. Rikys, *The Valuation For and Rating of Maori Land*, pp 139, 156–157

40. *Thomas v Valuer-General* [1918] 37 NZLR, 164, at 164–176

5.3.4

a precedent set by the Urban Farm Land Rating Act 1932, which enabled urban authorities nationwide to give rating relief to farm lands that fell within their boundaries, hence protecting such land from the effects of higher urban valuations.⁴¹ Differentiation meant that the council could vary the dollar sum by which valuations were multiplied, to permit lower rating assessments for chosen categories of land. The preamble to the Tauranga County Council Empowering Act 1952 makes clear that the whole thrust of the legislation was to protect productive farms from the harmful effects of the revised valuations.⁴²

This may have brought some relief for well-established farms in Tauranga County, but Māori lands that were classed as ‘unproductive’ received no such assistance – even though they too were affected by rising valuations. We heard how Ranginui 5B, for example, could not be granted any rating concession under the Act because it was not being farmed.⁴³ By 1963, the county council had come to the conclusion that ‘a great deal of Māori land is valued and rated beyond its potential’.⁴⁴

The existence of the 1952 legislation nevertheless shows that both the Crown and the council could take action to mitigate the effects of high rating charges when they desired to do so. Indeed, provision for differentiation of rating was later extended, giving local bodies freedom ‘to levy rates on a differential basis using almost any criteria they wished’. It has been argued, though, that differentiation was generally ‘put to political use by counties to protect the farmer and by municipalities to cushion the owner of the single family dwelling’.⁴⁵ Despite farm development schemes, and a trend towards increasing Māori urbanisation, many Māori still living in rural areas would have felt no benefit.

In 1970, where unimproved value had previously been used as a basis for rating, this was now mostly replaced by ‘land value’ – the difference being that while unimproved value excluded all improvements, even clearing and top dressing, land value only discounted structural improvements such as buildings and fences. Unimproved value was, however, retained for some leased land, particularly Māori land, where its use was considered more appropriate.⁴⁶

5.3.4 The problem of potential best use

The notion that valuation of land should take account of potential best use has been fundamental to rating policy and practice in New Zealand. Evidence presented in our inquiry

41. Urban Farm Land Rating Act 1932, preamble

42. Tauranga County Council Empowering Act 1952, preamble (doc P14, p 111). Section 2 of the Act makes particular reference to farmland with an area of not less than three acres (1.21 ha) and an unimproved value of not less than £35 an acre.

43. Document P14, p 112

44. Tauranga County Council minute book, 30 October 1963, WBDC (doc P14, p 86)

45. Valuation of Land Amendment Act 1970; Bush, *Local Government*, p 71

46. Gilling, *Government Valuers*, p 118

shows that when new potential uses present themselves, there can be sudden increases in valuation, and an ensuing jump in rates. In our inquiry district we heard how this happened in Maungatapu, Matapihi, and Hairini. As part of the drive to improve rates collection in the county during the 1950s, there was a plan to subdivide multiply owned land in those areas so that individual Māori could own sections, and hence become directly liable for rates. When the partition applications came before the Māori Land Court, Judge Harvey commented on ‘the danger inherent in [the] scheme’, expressing his concern that the Valuation Department would ‘take the partition as evidence of a market for subdivisational sales and place an immediate residential value on a remote potentiality’. What was needed, he thought, was ‘some realistic method of valuation for rating purposes.’⁴⁷

A similar situation arose in the 1970s, when kiwifruit production became lucrative; the value of dairying land could suddenly soar if it was perceived as suitable for growing kiwifruit. The Minister of Agriculture and Fisheries expressed concern that valuing on potential usage particularly affected ‘leasehold Māori land where valuation related rentals were making dairy farming prohibitively expensive.’⁴⁸ But the trend continued. In February 1977, the *Bay of Plenty Times* noted that Tauranga County land values had risen by 335 per cent over the previous five years, and capital values by 271 per cent. It also referred to instances of land ‘with sub-divisional potential near Tauranga City’ facing valuation increases of 1000 per cent.⁴⁹ If, as the newspaper reported, ‘Farmers [were] being literally forced, by offers they cannot refuse, to turn productive land over to residential development’, it is little wonder that Māori found it difficult to hold on to their land.

At around the same time, the value of coastal land also began rising rapidly.⁵⁰ Faced with these soaring valuations and hugely increased rates bills, for land that was not necessarily ‘productive’, the pressure on Māori owners to sell must have been very high indeed. As Stokes observed, ‘the laws of supply and demand . . . do not account for traditional values such as Maori attitudes to ancestral land and the social and cultural value to the community of retaining it.’⁵¹

47. ‘Extract from Tauranga Minute Book, Volume 19 Folio 116 dated 17th November 1955’, p 2, MA 1 20/1/33, ArchivesNZ (supporting documents to doc A26 (doc A26(a)), p 112)

48. Stokes, *A History of Tauranga County*, p 405

49. *Ibid*, pp 406–407

50. Local Government Rates Inquiry Panel, *Funding Local Government: Analysis of Submissions* (Wellington: Department of Internal Affairs, 2007), p 49

51. Document A15, p 68

5.4 RATES AND ROADS: POLICY AND LEGISLATION, 1871–1924

5.4.1 Introduction

Roading was intimately connected to the emergence of local government in the Tauranga area. When the Armed Constabulary was brought in to police the Tauranga area in 1867–68, following the withdrawal of the military administration, building roads was one of the main priorities.⁵² At the same time, the first local bodies were established, also with a focus on roading. Within the confiscated block, two highway districts were proclaimed in 1867, and more were established in other parts of the Tauranga area over the next decade – the Tauranga North highway district (the town board), the Tauranga highway district, the Te Puna and Katikati highway districts and Te Puke highway district.⁵³ In 1871, highway boards gained the legal authority to rate Māori land, although rates could only be imposed where the land was occupied by non-Māori.⁵⁴

Constructing, maintaining, and upgrading roads – both to service the immediate area and to give Tauranga better links with other centres – were also among the major issues for the new Tauranga County and the Borough of Tauranga, established in 1876 and 1882 respectively. The prime means of paying for roads was through rating.

Meanwhile, the Crown's focus was on expanding the categories of rateable Māori land. Two Acts were passed in 1882 to this effect, in response to settler pressure: the Rating Act, and the Crown and Native Lands Rating Act. Under the latter, all native land – irrespective of who occupied it – became rateable if situated within the boundaries of a borough.⁵⁵ Native land was also rateable if situated within five miles (eight kilometres) of 'any public road or highway open for horse traffic.'⁵⁶ The reference to the road needing to be open to traffic indicates that land near 'paper roads' – that is, unformed roads that existed only on plans – was not affected. Nevertheless, nationally, the Act impacted on 3.5 million acres (1,416,400 ha) out of 13 million acres (5,260,913 ha) of Māori land by 1883.⁵⁷

The categories of fully rateable Māori land were extended again under legislation passed in 1893, 1894, and 1896. Then, in 1900, under the Māori Councils Act, the prospect was held out of 'some simple machinery of local self-government' whereby a district Māori council would be able to take charge of certain communal matters such as recreation grounds, sanitation, burial grounds, and the control of noxious weeds, in Māori villages within their area. To cover costs they would be allowed to strike rates in the form of 'a tenement-tax on houses, whares, or Native lands within the boundaries of any Maori kainga, village, or

52. Stokes, *A History of Tauranga County*, p 190

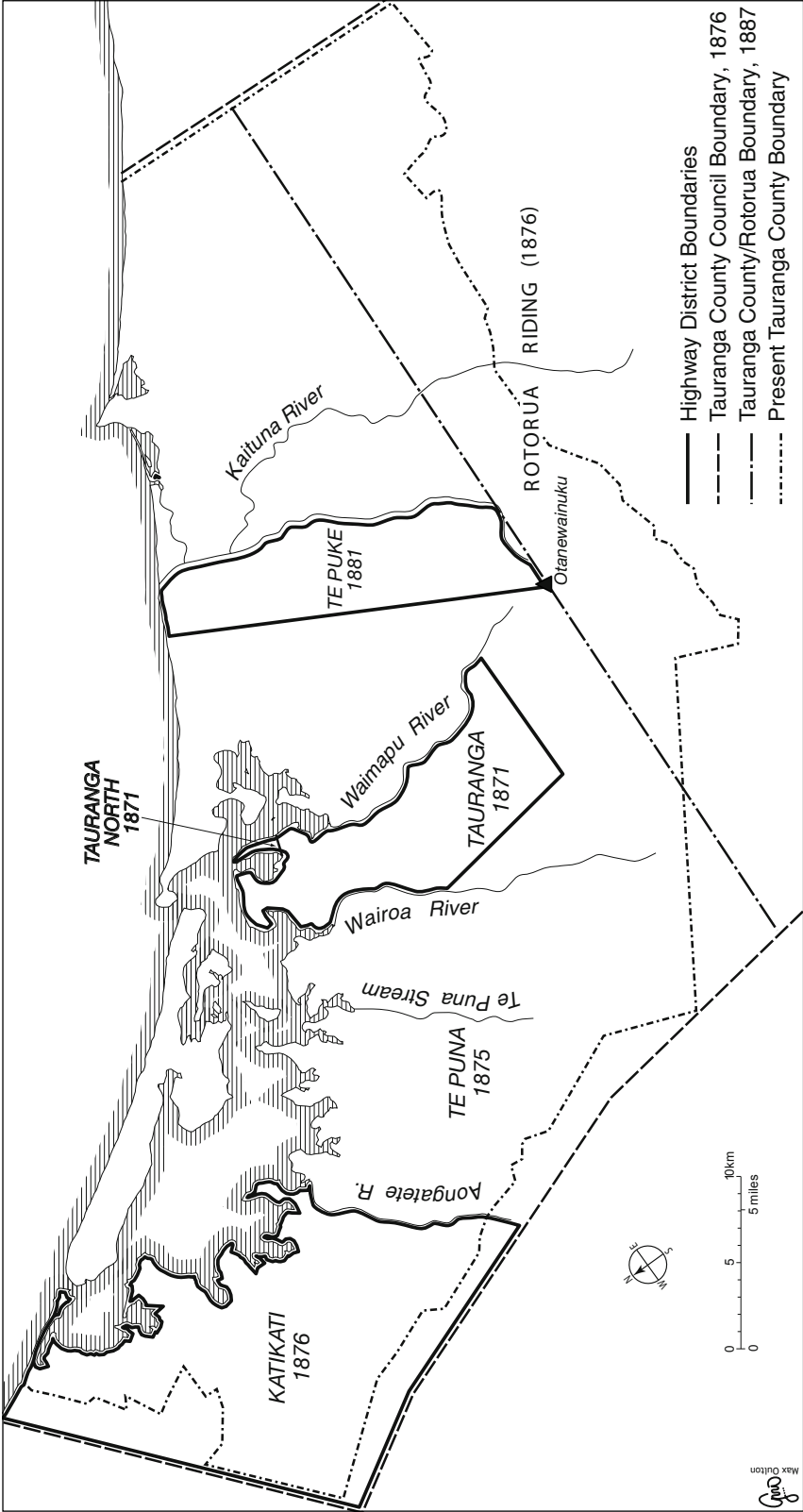
53. *Ibid*, pp 194, 197

54. *Ibid*, p 190; Highway Boards Empowering Act 1871, preamble, s 5; Bennion, *Maori and Rating Law*, p 7; doc P14, pp 16–17. According to the preamble of the 1871 Act, section 19 of the Constitution Act 1852 had previously exempted Māori land held under customary title.

55. Document P14, pp 17–19

56. Crown and Native Lands Rating Act 1882, s 6(15)

57. Document P14, p 19



pa. Māori paying such a tax were to be exempt from paying local body rates. It was an idea that was later reported to have ‘found great favour with the native people generally’ and 24 such councils were set up.⁵⁸ A Tauranga Māori Council was gazetted in 1902 but we have no evidence on its early activities. Māori councils in general, however, seem to have struggled – a situation for which Gilbert Mair, made superintendent of the councils in 1903, blamed under-resourcing by the Government. ‘[M]atters have drifted from bad to worse’, he wrote, ‘and the natives generally are losing all interest in the institution.’ He went on:

It is greatly to be regretted that the situation is so unsatisfactory, for I fervently believe that great permanent good might have otherwise resulted, and it redounds to the credit of the natives themselves that so much good has been accomplished without any assistance worthy of the name.⁵⁹

Meanwhile, under the Native Land Rating Act of 1904, Māori land that could be rated now included all Māori land within 10 miles (16km) of a town or borough; Māori land which had at any time been acquired by purchase or lease; Māori land for which rates had ever been paid previously; and Māori land which had been incorporated under the Native Land Court Act 1894.⁶⁰ Other Māori land which had had its title ascertained, and which was not in any of the categories listed as fully rateable, was to be subject to only half the normal rates. Customary land remained exempt unless occupied by a European.

According to Tom Bennion, the 1904 Act seems to have been the first to direct that Māori owners should be listed on valuation rolls, ‘thus ensuring that they would be eligible to vote in local body elections.’⁶¹ Where interests in a block had not been defined, there were to be ‘nominated Native occupiers’ (no more than one nominee for every 25 owners) and only they would be named on the roll. The nominated occupiers also became liable for the payment of rates ‘as if they were the sole occupiers’, although with certain limits on the total liability. The concept of ‘nominated occupiers’ was retained in the Rating Act 1908, which consolidated earlier rating legislation.⁶²

In 1910, with the passing of the Rating Amendment Act, the bulk of Māori land finally came within the general rating regime.⁶³ Māori freehold land became subject to rates ‘in the same manner as European land’, effectively meaning that all half rates were abolished.

58. Māori Councils Act 1900, preamble and ss 16, 23, 24; Gilbert Mair to under-secretary for Native Affairs, 1 August 1906 (supporting documents to doc A38 (doc A38(d), p 1198)

59. Proclamation defining districts under ‘The Maori Councils Act, 1900’, 20 February 1902, *New Zealand Gazette*, 1902, no 15, p 413; Gilbert Mair to under-secretary for Native Affairs, 1 August 1906 (doc A38(d), p 1199)

60. Native Land Rating Act 1904, s2(f). The Native Land Court Act 1894, s122, specified that owners of a Māori land block or blocks could, if it were the wish of the majority, request the Native Land Court to establish a body corporate to administer the land, with a committee of between three and seven people appointed by the court.

61. Bennion, *Maori and Rating Law*, pp 29–35; Native Land Rating Act 1904, s4. Bennion notes, however, that ‘some Maori would certainly have been eligible to vote under earlier legislation, for example section 2(3) of the Rating Amendment 1896’.

62. Native Land Rating Act 1904, s7(1)(2); Rating Act 1908, ss 93–94

63. Bennion, *Maori and Rating Law*, p 37

Although *all* customary land, whether or not occupied by a European, was now exempt from rates, this was of no benefit to Tauranga Māori who, through the Crown's actions, no longer held any customary land.

5.4.2 An unfair burden on Māori?

These legislative moves to make Māori land increasingly subject to rating proceeded despite initial Māori resistance to the whole idea of rating. Māori were particularly opposed to being rated for roads that they had not requested and (at least at the outset) said they did not want. The Crown's policy also took no account of the fact that Māori had already contributed to both local and central government funds in a variety of other ways, including a de facto 10 per cent sales tax on all Māori land sold (see sec 5.10.1) and the unpopular dog tax instituted in 1880. In Tauranga, it must also be remembered that the imposition of rating followed hard on the heels of raupatu, which had left no rates-exempt customary land.

As more Māori land became liable for rates, Māori landowners continued to express their concerns to government about what they perceived as an unfair rates burden. They pointed to the factors outlined above, and others such as their inability to pay, arguing that Māori had not traditionally treated their land as an economic commodity to be exploited and 'improved' in the interests of income generation. Certainly they had traded with settlers but, in the 1880s, they were still adjusting to the effects of the confiscations and recovering from the disruption of the wars – and this at a time of economic downturn.

These arguments and others were advanced when the Native Minister, John Ballance, met with Tauranga iwi and hapū in February 1885. During the one-day hui, rating was the first grievance raised, with Te Mete Raukawa asking for a blanket repeal of the rating laws insofar as they affected Māori land. 'The Rating Act is a very unjust Act', he said, 'because the Natives, being an impoverished people, are not able to pay either the rates on the land, or the property-tax.'⁶⁴ In turn, the Minister gave a rationale for rating which shows the centrality of roading and commerce in the Government's thinking on the subject:

Why are rates paid at all? To make and keep in repair the roads. How can roads be kept in repair if rates are not paid by the owners of the land? The road is for the benefit of owners of land, to get their produce to market, and without the roads they cannot go to market.⁶⁵

Taxation without representation was another issue. There was little Māori representation at central government level where the rating laws were being passed, and virtually none

64. 'Notes of a Meeting between the Hon Mr Ballance and Tauranga Natives, at Whareroa, Tauranga, on the 21st February 1885', 21 February 1885, AJHR, 1885, G-1, pp 59–60

65. Ibid, p 61

on the local bodies that were striking the rates.⁶⁶ Mohi Tawhai, the member for Northern Māori and a member of the Hokianga County Council, was an exception that proved the rule.⁶⁷ He pointed out to Parliament that, under the proposed Crown and native rating legislation, rating would also apply to land still held under customary title – even though owners of such land were not eligible for election to local bodies because their names were not listed on any roll.⁶⁸

There were particularly strong feelings on the matter of representation among Tauranga Māori. The Native Councils Bill of 1872 (which did not ultimately become law) had provided for a fifth Māori member in Parliament, and there were strong expectations this would mean an electorate for Bay of Plenty Māori. This provision was, however, rejected by the Legislative Council, prompting Tauranga Māori to feel badly used.⁶⁹ This may well explain why, at the 1885 hui, Te Mete Raukawa pleaded with Ballance for a legislative councillor to be drawn from ‘Ngaiterangi,’ to increase the possibility of ‘getting relief from Parliament for any grievances from which they are suffering.’⁷⁰ Clearly, Tauranga Māori did not think that their concerns were being heard at central government level.

But at least there was some opportunity at the national level for Māori representation; there was no provision at all for specifically Māori seats on local councils. Nor could Māori vote in local body elections unless named on the local valuation roll – and, in practice, much Māori land in New Zealand did not have individually identified Māori owners or occupiers at that time.⁷¹ Thus, in the view of most Māori, the bodies responsible for setting and administering local rates remained settler institutions, and settler needs were prioritised over those of Māori. Some, such as Hori Ngatai, also protested at a perceived lack of equality of treatment between Māori, where the Crown’s legislation meant that some were charged rates while others, for various reasons, were not.⁷² In Ngatai’s case, it was because a land block had been Crown-granted to him in trust for his hapū, making him personally liable for all the rates on it.⁷³

66. Mohi Tawhai served as a county councillor in Hokianga, but we have no information about the circumstances of his election. Alan Ward (as cited in Bennion, *Maori and Rating Law*, pp 9–10) implies that Retreat Tapsell was a county councillor in the Bay of Plenty region but we have not been able to verify this. Retreat’s brother, Hans, was certainly elected to represent the Maketū Riding of Tauranga County Council in early 1877 (*Bay of Plenty Times*, 3 February 1877, p 2). Ward observes, however, that such men were exceptional in the nineteenth century. See Ward, *A Show of Justice*, p 269 (cited in Bennion, *Maori and Rating Law*, p 10).

67. Tawhai stated in the House: ‘I am a member of the County Council of my district. My land was Crown-granted; I paid the rates, and I was thereby entitled to take part in the administration of the county.’ His home area was Hokianga: Mohi Tawhai, 30 August 1882, NZPD, 1882, vol 43, 717.

68. Ibid

69. ‘Reports from Native Officers of Native Meetings’, HT Clarke to under-secretary, Native Department, 3 December 1872, AJHR, 1873, G-1B, pp 1–2; 30 September 1873, NZPD, 1873, vol 15, p 1514

70. ‘Notes of a Meeting’, 21 February 1885, AJHR, 1885, G-1, p 60

71. Bennion, *Maori and Rating Law*, pp 11, 15; Rating Act 1876, s 2; doc P14, p 17

72. ‘Notes of a Meeting’, 21 February 1885, AJHR, 1885, G-1, p 60

73. Document P14, p 26

On the other side of the fence, settlers and local government officials wanted Māori to share *more* of the rates burden. In their view, rating was necessary to pay for infrastructure that would open up the country for further settlement and boost economic production, from which they believed Māori would also benefit. Any rating exemptions or reductions for Māori were often viewed as ‘special treatment’ that left Europeans ‘carrying’ those Māori who did not pay rates. Sir John Hall, the member for Selwyn, expressed this viewpoint when he told Parliament in 1882:

I do not think we ought to lose any opportunity of impressing on gentlemen who represent the Native race in this House that, if they come here and claim to be put on the same footing as regards political rights and privileges with their European fellow-subjects, they must also bear the same burden as their European fellow-subjects.⁷⁴

At the local level in Tauranga there was a similar perception that Māori were shirking their obligations. In 1900, an officer of the Katikati Road Board complained that, because of the administrative difficulties experienced by the county council in collecting Māori rates, Māori seemed to think that ‘their obligations may safely be ignored’. He was also suspicious of ‘the disloyal King movement, which discourages the payment of dog-tax, rates, etc.’⁷⁵ A few years later, an irate local wrote to the *Bay of Plenty Times*:

the position is now almost intolerable. It is the last straw that breaks the camel’s back, and it seems to us that the Maoris are getting dangerously near to breaking the patience of the long-suffering ratepayers of this county, as the needs of the county render it imperative for more revenue to be found.⁷⁶

Tauranga County Council, too, wanted Māori to share more rather than less of the rating burden. In particular, they viewed the problems of underdeveloped and ‘idle’ Māori land, noxious weeds, and pests as major threats to the successful operation of local government in the region (although, ironically, the noxious weeds in question had inadvertently been introduced by Europeans, probably as contaminants of potatoes or vegetable and pasture seeds).⁷⁷

5.4.3 The Crown focuses on the problem of rates debt

By the 1920s, most Māori land had become liable for rates and the emphasis was shifting to whether those rates were being paid. Collecting rates from the owners of multiply owned

74. John Hall, 30 August 1882, NZPD, 1882, vol 43, p706

75. *Bay of Plenty Times*, 5 September 1900, p2, col 3

76. ‘County Ratepayers Burden’, *Bay of Plenty Times*, 10 January 1910, p2 (doc P14, p28)

77. Document P14, p27; Ministry of Agriculture and Forestry, ‘Weeds in New Zealand: History’, undated, <http://www.maf.govt.nz/mafnet/rural-nz/sustainable-resource-use/land-management/emerging-weeds/emerging-weeds-02.htm> (accessed 26 March 2010)

Māori land was seen as problematic. For one thing, there was the problem of notification. In 1882, the Crown had attempted to address the situation by making the Colonial Treasurer primarily responsible for notification: he was to receive rates demands on Māori land and then publish notices in the *Gazette* requiring the owners to pay. If the rates were not paid within three months, Treasury would indemnify the council concerned and the amount would then be charged as a lien on the land block in question.⁷⁸ In 1888, however, the provision was repealed and the Crown's liability for indemnity was progressively phased out.⁷⁹ The problem of notification and collection thus reverted to the local authorities, who struggled with the task.

In Tauranga in 1912–13, for example, the Tauranga County Council had struck £596 in native rates but collected a mere £3 17s 6d. In 1922–23, it struck £1171 and collected only £32 3s 6d.⁸⁰ As a result of such rates arrears, Tauranga County was, according to Marinus La Rooij, 'forced . . . to charge higher rates on its rate-paying landowners and offer fewer services.'⁸¹

Meanwhile, the system of ownership in common, coupled with the succession laws, was resulting in ever-expanding lists of owners. This made the individual notification of rating debt increasingly burdensome and difficult for local bodies. As North Island councils grew more and more concerned that Māori non-payment of rates could threaten settlement and development, something more was needed. A parliamentary committee was established in 1924 to investigate Māori rating issues, and it tabled recommendations about how best to improve rate collection. These formed the basis of the Native Land Rating Bill, a landmark piece of legislation which handed over responsibility for rates enforcement to the Native Land Court.

From now on, claims for rates recovery were to be treated as applications for charging orders. The court would then make an order in favour of the local authority, granting a charge over the land for the amount of rates payable plus recovery costs.⁸² As Bennion has commented, the idea was to make liens 'stick' more effectively to the land: 'Now they would be simple charging orders, easily imposed by the court.'⁸³ Once a rates charging order had been made, the court could appoint a receiver to enforce it – initially, the Native Land Board, but subsequently the role generally fell to the Native Trustee. The receiver could lease the land and its resources for up to 21 years. Further (and until 1988), Māori land could be sold if a rates charging order on land in receivership was not paid within one year.⁸⁴

78. Crown and Native Land Rating Act 1882, ss 7, 15

79. Crown and Native Lands Rating Acts Repeal Act 1888, ss 4–6

80. Document P14, p 32

81. *Ibid*, pp 31–32

82. Native Land Rating Act 1924

83. Bennion, *Maori and Rating Law*, p 48

84. Rating Act 1925, s 109

The desire to force the productive use of land lay behind the legislation. But, despite its tough measures, the Government recognised that not all lands could be made productive. If the Native Land Court determined certain land had little or no productive value, it might not be rated at all. The court also had discretion to deal with outstanding rates on a case by case basis. Further, although land could be vested in the Native Trustee for sale, this required the Native Minister's consent. As we shall see, it was rarely given: in rates cases, the Government sought to encourage lease rather than sale. Alienation by sale was available as a last resort, but it was hoped that the threat of a forced sale would act as a spur to the Māori owners to develop their land.⁸⁵ Under the legislation, customary land, Māori burial grounds, and churches and marae on Māori land (not exceeding five acres, or 2.02 hectares) remained exempt from rating. But within a year, the Native Land Rating Act 1924 was incorporated into and superseded by the Rating Act 1925.

5.5 RATING POLICY AND LEGISLATION, 1925–50

On the East Coast, meanwhile, Apirana Ngata had been promoting consolidation schemes to make better use of Māori land. In Minister Gordon Coates' view, such schemes would also help to address the rating issue and to put Māori in a position to pay rates they owed. Native land legislation introduced in 1926 and 1927 incorporated a number of Ngata's ideas.⁸⁶

Writing to Peter Buck early in 1928, Ngata commented that there had been 'an onslaught' from local bodies demanding that the Government allow rates charging orders to be enforced by selling the charged (Māori) lands. He was scathing about the equity of that demand:

The local bodies were asking for their pound of flesh on the theoretical basis of racial equality, whereas in practice the Maori was not regarded or treated as an equal and in the road services for which the unpaid rates were demanded[,] large areas of Native lands were shamefully treated.⁸⁷

As examples of unequal treatment, he noted that Māori farmers were 'not provided a penny of state money' and the Government had failed to deal with the problem of native land title. Further, he said that charging orders were being taken out against 'poor lands quite unfit for settlement, because the pakeha had picked the eyes out of the country'. He thought the lands should be classified so that 'much of the area now rated would be entitled to exemption.'⁸⁸

85. Document P14, p 37

86. Bennion, *Maori and Rating Law*, pp 49–62

87. Apirana Ngata to Peter Buck, 9 February 1928, in *Nā to Hoa Aroha: From Your Dear Friend: The Correspondence Between Sir Apirana Ngata and Sir Peter Buck*, edited by MPK Sorrenson (Auckland: Auckland University Press, 1986), vol 1, p 68 (doc P14, pp 46–47)

88. Apirana Ngata to Peter Buck, 9 February 1928, in *Nā to Hoa Aroha*, vol 1, p 68

Ngata became Native Minister towards the end of 1928, and over the next two years he managed to forge agreements with some local bodies whereby, if they agreed to wipe rates debt on Māori land, the Crown would assure them that Māori land in their district would be developed. The Crown would also pay them a lump sum (using money from the native land settlement account) to offset, in part, the debt that had been waived. In this way, some potential alienations were avoided. They were, however, largely outside of this inquiry district, being mostly in the Far North, Waikato–King Country, and the eastern Bay of Plenty. Ngata also continued Coates' practice of using his veto as Native Minister to stop Māori land being sold for rates debt.⁸⁹

Otherwise, however, the Government brought about no significant legislative changes affecting the rating of Māori land between the passing of the 1924 Native Land Rating Act and 1950 when the Māori Purposes Act was passed.

As for local bodies, their focus – particularly during the economic crisis brought on by the depression of the 1930s – was squarely on the problem of rates recovery, and it is to that subject we now turn.

Although local authorities had attached high hopes to the 1924 and 1925 Acts, collecting rates on Māori land in Tauranga Moana and elsewhere remained a struggle.⁹⁰ Information supplied by Tauranga County to the national Native Lands Rates Committee in 1933 shows that the rates collected or recovered on Tauranga Māori land were negligible.⁹¹ Between 1923 and 1933, for example, rates demands totalled £14,760, of which £65 was paid on time and £212 recovered over the following years – leaving £14,483 outstanding.⁹²

Figures supplied to the committee from the Native Land Court registrars provide another insight into rates enforcement. In 1933, the Waiariki District Native Land Court received 1667 applications for rates charging orders, of which 1203 were granted. Significantly, however, no applications were made to lease out any land for rates recovery purposes, and only one application for sale was made: this was ordered by the court but not approved by the Minister. In general, the Government was reluctant to permit such sales.⁹³ Thus it seems that while rates on Māori land were clearly difficult to collect, the alienation mechanisms available to try and recover those rates were not strictly enforced.

89. Document P14, pp 40, 46–47

90. Stokes, *A History of Tauranga County*, p 323 (Kathryn Rose, 'The Impact of Confiscation: Socio-Economic Conditions of Tauranga Maori, 1865–1965' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1997) (doc A38), p 75; Tony Nightingale, 'Tauranga Moana: A Social and Economic Impact Report, 1865–1960' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1996) (doc A39), pp 57–58

91. See 'Report of Committee on the Rating of Native Land', 29 September 1933, AJHR, 1933, G-11, pp 1–4 (Bennion, *Maori and Rating Law*, pp 58–63; doc P14, p 51)

92. H Lewis Tauranga County Clerk to Secretary Native Affairs, 15 July 1933 (doc P14, table 3, p 42)

93. Bennion, *Maori and Rating Law*, p 63. Bennion cites a December 1937 memorandum to the Acting Native Minister as evidence of the Government's approach: according to the author of the memorandum, the Acting Native Minister had 'on several occasions indicated that it is not the policy of the Government to permit Native lands to be sold for payment of rates.'

Set against this evidence of non-payment, however, there is information to indicate that some Māori, at least, were endeavouring to meet some of their own needs for infrastructure. A report to the Director-General of Health in 1926 comments at some length about a bore recently sunk at Judea, with ‘pipes laid on to all houses to reticulate the whole settlement’. The report specifies that half the cost had been paid by the Tauranga Māori Council (the remainder being covered by the Department of Health).⁹⁴ It is not clear whether Māori living at Judea were simultaneously being charged rates by Tauranga County.

After 1937, the Native Land Court no longer had any discretion over whether or not to appoint a receiver to recoup unpaid rates:⁹⁵ a Supreme Court ruling made it compulsory.⁹⁶ Given the increased seriousness of the consequences, the Native Land Court now granted rates charging orders only after ‘exhaustive inquiries.’⁹⁷ By 1940, the Department of Māori Affairs was reporting a large drop in the number of rates charging orders being granted.⁹⁸

In February 1941, the Tauranga County Council sought an Order in Council that would declare much of the Māori land in the county exempt from rates because, in the council’s view, the rates were ‘uncollectable’ and were thus being ‘needlessly entered’ in the rate books.⁹⁹ A 12-page schedule of the lands to be considered for exemption was drawn up from records held at the Native Land Court in Rotorua.¹⁰⁰ It included nearly every Māori land block in the county. However, no blocks appear to have been exempted from rates at the time, and only a limited number seem to have been ultimately recommended for exemption.¹⁰¹ Indeed, a letter from the under-secretary for Native Affairs to the county clerk, in December 1942, suggests that it was Government policy to interpret the provisions for rating exemption fairly narrowly:

section 104 of the Rating Act 1925, notwithstanding its wide terms, should be invoked only for the purpose of exempting *waste lands*, that is, lands *which from their nature or situation*

94. Annual report of director, Division of Māori Hygiene, to Director-General of Health, 14 May 1926 (supporting documents to doc A39 (doc A39(a)), p 279)

95. Bennion, *Maori and Rating Law*, pp 63–64

96. Section 108(7) of the Rating Act 1925 stated that a rates charging order ‘may’ be enforced by appointing a receiver (Bennion, *Maori and Rating Law*, pp 63–64, n 362)

97. ‘District Reports: Tairāwhiti District’, 31 March 1939, AJHR, 1939, G-9, p 10 (Bennion, *Maori and Rating Law*, p 64)

98. ‘District Reports: Tairāwhiti District’, 31 March 1939, AJHR, 1939, G-9, p 9 (Bennion, *Maori and Rating Law*, p 68)

99. County clerk Tauranga County Council to under-secretary, Native Affairs Department, 27 February 1941 (supporting documents to doc N2 (doc N2(a)), fol 115) cf Fiona Hamilton, ‘Ngai Te Ahi Historical Report’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2000) (doc G1), p 152; Tony Walzl, ‘Ngati Ruahine: Land Issues Overview, 1900–2000’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001) (doc N2), pp 21–22; doc P14, p 63, fns 180–181

100. Registrar, Rotorua Native Land Court, to under-secretary Native Department, 25 July 1941 (doc N2(a), fols 102–114)

101. Chairman, Tauranga County Council, to Native Minister, undated (supporting documents to document G1 (doc G1(b)), fols 321–326)

*are incapable of being brought into economic productivity, or lands required for afforestation, water conservation and so forth. [Emphasis added.]*¹⁰²

In 1945, a new county clerk, Edward Fox, set to work on the rates recovery problem and made recommendations to the council in 1947. At his suggestion, the county began drawing up a separate rating roll for Māori land. He also proposed that the county, in cooperation with the Māori Land Court, determine exactly which lands were not suitable for development and therefore not rateable: this would save around £850 in administration costs alone, he said. Fox's ideas, however, proved very labour intensive to implement because of the amount of information that needed to be collected.¹⁰³ Then, in 1949, the council asked the Government to facilitate the settlement of around 30,000 acres of Crown and Māori land by returned servicemen, which would be 'a great help toward spreading the rating burden and stopping the spread of noxious weeds'.¹⁰⁴

By mid-1950, the collection of rates on Māori land in Tauranga County was still problematic – although no worse, it seems, than in other comparable counties, and better than many. Indeed, when the Tauranga rates clerk analysed the figures for the 1949–50 financial year, across eight counties that all had 'a large proportion of Māori land', he found that the percentage of rates collected on Māori land in Tauranga County compared 'more than favourably' with most others – despite Tauranga having 'the largest number of Assessments and the highest amount of rates struck'.¹⁰⁵

5.6 THE INFLUENCE ON RATING OF PLANNING POLICY AND LEGISLATION

Before moving on to look at rates issues during the period of rapid urbanisation post-war, we pause to examine the development of planning policy and legislation. Town and country planning acquired an increasing prominence in the second half of the century. It had a significant impact on rating because it was fundamentally about how land is zoned – which in turn affects how land is used, valued, and rated.

102. Under-secretary to county clerk, Tauranga County Council, 1 December 1942 (doc G1(b), fol 318)

103. Document P14, p 63

104. 'Unimproved land – County Council urges development', *New Zealand Herald*, 30 March 1949 (doc P14, p 61)

105. R Carter, rates clerk, to Tauranga County Council, 'Report on Maori Rating', 2 November 1951 (doc G1(b), fol 315). The clerk's perception may have been that Tauranga County had 'a large proportion of Maori land' but, as we have seen, Māori within our inquiry district had already lost the bulk of their land by this time. Those remnants remaining to them were largely around the eastern end of the harbour and in the hill country to the south.

5.6.1 The early years

Urban and rural planning largely grew out of a desire to rationalise land use patterns so as to maximise economic development. Because, in the early years, urban settlements were predominantly Pākehā and governed by councils with little or no Māori representation, planning tended to reflect a Pākehā rather than a Māori perspective.

The first planning legislation was introduced in 1926, and applied only to towns, boroughs, and cities.¹⁰⁶ Because most Māori still lived in rural areas, they were little affected.¹⁰⁷ In any event, the Town Planning Act of that year made no specific provision for the interests of Māori in urban areas.¹⁰⁸

During this period, planning for the development of ports, aerodromes, and main highways was carried out jointly between central and local government, under public works legislation. After 1944, provision was made for local authorities and the Ministry of Works to manage jointly any development ‘of both national and local importance’, whether or not this was strictly a ‘public work’. Any land required for such a scheme was to be taken under the provisions of the Public Works Act 1928 (legislation which has been discussed in more detail in the previous chapter),¹⁰⁹ and local authorities could levy a special rate to cover their share of the costs of the scheme.¹¹⁰ In 1945, the administration of all planning shifted to the new planning division of the Ministry of Works.¹¹¹

After the Second World War, general town and country planning legislation was introduced, to encourage local authorities to plan land usage and to regulate land zoning and procedures for planning consents. The first such Act was the Town and Country Planning Act 1953.

This Act required every council to prepare a district planning scheme covering all land within its district.¹¹² The aim was to foster development in such a way as to ‘most effectively tend to promote and safeguard the health, safety, and convenience, and the economic and general welfare of its inhabitants, and the amenities of every part of the area.’¹¹³ Highlighted

106. Town Planning Act 1926 (Cathy Marr, *Public Works Takings of Maori Land, 1840–1981*, Rangahaua Whānui Series (Wellington: Waitangi Tribunal, 1997), p 159)

107. Tony Nightingale, ‘Maori Re-housing: Tauranga 1945–1972’ (commissioned research report, Wellington: Waitangi Tribunal, 1996) (doc A41), p 8. Subdivision and partition of Māori land at this time was decided and administered under Māori land legislation.

108. Rachel Willan, ‘From County to Town: A Study of Public Works and Urban Encroachment in Matapihi, Whareroa and Mount Maunganui’, December 1998 (doc F29), p 12

109. Finance Act 1944, s 31(1); Marr, *Public Works Takings of Maori Land, 1840–1981*, p 159

110. Finance Act 1944, ss 31(4), 31(8)

111. Caroline Miller, *Dictionary of New Zealand Biography*, ‘Cox, John Watson, 1902–1984’, 22 June 2007, <http://www.dnzb.govt.nz> (accessed 30 January 2009). John Watson Cox was the first head of the planning division.

112. Kenneth Palmer, ‘Legislation Governing Town and Country Planning in Tauranga Moana 1953–1990’, report by Kenneth Palmer, August 2006 (doc s4), p 5; Town and Country Planning Act 1953, s 19. It should be noted that many councils did not comply with the 1953 requirement to complete a district plan, and only drew up their schemes under the 1977 Act. The first district plan for Tauranga, however, was prepared in 1968.

113. Document s4, p 9; Town and Country Planning Act 1953, s 18

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5.6.1



Figure 5.4: Aerial view of central Tauranga, circa 1930s, with Mount Maunganui in the distance
Photograph by Gordon Burt. Reproduced courtesy of Gordon Burt Collection, Alexander Turnbull Library (F-117943-½).



Figure 5.5: Mount Maunganui township, from Mount Drury, 1949
Photographer unknown. Reproduced courtesy of National Publicity Studios Collection, Alexander Turnbull Library (F-019797-½).

under ‘Scope of District Schemes’ was the need to preserve productive land and, as far as possible, to keep urban development within existing urban boundaries.¹¹⁴

In terms of Māori land, the Act required the Māori Land Court to take into account the requirements of these district schemes when dealing with any planning matters. Aspects of Māori land use and development that did not come under the jurisdiction of the court were automatically deemed to be covered by the provisions of the relevant district scheme.¹¹⁵

The legislation also introduced zoning – that is, the definition of areas to be used exclusively or principally for ‘specified purposes or classes of purposes’, together with ‘the specified conditions (if any) to which each use . . . is subject.’¹¹⁶ There was no specific provision under the Town and Country Planning Act 1953 to protect Māori interests. While the Act referred to amenities such as cemeteries, courthouses, tennis courts, and halls, there was no mention of marae, or wāhi tapu.¹¹⁷ Māori interests were not identified as being relevant to the content of regional and district planning schemes. Nor did Māori have specific rights to lodge objections (although they could, of course, still make submissions if qualifying under some other category of objectors).

Tauranga County, Tauranga City, and Mount Maunganui Borough all drew up district schemes under these regulations, but (as elsewhere in the country) there was little attempt to coordinate at the regional level.¹¹⁸ A publication put out much later by the Town and Country Planning Division of the Ministry of Works and Development would retrospectively note a lack of emphasis on regional planning (as opposed to district planning), and comment that, ‘the undeveloped state of central government planning meant that the regional planning which did occur was often done in a vacuum.’¹¹⁹

5.6.2 The 1960s and 1970s: an emerging awareness

From the 1960s onwards, ideas about Māori community development were slowly beginning to filter through to government, and would eventually find their way into planning policy and legislation.

114. Town and Country Planning Regulations 1960, reg 16

115. Janet Stephenson, ‘Recognising Rangatiratanga in Resource Management for Maori Land: A Need for a New Set of Arrangements?’, *New Zealand Journal of Environmental Law*, vol 5 (2001), p 174

116. Document s4, p 9; Town and Country Planning Act 1953, sch 2

117. Town and Country Planning Regulations 1960, sch 2

118. Regional plans (as opposed to district plans) did not exist in most regions prior to the Resource Management Act 1991. A notable exception was Auckland, where the Auckland Regional Authority drew up a plan in 1974. Some other regions did establish policies through a plan proposed by a united council. However, although these policies could influence policy direction and zoning at the district level, they did not directly regulate any land development. See doc s4, p 49.

119. CD Scott, ‘Land Value, Rating, Zoning and Land Use: Some Interrelationships and their Influence on Planning’, prepared for the Town and Country Planning Division, Ministry of Works and Development, Wellington, 1982, p 19 (Leanne Boulton, ‘Town and Country Planning and its Impact on Tauranga Maori Communities, c. 1953–1990: A Summary and Analysis of the Existing Research’ (commissioned research report, Wellington: Waitangi Tribunal, 2006) (doc s6), p 39)

At this time, the Government's stated policy was to encourage Māori to relocate to larger urban centres, either singly or in family groups, due to a perceived lack of employment opportunities in rural areas.¹²⁰ Older Māori, however, often remained behind in their home areas, and in 1963 the attention of Parliament was drawn to the need to cater for their situation, for example by providing appropriate housing.¹²¹ In 1965, the first kaumātua flats were opened in Kaikohe in Northland, and more were subsequently built near marae in other centres.¹²² By 1973, provision for kaumātua housing had become accepted Government policy. As Matiu Rata, Minister for Māori Affairs, told the House that year:

Trust boards could use land which they held, particularly in rural communities, and, with the co-operation of local authorities and under the provisions of the Town and Country Planning Act [1953], a realistic plan might be evolved for providing suitable accommodation for elderly Maoris.¹²³

Marae development also received attention, with a parliamentary committee established to examine financial resourcing issues for marae. The committee was highly critical of the Crown's town and country planning regime, which it said had 'not provided protection for marae but . . . frequently permitted development and use on adjacent land which have been detrimental to the function, value, and character of many marae throughout the country.'¹²⁴ It went on to say that:

the basic reason for this sorry record is the lack of recognition in the Town and Country Planning Act 1953 or its Schedules of the need to preserve the cultural values inherent in marae. Town planning has concentrated on the protection of the physical environment and the Schedules of the Act are full of requirements in this sphere.¹²⁵

This emerging understanding of the relationship between Māori and their ancestral land, and of Māori cultural and community needs, continued. A bulletin prepared by the Ministry of Works and Development and the Department of Māori Affairs in 1975, *Planning for Maori Needs in Rural Areas*, sought to educate town and country planners on the relationship between Māori and their land. It emphasised the importance of tūrangawaewae and community, described rural marae as 'the focal point of community life,' and made clear that the prime considerations for Māori were often not economic:

Many Maoris have a strong feeling of attachment to their ancestral land. Whereas the European tends to regard land as a form of personal property, the Maori places emphasis

120. Josiah Hanan, 15 July 1964, NZPD, 1964, vol 338, p 848

121. Josiah Hanan, 20 August 1963, NZPD, 1963, vol 336, pp 1296–1297

122. *Te Ao Hou*, no 76, June 1975, p 45

123. Matiu Rata, 16 October 1973, NZPD, 1973, vol 387, p 4402

124. *Report of Committee on Marae Subsidies to Honourable Matiu Rata Minister of Maori Affairs, September 1974* (Wellington: Government Printer, 1974), pp 9, 26

125. *Ibid*, p 26

on land ownership as the basis of belonging. Inherited rights in Maori land not only give a person some right to use the land, but more importantly they give rights of membership to a kinship group and rights to speak on the marae. . . . For this reason families in rural areas often like to live on their own land even when they are not using it for farming purposes and even though it may not be in the most convenient location in relation to their employment.¹²⁶

While noting that there were ways of accommodating Māori needs under existing legislation, it said that those opportunities were not generally being well used or communicated to Māori. An exception, which we shall discuss below in section 5.6.4, was Tauranga County's initiative of creating marae community zones.

By 1977, the focus was on legislative reform. The New Zealand Māori Council's submission to the select committee reviewing the Town and Country Planning Act 1953 said that the existing legislation had 'for far too long been a matter of grave concern and serious and continuing strife for the Māori race'. It listed the Act's many negative impacts for Māori: 'very poor communications; lack of real participation; cumbersome machinery; incomprehensible district schemes; lack of clear objectives and policies; . . . lack of provision and protection for marae [and] traditional and cultural usages of historic places.'¹²⁷

Later that same year, a new Town and Country Planning Act passed into law. For the first time, matters such as the relationship between Māori and their land received specific legislative recognition.

5.6.3 The Town and Country Planning Act 1977

The Town and Country Planning Act 1977 has been described as a 'labyrinthine law of 170 sections and 72 regulations', which itself interacted with some 40 other statutes.¹²⁸ For Māori, its greatest importance lay in the inclusion, in a list of 'matters of national importance', of 'the relationship of the Maori people and their culture and traditions with their ancestral land.'¹²⁹ The matters of national importance were to be weighed against each other and provided for when preparing, implementing, and administering planning schemes. The legislation also stipulated that planning schemes must make provision, where 'appropriate to the circumstances and to the needs of the region', for 'marae and ancillary uses, urupa reserves, pa, and other traditional and cultural Maori uses.'¹³⁰

126. 'Planning for Maori Needs in Rural Areas', *Town and Country Planning Bulletin*, no 16, September 1975 (doc A15, pp 4–7)

127. New Zealand Māori Council (Stephenson, 'Recognising Rangatiratanga in Resource Management for Maori Land', *New Zealand Journal of Environmental Law*, p176)

128. Bush, *Local Government*, p 92

129. Document s4, p 12; Town and Country Planning Act 1977, s 3(1)(g)

130. Town and Country Planning Act 1977, s 11(2), sch 1, cl 9(d)

5.6.4

The significance of the Act was, however, undermined by a narrow interpretation of the term ‘ancestral land’. It was left undefined in the Act and the courts initially interpreted the term as meaning only traditional land still belonging to, vested in, or reserved to, Māori.¹³¹ Unless they owned the land in question, Māori thus had no ability to raise concerns about the effects of development over key aspects of their ancestral landscape such as wāhi tapu or other significant areas.¹³² It was not until 1987 that a High Court decision ruled that for land to be regarded as Māori ancestral land, it was sufficient if there were ‘some factor or nexus between their culture and traditions and the land in question which affects the relationship of the Maori people to the land’.¹³³

In terms of representation, the 1977 Act made the first small step towards making formal provision for Māori views to be heard at local government level. Where, in the opinion of the regional authority, there were significant Māori landholdings, the regional planning committee – a body that was advisory only – was able to include a representative nominated by the District Māori Council. This was later amended to a more specific requirement for ‘a representative of the tangata whenua of the region’.¹³⁴

Other features of the 1977 Act included the opportunity for Māori to object to any proposed regional and district schemes either as landowners or through submissions put forward by the District Māori Council or other Māori groups.¹³⁵ The right to attend complaint proceedings was granted to any group or person who could prove ‘an interest in proceedings greater than the public generally’.¹³⁶

But despite the new measures ushered in by the 1977 legislation, there was no huge change on the ground. There was no progress on preparing regional plans until the reforms of 1988, which we discuss in the next chapter. No provision was made for Māori representation on district councils (as opposed to regional planning committees) or on any special planning committee set up by a district council.¹³⁷

5.6.4 Town and country planning in Tauranga Moana

From the early 1950s, the aim of local authorities in the Tauranga district was to preserve high quality horticultural land to the west of the town (mostly owned by Pākehā), and to direct further urban development, and commercial and residential expansion, onto land around the eastern end of the harbour. This was to be achieved by twin strategies: restricting

131. *Knuckey v Taranaki County Council* (1978) 6 NZTPA 609

132. Document s4, pp 26, 50

133. *Royal Forest and Bird Society Inc v W A Habgood Ltd* (1987) 12 NZTPA 76, at 81

134. Town and Country Planning Act Amendment Act 1987, s 6(e)

135. Document s4, p 24

136. *Ibid*, p 25; Town and Country Planning Act 1977, s 157. By striking out the right of representation and other matters, the Planning Tribunal would effectively be precluding appeals by those claiming an (unproven) interest greater than that of the general public.

137. Document s4, p 28

subdivision in most areas zoned as rural but, at the same time, permitting controlled expansion of urban boundaries (particularly those of Tauranga borough and city) so that certain areas of rural land could be rezoned as residential.

A good proportion of the remaining Māori land in the district was situated around the eastern end of the harbour, in places such as Maungatapu, Hairini, Welcome Bay, and Matapihi. Positioned as they were between the municipalities of Tauranga and Mount Maunganui, these communities lay precisely on the curving swathe of land around the harbour's edge identified as most suitable for urban development. Thus, throughout the 1950s and 1960s, the areas were targeted as sites for residential development and for the public amenities needed for the growing population and the port and industrial facilities at Mount Maunganui.¹³⁸ This had serious implications for the populations living there. Writing about Matapihi in 1957, Judge Ivor Prichard of the Māori Land Court commented that it was 'in the melting pot period of transition from a small farming area to a residential one'. He then went on: 'even where there is one European owner of such an area he has extreme difficulties in carrying on over such a period.'¹³⁹ His expectation was clearly that for Māori communities with land in multiple ownership, the period of change would be much more difficult to navigate.

By 1959, the expansion of urban boundaries was causing anxiety in local Māori communities. 'It is with concern', wrote William Ohia of the Ngāi Te Rangi Tribal Executive, '[that] the Maori people of Tauranga[,] and Matapihi in particular, view the spread of the Tauranga and Mount Maunganui Boroughs into their tribal land boundaries.'¹⁴⁰

A further letter from Ohia showed the executive clearly trying to plan strategically, on their own side, to protect the tribe's remaining lands. Expressing dismay at their loss of land in Whareroa, they proposed that the Department of Māori Affairs undertake the consolidation of Māori land titles in Maungatapu and Matapihi.¹⁴¹ A meeting was arranged for April the same year, at Matapihi, with the Secretary for Māori Affairs, Mortimer Sullivan, to discuss planning issues. Chairing the meeting, Turirangi Te Kani told Sullivan:

The people of Matapihi are perplexed at the changes which have lately taken place on this side of the harbour and also on the Maungatapu peninsular. We don't know where we stand and various differing proposals are put to us . . . We don't know which proposal would be to our best advantage.¹⁴²

138. Summary of doc s6, undated (doc s6(a)), p 9

139. Prichard to Secretary for Māori Affairs, 4 June 1957 (supporting documents to doc A38 (doc A38(c)), p 766)

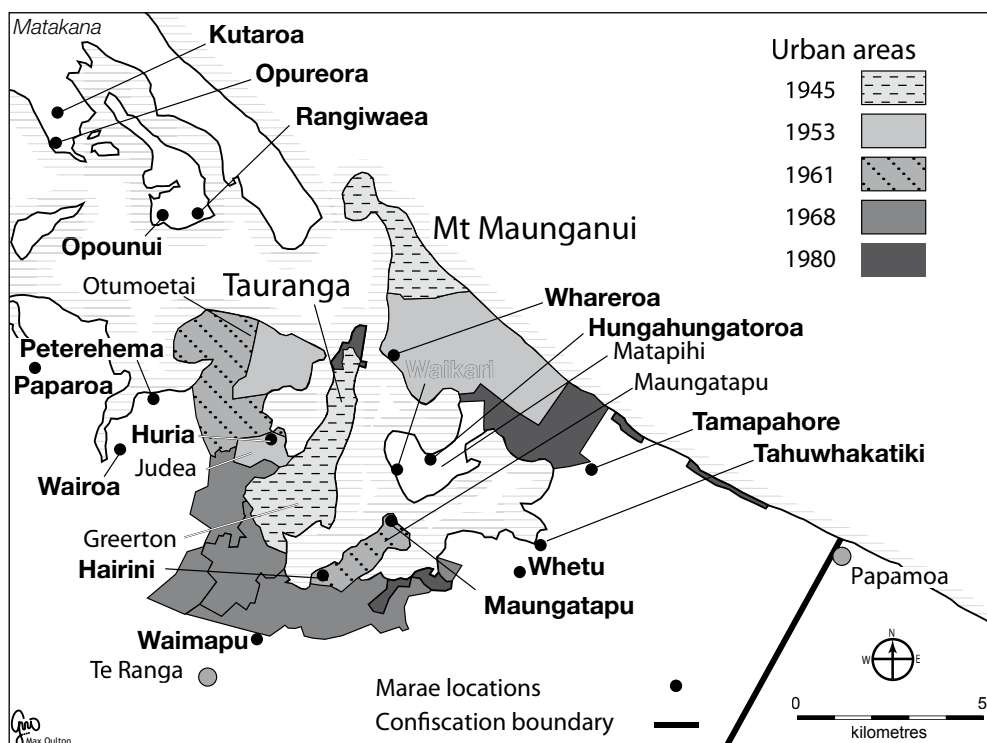
140. W Ohia to Māori Trustee, 1 February 1959 (doc A38(c), p 854)

141. W Ohia to Secretary for Māori Affairs, 23 March 1959 (doc A39(a), p 4)

142. 'Minutes of Meeting held at Matapihi School, Tauranga, on the Evening of 8th April, 1959', 8 April 1959, pp 1–2 (doc A38(c), pp 847–848). The minutes refer to Sullivan as 'Under Secretary' but he had been secretary since late 1957.

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5.6.4



Map 5.3: Tauranga Moana marae and urban expansion, 1945–1980s

He then went on: ‘We feel that pressure can be brought on us in a variety of ways and we don’t know whether to resist or give in.’

By 1960, Tauranga County was eyeing the coastal sandhills for more intensive residential settlement. At a meeting with the acting secretary for Māori Affairs to discuss Māori land and housing issues, the council chairman, Mr Spratt, said he would ‘much rather that the people in Tauranga County should live on the coastal sandhills and leave the good land for market gardening.’ His comments appear to have been made during a discussion on Māori integration into towns and the Crown’s policy of ‘pepper potting’.¹⁴³

In 1963, the borough of Tauranga attained city status. Its population continued to grow, and in 1968 its boundaries were further extended to take in the Welcome Bay area.¹⁴⁴ In line with the provisions of the Town and Country Planning Act 1953, and the associated regulations issued in 1960, Tauranga City, Tauranga County, and the Borough of Mount Maunganui all issued district planning schemes during the mid- to late 1960s, with periodic revisions thereafter.¹⁴⁵ There were also ‘codes of ordinances’ specifying what land uses were permitted within the various rural, residential, commercial, and industrial zones.¹⁴⁶ None

143. Jack Kent Hunn, acting secretary for Māori Affairs, notes of meeting, 10 November 1960 (doc A39(a), p22). ‘Pepper potting’ is discussed further in chapter 9.

144. Document A15, pp 11, 18

145. ‘Population Changes 1926–1966’, *Tauranga County District Scheme 1969* (doc T40)

146. Document s6, p 29

of these documents made specific mention of Māori. Further, although the schemes did not preclude Māori interests being provided for, the language did not encourage laypeople – Māori or Pākehā – to engage with the plans and make use of them. By way of illustration, we spotted one impenetrable clause which comprised a single sentence of 119 words, running over 12 lines of print.¹⁴⁷ It was not an isolated example, either in its length or in its complexity.

However, the Tauranga County Council was beginning to recognise certain Māori needs and interests in town and country planning – most notably through the introduction of a new type of zoning, the marae community zone.

(1) *Marae community zones*

Because many marae in the Tauranga district were in areas zoned rural, Māori communities had long found it hard to get planning permission for residential development near their marae.¹⁴⁸ In introducing the concept of marae community zones in 1973, the Tauranga County Council's aim was to allow, first, for marae to develop as cultural centres for community activities and, secondly, for some residential areas for Māori in rural zones. Under the new proposal, community buildings, sports grounds, and recreation facilities would be permitted in the marae zone, along with some residential subdivision.¹⁴⁹

A driving force behind the initiative appears to have been Sol Kanapu, the council's Māori land officer, who was also Māori rates clerk at the time. Reporting directly to the county clerk, he was allowed to operate flexibly and practically – visiting landowners at home, on their land, or at the marae, and sometimes taking council officials with him. When he retired, the *Bay of Plenty Times* described him as 'a pivotal figure in changing the way Maori land was developed,' and said that he 'could well be regarded as a very significant figure in the history of local body administration in New Zealand'.¹⁵⁰

The question of land tenure was, however, of concern to the council, since the aim was to provide residential areas for local Māori and not to allow indiscriminate transfer to other owners not connected in some way with the marae – a particular issue for marae sited in desirable coastal locations. One condition for special zoning of a marae area was therefore the establishment of a management committee or group of trustees or advisers, who would be responsible for maintaining and operating the marae and surrounding area.¹⁵¹ Further, while the district scheme allowed for residential areas to be included in a development plan

147. 'City of Tauranga District Scheme: Code of Ordinances', operative 8 April 1974, cl 205 (doc T40)

148. Document A15, p 23; Desmond Tatana Kahotea, 'Western Bay of Plenty Urban Development Strategy Study, Technical Report 8: Taha Māori : Māori Perspectives', report prepared for the Town and Country Planning Directorate, May 1986 (doc A16), p 23

149. Document A15, pp 23–24; June 1972 amendment to Tauranga County Operative District Planning Scheme (doc T40)

150. Document A15, p 28; doc P14, pp 82–84; paper 4.6, p 11

151. Document A15, p 23

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for a marae community zone, it stipulated that ‘this use will be ancillary to the main function of the area.’¹⁵²

When the first review of the district scheme was advertised to the public in 1974, submissions were made by Edward T Durie (now Sir Edward) on behalf of the Matapihi–Ohuki Trustees and the marae committees of Bethlehem and Wairoa. The submissions stressed the importance of vibrant marae communities and queried why, under the scheme, residential development near marae was to be restricted as ‘ancillary’ land use:

If the Council intends . . . that residential development should be limited to caretakers and some of the old people living in pensioner flats, then I submit that the development envisaged could lead to the death of a Marae. . . .

Marae community zones must be large enough to permit a reasonable number of homes to surround the Marae – to provide an adequate age coverage, a sufficient caring force and to ensure through numbers the continuation of the culture that those Marae represent.¹⁵³

Acknowledging that local government had to take account of the welfare of all its inhabitants, Durie argued that ‘the social and cultural welfare of the whole district’ would be enriched by flourishing marae. Further, he submitted, ‘to make special provisions for areas of Māori land to improve land usage, benefits the productivity of the County as a whole’.

Provision for marae community zones was duly incorporated into the Tauranga County District Scheme (First Review) which became operative on 1 April 1976. By May 1978, five marae community zones had been approved and several more followed in the next two years.¹⁵⁴ This was a welcome and proactive move towards accommodating Māori cultural and community needs within the framework of broader planning objectives – especially as central government did not seem to start thinking about its role in promoting marae development for at least another year.

(2) Other policies and actions

In Tauranga as elsewhere, the Town and Country Planning Act of 1977 initially resulted in little change. With respect to incorporating Māori perspectives into planning, and providing for Māori representation, the chairman of the Tauranga County Council admitted in 1979 that ‘my council has yet to receive comments from its planning advisors on this particular question and I am quite unable at this stage to make any comment as to what the proposed amended ordinances are likely to cover in this respect.’¹⁵⁵

Nevertheless, during the 1980s councils began at last to elicit Māori perspectives to help shape their planning. By 1985, the Bay of Plenty United Council, with Ministry of

152. Document A15, p 24

153. E T Durie (as quoted in doc A15, pp 25–26)

154. Document A15, p 27

155. E K Barrett, ‘County Ordinances – District Scheme – Rating’, in ‘A Seminar on the Alternative Use of Maori Land held at Hungahungatoroa marae, Matapihi’, Tauranga, 24 March 1979, p 15 (doc s6, p 33)

Works assistance, had prepared the Western Bay of Plenty urban development study, an urban development strategy for the period from 1986 to 2011.¹⁵⁶ To complement the study, Desmond Kahotea, a claimant in this inquiry, was contracted to write a paper on Māori perspectives.¹⁵⁷ Further initiatives were to follow towards the end of the 1980s, which we shall look at in the next two chapters.

5.7 RATING POLICY AND LEGISLATION, 1950–87

As urbanisation accelerated in the post-war period, so too did the need for urban infrastructure. The primary means of funding local infrastructure was rating. Better infrastructure in turn helped promote more local growth and development. And so rating, land utilisation, and planning objectives became inextricably connected.

We now return to rating policy and legislation, and their implications for Tauranga Māori, in the period from 1950 onwards. It was a period of dramatic expansion in forestry, farm development, and electricity generation across the central North Island. Dairying and increasingly intensive horticulture (especially kiwifruit, in the 1970s) boomed in the Tauranga district, too. Tauranga became the international port for large-scale exports of forest and farm produce and imports of fertiliser, machinery, manufactured goods, and raw materials.¹⁵⁸ Port development took place between Tauranga and Mount Maunganui, and new roads and railways were built to link port to hinterland. As the urban areas of Tauranga and Mount Maunganui expanded in population and infrastructure, suburbs spread out onto adjacent farmlands – many on Māori-owned land. The pressure on Māori land, and on small, previously rural marae communities, was very great.

But Māori urbanisation in the Tauranga area was both active and passive: although in some cases the town came and engulfed the tangata whenua, in others they actively chose to move into town, in line with the national trend towards increasing Māori urbanisation. It was a migration partly driven by ‘pull factors’ such as the better employment opportunities in urban areas and housing assistance from the Department of Māori Affairs, and partly by ‘push factors’ such as the difficulty in developing multiply owned Māori land. In the wake of the 1961 Hunn report’s recommendations on social reforms for Māori, government encouragement of Māori urbanisation intensified.¹⁵⁹

156. Document s6, p 51; doc N2, pp 149–150

157. Document A16

158. E Stokes, ‘Bay of Plenty: Pumice, Pines and Power, 1920s to 1980s’ in *New Zealand Historical Atlas: Ko Papatūānuku e Takoto Nei*, edited by M McKinnon, B Bradley, and R Kirkpatrick (Auckland: David Bateman and Department of Internal Affairs, 1997), plate 92

159. Paul Meredith, ‘Urban Māori – Urbanisation’, *Te Ara – the Encyclopedia of New Zealand*, 4 March 2009, <http://www.teara.govt.nz/en/urban-maori/1> (accessed 18 January 2010)

5.7.1

5.7.1 Utilising ‘unproductive’ Māori land

As we have seen, from the earliest years of European settlement, both central and local government had been concerned about what they saw as ‘idle’ or ‘unproductive’ Māori land. Rating policy in the post-war period was aimed at bringing such land into production. As Ernest Corbett, the Minister of Māori Affairs, said to the House on 29 November 1950: ‘The whole of our wealth is obtained from the production of our lands . . . and every landholder has a duty to see that full use is made of the soil.’¹⁶⁰

Several pieces of rating legislation were introduced around this time that effectively forced the development of Māori land hitherto incapable of paying rates, largely by increasing the use of receivership leases. A few years later, this rating legislation would become explicitly tied to the new town and country planning legislation already discussed at section 5.6.

(1) *The Māori Purposes Act 1950*

When the Māori Purposes Bill was presented to Parliament, it was heralded as containing new measures for dealing with ‘idle Maori lands’ that had not been paying rates. According to the Minister, Corbett, this was ‘a problem for which the Maoris cannot be blamed because of the very difficult position of a multiplicity of owners, creating almost communal lands’.

The legislation aimed to cut through these difficulties by providing for the land to be leased to a single owner, who would be compensated for any improvements carried out. Without compensation, said Corbett, there could be ‘a tendency for the land to be mined instead of being efficiently farmed’ – especially towards the end of a lease, when lessees saw little point in further investment. Run-down farm land could be left ‘weed-infested’ and ‘practically useless’, causing farming to be abandoned on formerly productive land.¹⁶¹

If land was leased out on a voluntary basis, the minimum lease was to be 10 years, with two-thirds of the rental paid out to owners and one-third set aside to cover compensation for improvements. In the case of receivership leases, the minimum period would be 21 years, with a right of renewal for a further 21 years. In addition, the Māori Trustee would be appointed as receiver, thereby simplifying the receivership provisions of earlier legislation. He would distribute only half the proceeds to owners and invest the remaining half so as to provide for compensation – the rationale being that improving ‘wholly unproductive’ lands would likely require considerable work and investment, so lessees needed greater compensation. Further, the owners of that land would now at least be able to receive half the rent for the term of the lease, on land that had not previously been generating any income, and they would theoretically get back fully productive farm land at the end of it. Corbett also stressed that these provisions offered Māori landowners wider protection than the previous

160. Ernest Corbett, 29 November 1950, NZPD, 1950, vol 293, p 4723

161. Ibid, pp 4722–4723

legislation: now, for example, the Māori Trustee would have no power to sell any land so administered, but only to lease it.¹⁶²

Under the Act, the Māori Land Court was empowered to vest Māori land in the hands of the trustee for lease or sale if most or all of the following factors were applicable:

- ▶ the land was unoccupied;
- ▶ it was covered in noxious weeds;
- ▶ rates were owed on the land and a charge had been made;
- ▶ the owners of the land had ‘neglected to farm or manage the land diligently’ and it was not being used in the best interests of the owners or in the public interest; or
- ▶ the owner of the land could not be found.¹⁶³

The Act did not define ‘public interest’. Nor did it indicate who might be deemed responsible for deciding what was in the ‘best interests’ of the owners.

(2) *The Māori Affairs Act 1953*

This Act succeeded the Māori Purposes Act 1950. It stated that where the land was to be leased or sold, preference should go to a Māori tenderer. The role of the Māori Trustee in managing ‘idle’ Māori land, or land owing rates, was reinforced.¹⁶⁴

Further, it now became compulsory, under the Act’s ‘conversion’ provisions, for the trustee to purchase ‘uneconomic’ interests (valued at £25 or below) and resell them to other Māori individuals or incorporations.¹⁶⁵ For more complex problems of land management, such as changes in land use due to urban growth, section 438 of the Act gave the Māori Land Court power to vest land in a trustee – for example, the Māori Trustee – for lease, subdivision or sale. Section 438 also allowed the owners to form a trust to administer the land.¹⁶⁶

(3) *The Māori Affairs Amendment Act 1967*

This legislation adopted many of the controversial recommendations made by the 1965 Prichard–Waetford inquiry, set up to examine laws affecting Māori land and especially the powers of the Māori Land Court in determining the future use of Māori land. The inquiry recommended a firmer line on the management and utilisation of Māori land – 30 per cent of which it said was currently unproductive – and recommended moving Māori land rapidly toward the status of European land (although it did concede that nearly a quarter of unproductive Māori land was ‘probably of no use’ and incapable of development anyway).

162. Ibid, pp 4725–4726

163. Māori Purposes Act 1950, s 34 (doc P14, p 64)

164. Māori Affairs Act 1953, s 387

165. G V Butterworth and S M Butterworth, *The Maori Trustee* (Wellington: Māori Trustee, 1991), p 84; Māori Affairs Act 1953, pt XIII

166. Māori Affairs Act 1953, s 438

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The report said that once the problems of land utilisation had been solved, the rates problem would simply disappear as well.¹⁶⁷

(4) *The Rating Act 1967*

Introduced in the same year as the Māori Affairs Amendment Act, this Act gave the Māori Land Court sweeping new powers to vest land in a trustee ‘to lease, sell, or otherwise alienate’, where this was likely to facilitate the payment of future rates on the land.¹⁶⁸

The Act provided that whenever a local authority sought a charging order for unpaid rates, it had to give the Māori Land Court an opinion on the best use of the land under the relevant provisions of the Town and Country Planning Act 1953. The court, if it so decided, would then make out a charging order and place the land in a section 438 trust, for lease or sale.¹⁶⁹ This was significant in that rates enforcement legislation was now explicitly linked to town and country planning.

One protection retained in the Rating Act, however, was that the local authority had the power to offer rate relief ‘if it thinks fit’ on any Māori freehold land occupied by Māori. As rates charges climbed in the wake of a huge increase in land valuations during the 1960s, this did at least offer a glimmer of hope to some Māori landowners. The relief does not appear to have applied to Māori land occupied by non-Māori (although the Act did provide for rates relief on general land that was being farmed).¹⁷⁰

5.7.2 Outcomes in Tauranga Moana

(1) *Rates enforcement strategies*

In August 1950, the Tauranga County Council signalled a renewed determination to recover unpaid rates from Māori land.¹⁷¹ It resolved to take action on ‘idle’ Māori land, Māori housing sites, land being cropped by the Waiariki Māori Land Board, Māori land occupied by Europeans, and land being independently developed by Māori owners. The first applications for rates charging orders and for the appointment of receivers were to be made in time for the next Māori Land Court sitting, just three months away.¹⁷²

Barriers to land development caused by multiple ownership of Māori land were an integral part of the rates problem in the Tauranga area. The county viewed receivership leases as an answer, as they made one person, the lessee, responsible for the land and the rates.

167. Bennion, *Maori and Rating Law*, pp 70–71

168. *Ibid*, p 72; Rating Act 1967, s 155

169. Rating Act 1967, ss 153(4)(c), 155

170. Rating Act 1967, s 156; doc P14, p 113; O’Keefe, *The Law of Rating*, p 298; *The New Zealand Official Yearbook 1969* (Wellington: Government Printer, 1969), p 307

171. ‘Tauranga County Council to take steps to recover unpaid rates on Maori land’, *Bay of Plenty Times*, 30 August 1950 (doc N2(a), fols 98–99); doc P14, p 65; doc N2, pp 43–53

172. ‘Tauranga County Council to take steps to recover unpaid rates on Maori land’, *Bay of Plenty Times*, 30 August 1950 (doc N2(a), fols 98–99)

First a receiver would be appointed, usually the county clerk. Then the Māori Trustee (acting for the receiver) would draw up and administer the lease, collect the rental, and inspect the land at regular intervals to ensure the lease covenant was being kept. Initially, all rental money would go to the receiver to clear the debt. Once the rates debt was paid off, the receivership ended. The trustee would then act on behalf of the owners, administering the lease as before but distributing rental moneys to the owners. While the land was leased, the lessee was responsible both for developing the land and for paying the rates.¹⁷³

In addition to rates receivership applications, the council also signalled an intention to apply for Orders in Council to vest in the Waiariki Māori Land Board any Māori land in multiple ownership which had become infested with noxious weeds.¹⁷⁴ The board responded that, while it would seek to lease out such land, long-term leases were unlikely if the land was susceptible to becoming urbanised within the next 10 to 15 years.¹⁷⁵ That is, likely future use of the land, under the local planning scheme, affected what could be done with the land in the short term. This in turn affected the board's ability (or indeed the owners') to initiate any revenue-generating activity that might enable the rates to be paid. It is a clear example of how planning and rates recovery mechanisms could interact on the ground.

We received little evidence on the detail of the applications for charging and vesting orders, or about the individual blocks affected. We do know that, in 1950, several Ranginui blocks were brought before the court under the Native Land Act 1931, for failure to clear noxious weeds. The council expressed its desire to see the land start paying rates, and also for the land to be vested in the Māori Land Board.¹⁷⁶ However, the success of the move must have been limited because at least some of the same blocks seem to have come before the courts again in November 1952, this time under the Māori Purposes Act 1950 whose provisions for dealing with 'unproductive' Māori land had come into effect on 1 February 1951.¹⁷⁷

The first applications in Tauranga Moana under these new provisions were made in July 1951, when several Maungatapu blocks and one Te Puna allotment were the subject of a test application by the county council.¹⁷⁸ The council sought an adjournment, however, to give the Waiariki Māori Land Board time to explore development options for these lands that would forestall their compulsory lease or sale. The council subsequently advised the court that the provisions of the 1950 Act could potentially apply to as much as 3821 acres of Māori

173. Document P14, p 87

174. Native Land Act 1931, s 355; Native Land Act 1909, s 288

175. Document N2, p 43

176. Fiona Hamilton, 'Ngati He Historical Report 1950s to 1980s', final draft (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc J2(c)), pp 12–13; Richard Kay and Heather Bassett, 'Case Studies of Crown Administration in Welcome Bay: A Report on the Papakanui Trust Claim' (commissioned research report, Wellington: Waitangi Tribunal, 1997) (doc A51), pp 56–57

177. Document J2(c), p 13; doc A51, p 57; Māori Purposes Act 1950, ss 31(2), 34

178. Tauranga Māori Land Court minute book 16, 11 July 1951, fols 353–357 (doc N2(a), fols 159–160); doc P14, p 65. The Maungatapu blocks affected (1N1, 1N2, 10, and 2) are ones that would, in 1965, form the core of the Maungatapu B subdivision and pā reserve.

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land across Poike, Hairini, Maungatapu, Pāpāmoa, and Matapihi, which together were liable for £2522 in rates in the 1951–52 financial year.¹⁷⁹

Faced with the possibility of these test applications being pursued, the Waiariki District Māori Land Board became concerned that existing protections were being stripped away by the new legislation.¹⁸⁰ Until now, the board had been able to lease the land as agent for the owners, but was explicitly prevented from leasing it to Europeans. Leases were to be to Māori – preferably one of the beneficial owners.¹⁸¹ Under the 1950 legislation, the Māori Trustee could now act as agent for the owners to lease, or indeed sell, this same land on the open market. While Judge Harvey clearly preferred that the land continue to be leased to Māori owners, he seemed to think this was improbable in the case of three Maungatapu blocks:

As quite a number of Blocks are subject to Part xv1/31 and as it is a fact that for forty years past no owners have applied for leases of them, it would seem not unlikely that any leases issued under Section 34/50 would be to strangers.¹⁸²

What was needed was a way of assisting Māori to develop their land so that they could retain it, but, as we saw in chapter 3, development finance for Māori was not easy to obtain. In November 1951 the Waiariki Māori Land Board therefore lobbied the Board of Māori Affairs for financial assistance to set up small horticultural units in the Tauranga area and, after some negotiation about who would direct and control the project, the plan was approved.¹⁸³

However, plans were also afoot for the port and associated industrial development at Mount Maunganui. In the view of the Māori Affairs district officer, the chance of working for wages in the port and nearby industries would prove more attractive to local Māori than the uncertain prospects of developing small market gardens from scratch. It was decided to scale back the establishment of small horticultural farms to just three blocks: Ranginui 1, 2, and 3.¹⁸⁴

In October 1952, the county council announced its intention to resume making applications for charging and vesting orders as the hoped-for small farm and horticultural development had not eventuated.¹⁸⁵ Some of the promised applications were for Ranginui blocks, at least one of which had already been subject to the inconclusive noxious weeds applications under the old legislation. The next month, those Ranginui blocks were back before

179. R.L. Carter, Tauranga County Council, to Judge Harvey, Waiariki District Māori Land Court, 1 October 1951 (doc N2(a), fol 158); doc P14, p 65

180. 'Memorandum in Respect of the Small Farming Project in the Tauranga County', undated (doc N2(a), fols 149–152)

181. Native Land Act 1931, ss 366–367; Native Land Act 1909, ss 300–301

182. Judge Harvey to registrar, Rotorua Māori Land Court, 20 July 1951 (doc N2(a), fols 161–163); doc P14, p 66

183. Board of Māori Affairs, 'Head Office Comments', approved 20 November 1951 (doc N2(a), fol 133)

184. District officer, Rotorua, to under-secretary, Wellington, 15 February 1952 (doc N2(a), fol 128)

185. 'Utilisation of Idle Maori Land', *Bay of Plenty Times*, 16 October 1952 (doc P14, pp 68–69)

the Māori Land Court – again for unpaid rates and noxious weeds.¹⁸⁶ The county applied for unpaid rates to be charged against the blocks in question and the court directed that charging orders be made accordingly. Then the county applied for the Māori Trustee to be appointed as agent for the owners, with a view to leasing or selling the blocks. The next day, the court was told that arrangements had been made for the outstanding rates to be paid on some blocks, but a court order was issued appointing the trustee as agent for the remainder.¹⁸⁷ In February 1953, some of the Ranginui blocks were before the court yet again. Rates arrears on them had either been paid or almost been paid, but they had not been cleared of gorse. The court therefore ordered the Māori Trustee to be appointed as agent for the owners.¹⁸⁸

Despite (or perhaps because of) earlier fears that the trustee might lease or sell to non-Māori, the assistant district officer of the Department of Māori Affairs proposed in April 1953 that Māori lessees be found for several of the blocks.¹⁸⁹

Later that same year, most of the provisions regarding receivership and charging order applications were consolidated into section 387 of the Māori Affairs Act 1953. There were, however, some additional safeguards. The court now had first to be satisfied ‘by ordinary and reasonable standards’ that land was actually capable of being farmed productively (‘used with advantage’) before making out an order appointing the Māori Trustee as agent.¹⁹⁰ Tauranga County responded to this provision by adopting a ‘cart before the horse’ approach, focusing first on whether it could find a willing tenant before even making a receivership application.¹⁹¹

But it was often difficult for the county and the trustee staff to find willing tenants to lease the land. Ironically, says La Rooij, potential lessees were often deterred by high rates. He also notes that some of the land involved was ‘remote, uncleared, expensive to farm or unproductive’. Ranginui 9, Matapihi 1A, 3D, 6B, Ongaonga 1E, and Poike 1C2 were all blocks for which lessees were difficult to find.¹⁹²

In November 1955, the Tauranga County Council again made a large number of applications to the Māori Land Court for charging orders to recoup unpaid rates on a swathe of Māori land right across the county, including blocks in Maungatapu, Hairini, Poike, and various allotments in Te Papa and Te Puna parishes. Several of the applications were withdrawn, however, when the council decided to encourage partitioning of those particular blocks for Māori housing, saying that it did not want to ‘promote a situation akin to that

186. Tauranga Māori Land Court minute book 17, 5–6 November 1952, fols 43, 48, 57 (doc A51, pp 57–58)

187. Document A51, p 58; doc J2(c), pp 11–14

188. Tauranga Māori Land Court minute book 17, 18 February 1953, fols 69–70 (doc J2(c), p 14)

189. Document J2(c), p 15; doc A51, pp 59–64

190. Māori Affairs Act 1953, s 387(4). The list of potential uses included agriculture, grazing, horticulture, production of food products, dairy, piggeries, bee keeping, poultry, or any combination of these.

191. G Brownlee-Smith, ‘Maori Affairs Act 1953’, 3 March 1955, TCC A/10/3, WBDC (doc P14, p 93)

192. Document P14, pp 91–92

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which has been experienced at Pukekohe and Otaki'. In its view, leases in those places had been made to people who had 'little or no regard for the well being of the rightful owners of the land', and there had been 'unsatisfactory results so far as local body administration is concerned'. Instead, therefore, the council proposed that the court issue orders for certain blocks to be placed in the hands of the Māori Trustee, for subdivision and sale. Included in the list were seven Hairini, Poike, and Maungatapu blocks.¹⁹³

In the late 1940s and again in the early 1950s, the Tauranga County Council had considered hiring a specialised Māori rating office, influenced perhaps by the success of a similar move in Whakatāne County.¹⁹⁴ It was not until 1958, however, that a full-time Māori rates clerk was appointed. The appointee, Sol Kanapu, whom we have encountered earlier in relation to the establishing of marae community zones, was energetic in trying to find solutions. He had formerly worked for the Department of Māori Affairs and had a good understanding of Māori land administration. Where possible, he encouraged Māori owners to form their own trusts under section 438 of the 1953 Act to manage their own land. Where this failed, he spent considerable time travelling round the county, trying to find lessees – sometimes by contacting neighbouring owners.¹⁹⁵ It was, however, an uphill battle and he later commented:

It wasn't the Maori people's fault there were problems with the land, it was the system they inherited. The tradition of succession meant a block of land that may have started with ten owners could have as many as 200 within a couple of generations.¹⁹⁶

What effect, then, did the legislative measures for 'unproductive' land, and for enforcing rates recovery, actually have in Tauranga Moana? At the very least, alienation for unpaid rates and noxious weeds became a real possibility, and was widely perceived as such – including by the county council and the Māori Land Court. Those who favoured receivership leases, such as the county council, saw them as having three important purposes: to clear rate charging orders on titles and pay rate arrears; to put land into production with an occupier who would pay current rates; and to develop land, and control and clear noxious weeds. At the same time, the leases were perceived as a way of overcoming some of the obstacles to development caused by multiple ownership.

None of the parties to our inquiry disputed the receivership figures produced by La Rooij, and all accepted contemporary reports by the county council indicating the scale of the undertaking.¹⁹⁷ Within our inquiry district, the evidence points to some 63 blocks of Māori

193. Document P14, pp 71–72; Waikato–Maniapoto Māori Land Court, Tauranga minute book 19, 17 November 1955, fols 116–118 (doc G1(b), fols 30–32; doc A26(a), fols 111–113)

194. Document P14, pp 69–70

195. Ibid, pp 82–86, 92–93, 105

196. Soloman Kanapu (doc P14, p 87)

197. Claimant counsel, closing submissions with regard to rating and urbanisation, 24 November 2006 (doc U10), p 44; Crown counsel, closing submissions: issue 3, 8 December 2006 (doc U27), p 20

land being leased out in the period from 1951 to 1968 because of rates arrears. The total area of the blocks involved was over 3700 acres, and the large number of 21-year leases suggests that most were receivership leases rather than voluntary.¹⁹⁸ The latter inference is supported by information in a 1960 report by Sol Kanapu which shows receivership leases across the county outnumbering voluntary leases by a factor of seven to one.¹⁹⁹

Throughout the 1950s and 1960s, Tauranga County relied on a system of receivership leases to make Māori land in the district both more productive and less likely to accrue rates arrears. This was beginning to change by 1970, in the wake of the rapid urbanisation that was occurring in Tauranga. Nevertheless, by July 1986 Māori rates debt had reduced to the point where Māori were responsible for only 11 per cent of the total overdue rates owing to the County.²⁰⁰ In the census of that year, Māori made up fractionally over 13 per cent of the population of Tauranga County (or over 16 per cent if including those who identified as part-Māori).²⁰¹ Thus, Māori rates debt by 1986 was, as a percentage of total rates debt in the County, lower than would be expected from their demographic proportion of the local population.

(2) Alienation by sale as a result of rates arrears

Of the estimated 61,750 acres of Māori land throughout Tauranga County, around 6758 acres were reported as being in ‘productive occupation’ by 1960 as a result of various rates enforcement strategies.²⁰² While La Rooij notes that ‘there were few direct sales of Maori land for rates during the 1960s’, he points to several instances where the leasing of land to pay for rate charges ‘facilitated an eventual sale of the land’, especially in land subject to a receivership lease.²⁰³ From the evidence presented, this may have been because at the end of the lease the owners were in no better position to farm the land themselves than they had been at the beginning. Thus the only solution was a further lease, or a sale. But in many cases the income received from leasing was not high, and it often had to be divided between numerous owners. The pressure was therefore to sell instead – especially given that blocks might be able to realise a sale price of between 60 and 800 times the annual rental.²⁰⁴

In our inquiry district, of the 64 receivership leases between 1949 and 1968 for which La Rooij was able to find evidence, at least 16 blocks were sold either during or at the end of the lease.²⁰⁵ Of those, 13 appear to have been sold to the lessee (of whom four were themselves

198. Document P14, table 8, pp 88–89

199. S B Kanapu to Tauranga County Council, 31 October 1960 (supporting documents to doc A38 (doc A38(b)), p 725)

200. Document P14, p 123

201. *1986 New Zealand Census of Population and Dwellings: Regional Statistics – Bay of Plenty Local Government Region: Series B, Report 5* (Wellington: Department of Statistics, 1987), table 4, p 25

202. Document P14, p 82

203. *Ibid*, p 99

204. *Ibid*, pp 95–100

205. *Ibid*, table 8, pp 88–89, cf table 9, p 104

5.7.2(2)

possibly part-owners). Thus, receivership leases opened the door, in some 25 per cent of cases, to sale of Māori land, and usually to the existing lessee.²⁰⁶

It appears that council staff sometimes tried to organise or facilitate the sale of blocks in receivership when leasing arrangements fell through, although few of these attempts seem to have been successful. For example, in the case of one block described as too ‘uneconomic’ to be viable as a separate entity, the Māori rates clerk seems to have encouraged a neighbouring owner to write to the Māori Trustee to inquire about purchase. In the event, the owners refused to sell, and the lease was transferred to a new lessee.²⁰⁷

In addition to blocks sold during or at the end of receivership leases, La Rooij lists a further seven blocks sold between 1961 and 1970 where rates were an identifiable factor in the reasons for sale. In one of those cases – Ottawa 1C3 and 1C4, alienated in 1970 – the county was authorised by the Māori Land Court to sell Māori land outright for rates. La Rooij observes that this appears to be the first instance of this practice, which did not become widespread.²⁰⁸ Nevertheless, it would likely have sent a strong signal to Māori landowners about the potential repercussions of unpaid rates.

Based on the evidence that we have received, it is not often possible to point to rates as the sole factor leading to the sale of Māori land. Rather, it appears to have been one contributing factor among several, which often served to bring other land-related matters to a head. Selling land was, for example, one way of obtaining sufficient capital to build a house. An owner with sufficient shareholding could partition off a housing section, and pay for house construction by selling his or her other land interests.²⁰⁹ Another reason for selling could be the difficulty of raising finance to clear gorse and turn an area into productive farm land, especially given the increasingly capital-intensive farming and horticultural techniques that were becoming the norm.²¹⁰ Those who did manage to purchase a housing site, however, could find that it became compulsorily ‘Europeanised’: legislation passed in 1967 stipulated that sections measuring two roods or less would become general land where there were fewer than five owners. As general land, it could no longer receive what few protections were afforded by the Māori Land Court.²¹¹

After 1967, the forced acquisition and redistribution of ‘uneconomic’ shares (see ch 2) could also reduce the number of shareholders. Again, this could lead to ‘Europeanisation’

206. For a table showing blocks leased for rate arrears and subsequently alienated by sale, see doc P14, p 104

207. Document P14, pp 101–103

208. Ibid, p 109. La Rooij’s methodology for identifying these seven blocks, as for the other alienated blocks mentioned in his report, was a systematic review of all the available Māori Trustee and Tauranga County Council files held at Archives New Zealand’s Auckland branch.

209. Whakamarama 1CA5A1, Tauranga Māori Land Court minute book 21, 2 February 1960, fol 216 (doc P14, p 103)

210. Pāpāmoa 21D, Tauranga Māori Land Court alienation minute book 1, 4 November 1965, fol 146 (doc P14, p 103)

211. In this context, we note that in September 1972, the council sought to recover rates from 64 sections of Māori-owned general land. ‘Total Maori rate arrears \$52,000’, *Bay of Plenty Times*, 13 September 1972 (doc P14, p 109)

in some instances. For example, the Ongaonga 1G3B5B and 1A blocks (in the Kaimai area) were placed in receivership and leased to a part-owner, who consolidated his holdings by acquiring uneconomic shares. The status of the land was changed to general land in 1968 and later sold.²¹²

(3) *The provision of services*

Failure to provide services was – and remains – another key rating issue for Māori. In the early days of colonisation, much debate in the House centred on the argument that if Māori received the benefit of roads (the major use of rating revenue at the time), they should contribute to the costs. Major Te Wheoro, in 1882, reversed this argument during the debate on the Crown and Native Lands Rating Act:

supposing land was within the distance of five miles from a road, but that between the land and the road there was a river: the land on the side of the river opposite to the road would receive no benefit whatever from the road that is made. Would it be just in that case to rate the land?²¹³

In debating the same piece of legislation, Mr Bonar assured the Legislative Council that, under the Act, ‘no land which does not receive any benefit from the expenditure on public works will be called on to bear a share of the cost’, implicitly endorsing the argument that rating without the return benefit of services is not justified.²¹⁴ But more than 40 years later, Apirana Ngata was still commenting about the lack of services provided to Māori, writing to his friend Te Rangi Hiroa that ‘in the road services for which the unpaid rates were demanded[,] large areas of Native lands were shamefully treated.’²¹⁵

Within the Tauranga Moana inquiry district, Māori landowners on Matakana Island and Rangiwaia Island, in particular, have regularly protested the lack of services that they have received in return for their rates. In 1945, the registrar of the Māori Land Court in Rotorua even wrote to the under-secretary for the Native Department in support of a partial rates waiver for those living on Matakana, saying: ‘It is considered that settlers on Matakana Island should pay the Hospital and Harbour rates but not the General rate.’²¹⁶ We have no indication what response, if any, was received. Six years later, ‘a very large gathering of people’ from around the Tauranga area met with officials to discuss development policy and Māori owned ‘idle lands’. The under-secretary for Māori Affairs was present and was

212. Document P14, table 9, p 104; Desmond Tatana Kahotea, ‘Alienations of Te Ongaonga No 1 and Ruakaka Blocks’ (doc C13(c), pp 18–19)

213. Major Te Wheoro, 30 August 1882, NZPD, 1882, vol 43, p 712

214. James Bonar, 8 September 1882, NZPD, 1882, vol 43, p 873

215. Ngata to Buck, 9 February 1928, in *Nā To Hoa Aroha*, edited by Sorrenson, vol 1, p 68

216. C V Fordham, registrar, to under-secretary Native Department, 25 October 1945 (doc A38(b), p 746). Given that his memorandum was about various Māori land matters, we assume that in this instance the term ‘settlers’ was intended to encompass Māori as well as Pākehā.

5.7.2(3)

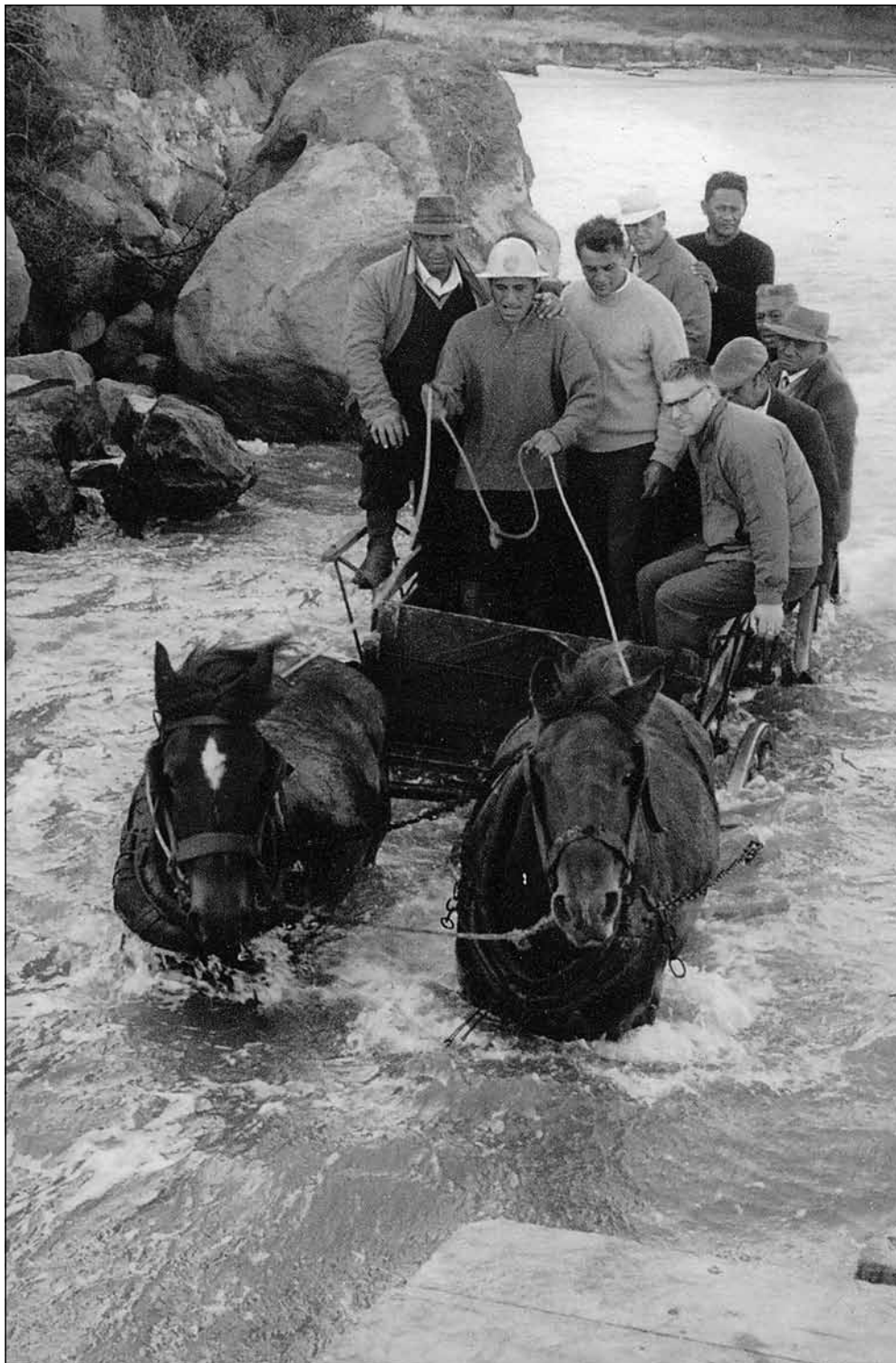


Figure 5.6: The Matakana 'ferry', 1959, with a Tauranga County Council party on board. They had been visiting the island to discuss rates. Sol Kanapu (black jersey, no hat) is at the back. Photographer unknown. Reproduced courtesy of Tauranga City Libraries (03-404).

particularly questioned about the rating of Matakana and the proposed construction of six miles (9.6 km) of road there – progress on which had apparently stalled through a lack of coordination between central and local government. The under-secretary told the questioner that, as far as central government was concerned, the full cost could not be covered from public funding and ‘if the people wanted the roads then they would have to come to some arrangement to agree to a 50% charge being put on their lands.’²¹⁷ Māori landowners on Matakana, meanwhile, had already expressed their willingness to meet their rating obligations ‘as soon as the roading operations were commenced.’²¹⁸ In short, a “chicken and egg” situation had developed, with each side reluctant to move until it had seen progress from the other side.

In 1962, the county council lodged receivership applications with the Māori Land Court for several Matakana blocks. On this occasion, staff from the Department of Māori Affairs attended the hearing and defended the owners’ interests. Significantly, they drew attention to the lack of services, arguing that the owners of the blocks should not have to pay rates while there were no county facilities on the island.²¹⁹ The resident population of Matakana was (and is) predominantly Māori.²²⁰

On the adjacent Rangiwaea Island, the Gardiner and Tawhiti whānau began a rates strike in 1973, to protest the lack of services on the island. The county accepted that the islanders received few services, and agreed to waive half the rates.²²¹ However, in the late 1970s valuations began rising again, rocketing by a massive 1000 per cent in 1981 after a general revaluation across the county. We did not hear whether any further rates rebate was granted, although a *Bay of Plenty Times* article reported:

Councillors said that though no direct services such as roads and water were supplied to the island, the council was involved in town planning and other general administration associated with Rangiwaea, so it was incorrect to say nothing was done for the land owners.²²²

In addition to the lack of roads and water supply on Rangiwaea, Stokes notes that as at 1980, the wharf was in poor condition. Her maps indicate that the island was entirely Māori-owned at that time.²²³

Such situations embody what La Rooij has described as a ‘dismal symmetry’: because collecting rates on Māori land was often difficult, councils were accordingly unwilling to

217. Deputy registrar to registrar, 12 December 1951 (doc N2(a), fols 129–132); doc P14, p 59

218. Tauranga County Council minute book, 5 November 1951, WBDC (doc P14, p 59)

219. ‘Problem of unpaid Maori rates’, *Bay of Plenty Times*, 21 August 1962 (doc P14, p 91)

220. Statistics New Zealand, ‘Matakana Island Community Profile (2001)’, 30 May 2003, <http://www2.stats.govt.nz/domino/external/web/CommProfiles.nsf/FindInfobyArea/536611-au> (accessed 15 April 2009)

221. Document P14, p 111

222. ‘Islanders request rate charges’, *Bay of Plenty Times*, 9 March 1982 (doc P14, pp 121–123)

223. Evelyn Stokes, *Matakana and Rangiwaea: A Report on an Island Community in Tauranga Moana* (Hamilton: University of Waikato, 1980), pp 15, 36–37, figs 10, 11



Figure 5.7: The Matakana wharf and 'ferry', 1962
Reproduced courtesy of Tauranga City Libraries (04–345).

provide services to predominantly Māori areas – while on the other side of the coin, poor service provision caused Māori to question the point of paying rates.²²⁴

Claimants living on the inshore islands were not the only ones to lack basic services. Judea Māori had partially funded their own bore in the mid-1920s. The borough council appears to have been reluctant to pay for any subsequent improvements and extensions out of council funds.²²⁵ One Ngai Tamarāwaho witness spoke of houses on native reserve land at Judea that still had no reticulated water in the mid-twentieth century: the families used a communal tap in the street.²²⁶ A Ngāti Hangarau witness pointed to the ongoing lack of a proper sewerage system (other than septic tanks and soak-holes) in their part of Bethlehem. He also said they had begun lobbying in 1958 for a footpath along Bethlehem Road so that their children could walk safely to school, but it took 40 years before there was any positive response from the council.²²⁷

Overall, the evidence does suggest that Māori in rural areas were not well provided with amenities in the period discussed in this chapter. Set against that, however, we would note

224. Document P14, pp 56–58

225. Medical officer of health to director-general of health, 27 May 1937 (doc A39(a), p 288); medical officer of health to Director-General of Health, 16 February 1937 (doc A39(a), p 290)

226. Parihaka Kohu-Fry, brief of evidence, undated (doc F34), pp 5–6

227. James Tapiata, brief of evidence, undated (doc D10), pp 8–9

that little comparative evidence has been submitted to us concerning service provision to the general population living in those same areas.

We shall return to the issue of service provision in the next chapter, when we look at the period from 1987 onwards.

(4) Māori contributions to community infrastructure development

The perception among many tangata whenua is that they contribute twice to the general community: in kind (through land and the provision of amenities), as well as in cash (through rates).

The complaint is not new. In 1908, Hori Ngatai pointed out that it was he, and not the roads board, who had built the road that subsequently made him liable for rates.²²⁸ Tangata whenua found such impositions hard to swallow given that they had already given up around half their land as a result of the raupatu and its aftermath,²²⁹ not to mention having had further land taken for public works (albeit often with compensation). Māori landowners in Tauranga Moana have made land available for other purposes too: around 12 per cent of conservation land in the district is Māori-owned and the public is generally not restricted from access to these areas. Similarly, some Māori land is available to the public as historic, recreation or foreshore reserves. Māori sports clubs and kōhanga reo are open to all who wish to participate; marae, too, are sometimes used by the public. Further, by providing amenities such as their own kaumātua flats and urupā, Māori reduce the pressure on similar facilities funded by local authorities – and we have already mentioned how Māori at Judea in the 1920s funded half the cost of their own water supply (the remainder being covered by central, not local, government). On top of that, Māori have voluntarily raised money to contribute to the cost of building public amenities such as the footbridge from Tauranga to Matapihi.

Information provided by the Tauranga Moana Tangata Whenua Collective and others suggests that Ngāi Tūkairangi, Ngāti Kuku, Ngāti Tapu, Ngā Pōtiki, Ngāti Pūkenga, Ngāti Ruahine, Ngāi Tamarāwaho, Ngāti Kāhu, Ngāti Hangarau, Ngāti Hē, and Ngāi Te Ahi have all contributed in ways such as these, and continue to do so.²³⁰

228. Document P14, p 26; 'Natives and Taxation', *Bay of Plenty Times*, 7 February 1908, p 2. Hori Ngatai's complaint was made when he and a delegation of prominent Māori landowners attended a meeting of the Tauranga County Council to protest in person about the way in which the Native Land Rating Act 1904 was being applied around the district.

229. Stokes, *A History of Tauranga County*, p 94; Rolleston and Patuawa, 'Submission Report on the Rating of Māori Land in Tauranga', p 20 (doc Q1, app)

230. Rolleston and Patuawa, 'Submission Report on the Rating of Māori Land in Tauranga', pp 18–33 (doc Q1, app, and table B); Carlo Ellis, brief of evidence, undated (doc Q11), p 3

5.7.3 The combined impact of planning, rates, and alienation – case study 1: Maungatapu

The fate of Māori land in the Maungatapu Peninsula during the 1950s and 1960s offers an insight into the interconnected impact of rates pressures and urban infrastructure requirements.

In the 1800s, Ngāti Hē's hilltop pā in Maungatapu was one of the most significant in Tauranga Moana. In 1898, when times had become more peaceful, the whareniui was relocated closer to the beach and refurbished. The peninsula at this time was entirely rural, and in 1908 around 400 acres were still in Māori ownership; indeed, it seems that only about 50 acres were alienated from Māori ownership prior to 1950. Parengamihi Gardiner remembers it being 'all paddocks' with only a few homes. 'It was almost all Maori families, Ngati He families', she told us. Another witness mentioned market gardens, orchards, and mixed farming.²³¹

In July 1951, seeking to recover money owing for overdue rates, the county council brought several Maungatapu blocks before the Māori Land Court with a view to forcing their lease or sale. But Judge Harvey approached the Department of Māori Affairs about the possibility of setting up small farm schemes on some of the land, and the county council's applications were withdrawn. Initially, after the department inspected blocks at Ranginui, Maungatapu, and Hairini, it seemed that '15 or 16 economic holdings could be obtained'.²³²

However, it became clear that the small farm project did not fit well with planned industrial developments across the water at Mount Maunganui, which would need a labour supply, and the idea was put on hold.²³³ This meant that the land did not become eligible for the rates relief for farming land introduced under the Tauranga County Council Empowering Act later that same year.

Meanwhile, plans to build a deep-water port at Mount Maunganui, and the associated upgrade of power lines and roads between Tauranga and the Mount, had significant impacts for Maungatapu. Tangata whenua were alarmed to find that the route of the proposed bridge connecting Matapihi with Maungatapu might cross the ancient pā site and the marae area.²³⁴ They protested, too, when power poles for new transmission lines began to be

231. Tai Taikato, briefs of evidence, undated (doc 122), p 3 (doc 128), p 2 ; Parengamihi Gardiner, brief of evidence, undated (doc Q31), p 2; doc 12(c), pp 49–50; Stokes, *A History of Tauranga County*, p 341; Grant Young, 'The Alienation by Sale of the Hapu Estate of Ngati He at Tauranga Moana', 2 vols (commissioned research report, Wellington: Waitangi Tribunal, 2001), vol 2 (doc M3, pp 11, 34, 37, 44–46, 49–55); Michael Belgrave, Grant Young, Adam Heinz, and David Belgrave, 'Tauranga Maori Land Alienation: A Quantitative Overview, 1886–2006' (commissioned research report, Wellington: Waitangi Tribunal, 2006) (doc T16(a)), pp 59–67

232. Judge Harvey to T T Ropiha, under-secretary for Māori Affairs 8 October 1951 (doc N2(a), fols 155–157); JJ Dillon Board of Māori Affairs, 'Utilisation of Idle Maori Land --Tauranga Area', 13 November 1951 (doc N2(a), fols 135–138)

233. Document N2, pp 56–57

234. Stokes, *A History of Tauranga County*, p 350; doc S6, pp 123–124; Heather Bassett, 'Aspects of the Urbanisation of Maungatapu and Hairini, Tauranga' (commissioned research report, Wellington: Waitangi Tribunal, 1996) (doc A26), p 10; C J W Parsons to commissioner of works, 20 August 1952 (doc A26(a), p 80); Rapata Wepiha, brief of evidence, undated (doc Q51), p 1

erected across the peninsula and it was suggested that no building should be erected within 40 feet (12.1 m) of the powerlines. Installation went ahead anyway, resulting in an estimated 20 per cent drop in the value of at least some land.²³⁵

By 1955, the National Roads Board had approved construction of a new road, causeway, and bridge between Maungatapu and Matapihi.²³⁶ While the location of the bridge and causeway were finalised at this time, the line of the new motorway link road was not.²³⁷

At the same time, the county council was urging partition or subdivision as a way to address rates debt, and partition plans were before the court involving Māori land in both Hairini and Maungatapu. Another major aim of partitioning the land was to enable block owners to consolidate their interests in different blocks in the area. In this way, it was thought, they would be able to build homes on their individual sections, and live near to the emerging labour market at the port and its associated industrial area. In the event, though, some blocks had to be excluded because a centre-line proclamation had still not been made for the new link road to the bridge. The final plan involved some 220 sections of just under a quarter acre each, of which 135 were in Maungatapu. Fourteen of those Maungatapu sections were to be sold, however, to cover court, survey, and roading costs; another section, comprising 12 acres, was to go to the county council as a recreation reserve.²³⁸

Work on the bridge from Maungatapu to Matapihi was completed in 1959. It did not, in the end, require the marae to be relocated, nor did the route cross the adjacent pā site and urupā. However, the marae completely lost its privacy, and the pā and urupā were cut and levelled to provide fill, disturbing burials in the process and exposing human remains. Further, removing the topsoil eventually gave rise to drainage problems. Nevertheless, there were some benefits for tangata whenua: a sports ground was formed on the now-levelled area, and a few witnesses conceded that the bridge made the trip to work shorter for those working on the wharf.²³⁹

The same year, the centre-line of the new motorway was finally proclaimed.²⁴⁰ There was still no clarity, however, as to how much land would be taken. For Māori owners, this uncertainty made development problematic.²⁴¹ As the Māori Trustee later observed, Māori had been under considerable pressure to have this land developed, 'but they have been unable

235. Hinerongo Taikato Walker, brief of evidence, undated (doc Q32), p 4; doc A26, p 11; E M Beechey to Rotorua Māori Land Court, 3 October 1957 (doc A26(a), p 120); 'Extract from Tauranga Minute Book Volume 20 folio 121–122', 22 August 1957 (doc A26(a), p 119)

236. Stokes, *A History of Tauranga County*, p 377

237. Document A26, p 12

238. Tauranga Māori Land Court minute book 19, 18 November 1955, fols 124–126, 133, 133A–133K; doc A26, p 12; doc s6, pp 126–127

239. Document A26, pp 12–13, 73; 'Interview no 6: Kaumatua Wharepohoa Ririnui', p 4, 'Interview no 9: Kuia Ami Jane Williams', p 4 in Delwyn Little and Aroha Ririnui, transcripts of Ngāti Hē interviews, 2000–2001 (doc M4)

240. Proclamation Defining the Middle Line of the Tauranga-Te Maunga Motorway in Blocks XI, XIII, XIV, and XV, Tauranga Survey District, 17 September 1959, *New Zealand Gazette*, 1959, p 1295 (doc A26(a), p 3)

241. Document A26, pp 12–13, 73; doc Q31, p 2; Ngaputiputi Taniora Pukekura, brief of evidence, undated (doc Q33), pp 5, 9–10; doc Q32, p 3

5.7.3(1)

to do much about it because the Ministry of Works had virtually covered the Maungatapu Peninsula with a centre-line proclamation.²⁴²

(1) Maungatapu becomes part of urban Tauranga

One month before the Maungatapu–Matapihi bridge opened, the peninsula was absorbed into Tauranga Borough (later City). Maungatapu ratepayers had apparently sought this, believing a piped water supply was more likely to be provided by the borough than by the county. While ‘some Maori residents’ were among eighty who signed a petition to this effect in 1958, it seems there was little direct consultation with Māori.²⁴³

Although safe drinking water was obviously an important benefit to Māori landowners, there were distinct disadvantages to the urban boundary extension – including the closer regulation of partitions. Partition in rural areas was regulated only by the Māori Land Court, but partitions of Māori land within urban areas had to comply with requirements set in the Public Works Act and needed to be approved by the local council.²⁴⁴ Further, any streets, roads, and reserves had to be vested in the council rather than retained as Māori roadways.²⁴⁵ A second major disadvantage was increased rates, since land would now be zoned as urban residential: the county rates on Maungatapu 1JB2B2B2 had been approximately £300 and, noted Judge Prichard, ‘they will in the Borough be several times this.’²⁴⁶

At the time Maungatapu transferred from county to borough, its population was 260 Māori and 125 Europeans. According to the Ministry of Works, two-thirds of the area was still used for orchards, vineyards, market gardens, and mixed farms, and it recommended that the area be kept for intensive farming. But Tauranga’s deputy mayor rejected the idea, seeing the peninsula as ideal for residential development, and especially for ‘Executives who wish to live midway between the Port and the two towns [Tauranga and the Mount]’. According to the borough engineer, the peninsula might be able to house 2500 to 3000 people in future. The local member of Parliament, George Walsh, himself a resident of Maungatapu, saw the area being more suited to what he described as ‘the industrial forces.’²⁴⁷

Once Maungatapu joined Tauranga Borough, councillors began expressing concern about the standard of Māori housing there. There were moves to condemn a number of houses on the peninsula and to find the occupants State housing elsewhere. The Māori Affairs Department, already aware of the poor housing, noted that Māori preferred to build on their own land and that this might happen ‘as soon as subdivisions in Judea and Maungatapu-Hairini are completed.’²⁴⁸ However, lingering uncertainty over the motorway

242. Document A26, p 39

243. Document J2(c), pp 51–56; doc A26, p 38

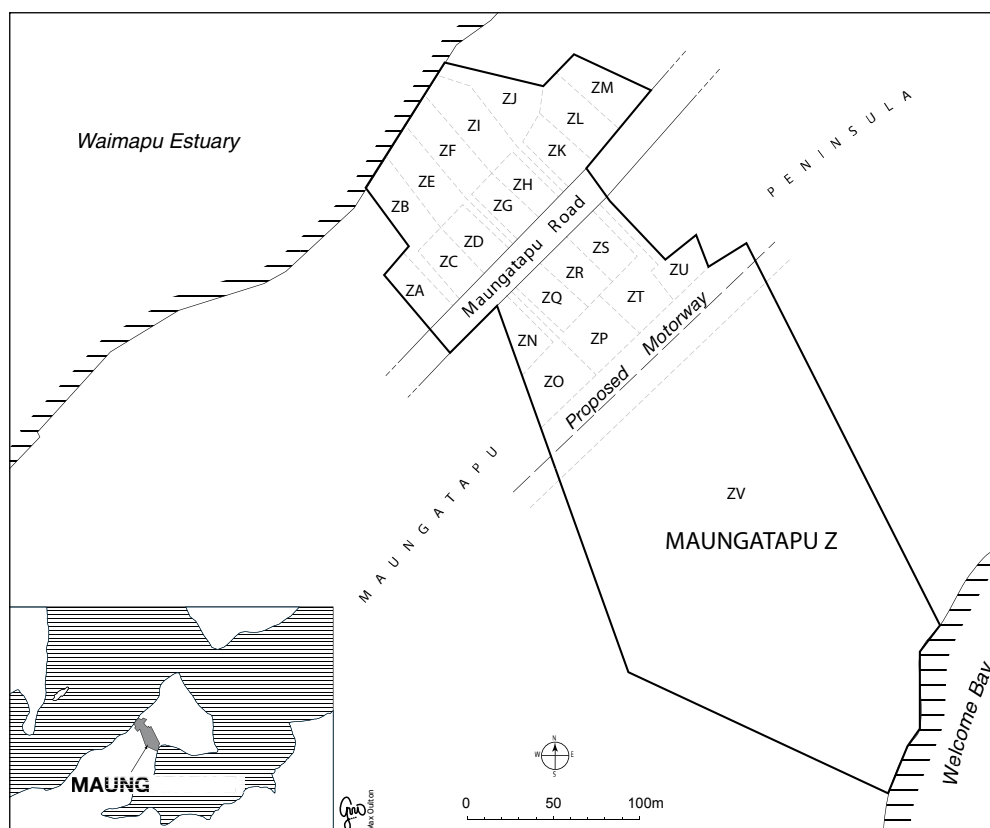
244. Māori Affairs Act 1953, s 415; Public Works Act 1928, ss 125, 128 (doc S4, p 45)

245. Māori Affairs Act 1953, s 432

246. Tauranga Māori Land Court minute book 22, 9 February 1959, fol 17

247. Document J2(c), pp 53–55

248. Document A26, p 37; doc Q33, pp 7–9; doc A38, pp 163–164



Map 5.4: The Maungatapu z block

plans made it difficult for subdivision plans to proceed. A Māori Affairs official noted in 1959 that there did not appear to be ‘any immediate prospect of housing sites being [available] to meet the demand on hand.’²⁴⁹

Among the areas affected was the land that was to become Maungatapu z. It was located in what was described as potentially ‘a high class residential area owing to the excellent views obtainable from the high elevated sections overlooking Tauranga harbour and the deep water anchorage available for private boats and launches’. With amalgamation into the borough imminent and rates rapidly rising, one group of owners applied to the Māori Land Court to partition some of the land. The court decided ‘that it must not chip off more sections but rather make a reasoned and final division of the block still remaining’.²⁵⁰

The resulting Maungatapu z subdivision comprised 22 sections, of at least 33 perches each. Several trusts were set up. The first related to sections ZL and ZM, at the northern end of the subdivision, which would be sold to cover the cost of survey, land clearing, legal services, and the trustee’s commission. Thirteen other sections, in a series of trusts, were vested in a second trustee, and also intended for sale. In establishing the trusts, Judge Prichard of

249. District Officer (Rotorua) to Head Office Department of Māori Affairs, 20 July 1959 (doc J2(c), p 95)

250. Document J2(c), p 63; doc M3, pp 114–115

5.7.3(1)

the Māori Land Court apparently did not share the Māori Affairs Department's optimism about Māori being able to build on their own land; he thought it was 'no longer practicable for Maoris to retain sections in a Borough "for our children or grandchildren" – the burden of rates makes such an impossibility'.²⁵¹

While the largest of the Maungatapu z sections (zv) was on the south-eastern side of the proposed motorway line, the others were on the north-western side. The saleability of several was affected by uncertainty over how much land would be taken for the motorway, which persisted for several years.

A further problem was that the partitions were all technically still part of one block for valuation purposes and, as a result, the borough council was rating the entire block as a single unit. The reason for this is unclear, as it seems that the Valuation Department had by that time produced separate valuations (for example, the valuation for Maungatapu z1 had been set at £1750 by February 1961).²⁵² Further, the mayor had agreed in 1960 that the borough would charge only nominal rates on the affected land, conditional on the partition plan going ahead and the sections being sold off as quickly as possible.²⁵³ The council clearly wanted to maximise its chances of being able to collect at least some rates on the land. But in fact, the uncertainty over who was responsible for paying rates when the block was treated as a whole resulted in a lower level of rates recovery.

The mounting rates debt made it even more vital for the trustee to urgently sell the remaining Maungatapu z sections. But their high potential value was not reflected in the price that could be realised on the open market at the time. In large measure, this may reflect the sheer scale of partitioning then being carried out around Tauranga, as more and more Māori land was brought within the urban area, effectively creating a glut.²⁵⁴ As Judge Prichard commented in 1961:

Maungatapu z-E suffered from the high expectations of the values. Throughout Tauranga as the city expanded so did expectations of land values. In reality this left large areas of land overvalued and therefore overrated and difficult to sell.²⁵⁵

It was a similar story for Maungatapu z1 and zF: both sold below valuation.

So, while the council was keen for land to be partitioned so that rates collection could be maximised, the more sections that came on the market, the harder it was to sell them and

251. Document M3, p 116; Tauranga Māori Land Court minute book 22, 9 February 1959, fols 17, 21; doc J2(c), p 62; 'Notes Regarding Trustees Dealings with Maungatapu z Blocks' (supporting documents to doc A41 (doc A41(a)), p 33); E M Beechey (Trustee Maungatapu z Block) Tauranga, 'Statement of Account' (doc A41(a), p 34); M Sullivan, secretary, to Minister of Māori Affairs, 30 April 1959 (doc A41(a), p 35); Ivor Prichard – Judge, at Tauranga, 9 February 1959, pp 1–4 (doc A41(a), pp 36–39)

252. Tauranga Māori Land Court minute book 21, 2 February 1961, fol 149

253. Document P14, p 138

254. Ibid, p 141

255. Judge Prichard, 29 September 1961 (doc P14, p 136)

the bigger the gap between valuation and sale price. And of course, uncertainty over what land would be taken for the motorway remained.

(2) 1963: the motorway taking is clarified

The extent of land needed for the new motorway – just under 22 acres – was eventually made clear in the formal notice of taking, gazetted on 9 May 1963.²⁵⁶ The Māori Trustee expressed his frustration at the length of time the decision had taken, and the resulting lack of progress over the past 10 years.²⁵⁷ But for the owners of Maungatapu z, there were more hurdles to be crossed. The Māori Trustee faced delays in obtaining compensation, and battles over Ministry of Works valuations that were lower than those of the Valuation Department.²⁵⁸

It is not clear what financial benefit the owners finally derived from Maungatapu z. When the accounts were forwarded to the Māori Trustee, they showed that expenses such as rates, surveying, and solicitors' fees had reduced sale profits to approximately £780, but we do not know whether that money was distributed to owners and, if so, how many people benefited. Nor is it clear how many tangata whenua were able to secure sections of their own in Maungatapu z. Of the seven sections *not* put in trust for sale, at least three seem to have been alienated by 1964 and three others became 'Europeanised' after the passing of the Māori Affairs Amendment Act 1967. The available information suggests that the majority of the block was sold out of Māori ownership.²⁵⁹

(3) Maungatapu 1D2X: misunderstandings about administrative processes?

A not dissimilar outcome is evident with respect to Maungatapu 1D2X.

When this roughly 13-acre block was subdivided into 41 sections in 1964, four were acquired by the Ministry of Works to extend Maungatapu School. Another 18 were held available for owners, providing they used them for personal housing within 18 months. In the event, only five were taken up. One of these was subsequently sold on the open market and the other four were 'Europeanised'. The rest of the 41 Maungatapu 1D2X sections, along with the 13 reserved sections not taken up by owners, were sold on the open market.²⁶⁰

256. 'Proclamation of Land Taken for the Tauranga-Te Maunga Motorway in Blocks xi, xiv and xv, Tauranga Survey District, 9 May 1963', *New Zealand Gazette*, 1963, p 609. Even then the information would prove to be incomplete since further small areas were taken in the early 1970s (doc J2(c), pp 65–66; doc A26, pp 78–79, 81, 83; doc A26(a), p 5)

257. The Māori Trustee (doc P14, p 135)

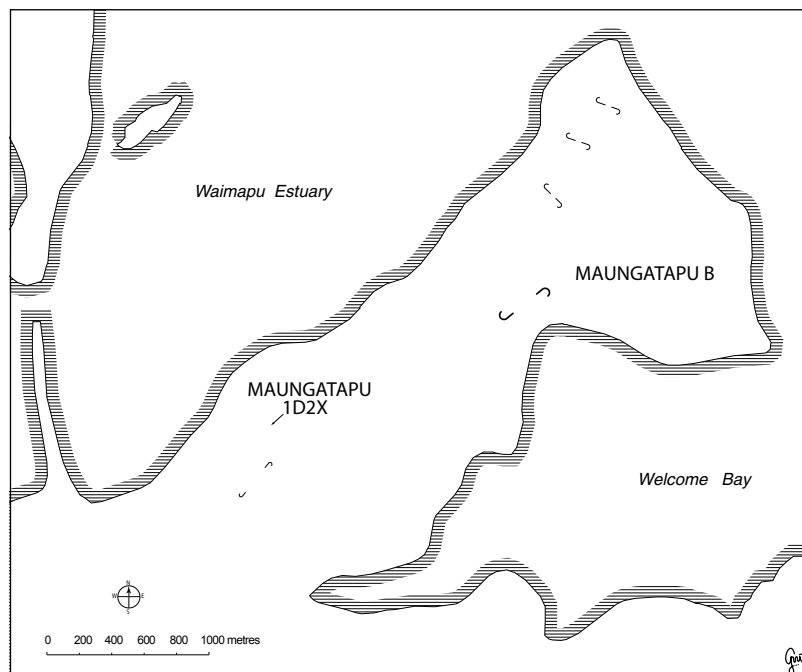
258. Document J2(c), p 64

259. Tauranga Māori Land Court minute book 22, 9 February 1959, fols 17–21; doc J2(c), pp 64–65; doc M3, pp 117–120; doc T16(a), p 67; EM Beechey (Trustee Maungatapu z Block) Tauranga, 'Statement of Account' (doc A41(a), p 34)

260. Document J2(c), pp 68–70; doc T16(a), p 57. Hamilton and Belgrave differ as to the area of the block. Plan ML 19502 gives 13a or 1.2p.

5.7.3(3)

TAURANGA MOANA, 1886–2006



Map 5.5: The location of Maungatapu 1D2X block. Also shown is Maungatapu B.

The reasons for so few sections being taken up are disputed. While the Māori Trustee alleged lack of interest on the part of the owners, there are indications that owners were not well informed about what was happening. It appears, for instance, that the Māori Trustee’s office distributed the proceeds of the earliest sales before consulting with owners, and then decided that it was ‘no longer practical’ to vest remaining sections in owners who were seeking them. Hamilton office staff seemed uncertain whether a letter had ever been sent to owners advising them of distributions made and of what the situation was with regard to the remaining land, and there is no record of any meetings of owners. In general, the evidence suggests that the lack of information led to missed opportunities for owners. Not only did they miss out on being able to offset proceeds of earlier sales against the cost of obtaining one of the remaining sections, but they also seem to have been ill informed about the 18 month deadline. Parengamihi Gardiner told us that her family were unaware that they had lost the opportunity to acquire a section until a cheque arrived in the mail. They were then told by the Māori Trustee that:

it was because it hadn’t been built on within the 18 months that they said they had stipulated a house had to be started or be in the process of being built. And it was something that I know for a fact that no-one had told us . . . My sister in-law threw the cheque at them. It really hurt them, because they would never sell land.²⁶¹

261. Document J2(c), pp 67–74; paper 2.547, pp 2–3; doc Q31, p 3

By 1973, \$90,000 in proceeds seem to have been distributed to owners (who by this time may have numbered more than 200) but again, the number of recipients and the individual amounts are unknown. The Māori Trustee's office in Hamilton was of the view that the proceeds represented 'a good profit margin and return considering that the land was at one stage idle and unproductive, and "chewing its head off in rates"'. However, it is not clear whether the owners' wish for some of the proceeds to be set aside for the benefit of the whole hapū and the marae was met and, if so, whether it was met out of the \$90,000 paid out.²⁶²

We have discussed here only two subdivisions, Maungatapu z and Maungatapu 1D2X, but the evidence suggests that outcomes in other subdivisions on the peninsula were much the same. Certainly the alienation pattern for sections in the extensive Maungatapu B subdivision (see map 5.5, for location) mirrors that of the two blocks discussed, as can be seen from table 5.1.

Name of subdivision	Total number of sections	Number of sections remaining in Māori ownership by the late 1970s
Maungatapu z	22	Not known, but at least three. (This was the number 'Europeanised' under the 1967 legislation.*)
Maungatapu 1D2X	41	Four (all 'Europeanised')
Maungatapu B	259	36 (of which 15 'Europeanised')

* Document T16(a), p 63

Table 5.1: Alienation of sections in three Maungatapu subdivisions

Nor is it clear that the situation improved in the ensuing decade. In the 1980s, the creation of the Hairini 8 subdivision, for instance, just below the Maungatapu Peninsula, resulted in only three of 10 sections in stage 1 going to former owners. The Māori Trustee then decided that the second stage of the subdivision should not proceed and the rest of the block was sold off, despite an attempt by owners to stop the sale.²⁶³

In terms of financial returns, the evidence shows that the Maungatapu B subdivision netted \$999,634.78 over 20 years – which sounds a lot until one takes into account the number of owners. By the time the trust was wound up, there were over 1100 owners, which suggests an average annual payout (not accounting for differences in share size), over the length of the project, of perhaps \$50 a head. Given a probable section price in the late 1960s of at least \$2000, even for a small section, it is perhaps not surprising that only 14 per cent of Maungatapu B sections went to tangata whenua.²⁶⁴

262. Document J2(c), pp 67–73

263. Document G1, pp 180, 214–216; doc A26, pp 51–53, 58–60

264. Document A26, pp 48–50; paper 2.547, pp 4–5

In short, by the late 1970s the formerly rural Maungatapu Peninsula was covered in intensive residential development within which the minority Māori population lived in small pockets. As we heard, this was the result of the crescendo of interest in their land that tangata whenua faced from mid-century onwards. Pressures to make their land more productive and to generate rating revenue were rapidly overtaken by pressures to accommodate infrastructure development (particularly the bridge and motorway), and to subdivide and sell. There is evidence that at least some owners were poorly informed about what was to happen, how it would affect them, and what they should do. Further, high valuations meant that prices for sections were often beyond the owners' means.²⁶⁵ As Mrs Gardiner said: 'We were offered our own land back, but the valuations had gone right up and no-one could afford to buy it. We couldn't even afford to buy our own land back.'²⁶⁶

5.7.4 The combined impact of planning, rates, and alienation – case study 2: Matapihi

In contrast to the experience on the Maungatapu Peninsula, Ngāti Tapu and Ngāi Tūkairangi managed to hold on to much of their land at Matapihi (and continue to do so), despite losing other land elsewhere. They have also resisted attempts to rezone this Matapihi land as urban. This is not because they oppose development, but because they believe their needs are best met by developing land and housing for their families at Matapihi in a semi-rural setting.

Judge Harvey of the Māori Land Court expressed a similar view back in 1952, when he wrote of the need to 'recast Matapihi peninsula so that its Maori owners can make the best use of their lands in ways other than alienating them to Europeans or European concerns'. He spoke of the potential for Matapihi to become 'a model Maori centre from both social and economic angles.'²⁶⁷

However, it has not been an easy battle: Matapihi lay between Mount Maunganui on one side, with its port and expanding residential area, and, across the water, the rapidly growing urban area of Tauranga. There were plans for a connecting highway, routed through Matapihi, from the 1930s – plans which at one stage had included a proposed public works taking of the whole peninsula, affecting 'between 40 and 50 families resident, of which about a dozen are engaged in farming operations.'²⁶⁸ The water main, taking water from Tauranga to Mount Maunganui, was built through the area and, in 1945, a 400-acre (162-ha) subdivision was proposed for Matapihi. It stalled after protests by the Matapihi Native

265. Document S6(a), p 14

266. Document Q31, p 3

267. Document S6, p 101; doc F29, p 37; Harvey to registrar, Māori Land Court, Rotorua, 20 July 1951 (doc N2, p 47)

268. Document F29, p 37; 'Tauranga to Te Puke Section of Main Highway: Proposed Alternative Route Across Tauranga Harbour', 23 September 1938 (doc A39(a), p 40)



Figure 5.8: Downtown Tauranga (foreground) at one end of the rail bridge; rural Matapihi at the other, 1947

Photograph by Whites Aviation. Reproduced courtesy of the Whites Aviation Collection, Alexander Turnbull Library (WA-07500).

Land Owners Committee, anxious to retain control of lands that had been, as they said, '[their] ancestral homes for hundreds of years.'²⁶⁹ By 1952, Ngāi Tūkairangi were considering a proposal to subdivide and sell some of their land at Whareroa and use the proceeds to 'implement a consolidation and housing scheme on Matapihi.'²⁷⁰ In the event, as we saw in the last chapter, much of their Whareroa land was instead taken for 'better utilisation' as a port. Further pressure came in 1953 with the significant enlargement of the neighbouring Mount Maunganui Borough: clearly, it would not be long before urban development reached Matapihi, just as it was to reach Maungatapu across the water.²⁷¹

By the end of the decade, as we saw earlier in the chapter, the expansion had become a matter of considerable concern to Matapihi Māori and, with the backing of the Ngāi Te Rangi Tribal Executive, they tried to work out collectively how best to respond to the threat. William Ohia, of the tribal executive, wrote to the Māori Trustee expressing a fear that '[w]hen the expansion of Tauranga and Mount Maunganui is viewed from the long term aspect . . . further industrial needs will require additional lands'. The tribe having been

269. H Reweti to Native Minister, 6 June 1945 (supporting documents to doc A38 (doc A38(c)), p 789)

270. Document N2, pp 55–56

271. Mahaki Ellis, brief of evidence, undated (doc Q9), p 4; Stokes, *A History of Tauranga County*, fig 20.1, p 329

burned by its experience over the Whareroa public works takings, Ohia commented: ‘our Maori land titles have proved insufficient protection against civic expansion’, and he sought a meeting with the trustee and the Māori Affairs district officer to discuss what could be done.²⁷² A couple of months later, Matapihi Māori met with the Secretary for Māori Affairs, who expressed sympathy for their concerns. There appears to have been no subsequent reduction, however, in the flow of proposed urban projects that sought to use Matapihi land.

By the 1960s, there were big plans for the peninsula – not only would bridges be built linking it with Tauranga, but it was earmarked to become the site for a university, cultural centre, and secondary school. The southern part was designated for urban expansion by Tauranga City, while the remainder would absorb future expansion from the Mount Maunganui urban area.²⁷³ And with a major power transmission line already built through Matapihi, the Electricity Department now planned to build an oil-fired power station at Oruamatua on the eastern point of the peninsula.²⁷⁴ Matapihi effectively was to become a ‘service corridor’ between two urban centres and, in all, Matapihi Māori would lose almost 10 per cent of the peninsula to public works of various kinds.²⁷⁵

To facilitate the urbanisation of Matapihi, both Tauranga City and Mount Maunganui Borough moved to incorporate Matapihi into their boundaries and have it rezoned residential.²⁷⁶ Land speculators, aware of these moves, began seeking to buy land from Māori owners.²⁷⁷ However, the owners clung tenaciously to their land and tried to develop it for their own purposes.²⁷⁸ It proved difficult. In particular, the ability to use tribal land for housing purposes was constricted by county zoning requirements which stipulated that only two houses could be built on each block.²⁷⁹ Thus, as Riri Ellis described to us, families ended up competing for the very limited number of houses.²⁸⁰

In the late 1950s and early 1960s, the Ngāi Tūkairangi Tribal Committee proposed a subdivision of their own so that their people could stay on their lands at Matapihi. This was in line with concerns raised at their meeting with the under-secretary for Māori Affairs, when Turirangi Te Kani pointed to the fact that Matapihi comprised two different tribal communities who wished to maintain their separate identities and interests. At that meeting,

272. W Ohia to Māori Trustee, 1 February 1959 (doc A38(c), p 854)

273. Document S6, p 122

274. Stokes, *A History of Tauranga County*, p 343; Kihī Ngatai, brief of evidence, undated (doc Q13), pp 9–10; doc Q9, pp 17–18

275. Document Q9, pp 3–22

276. Stokes, *A History of Tauranga County*, pp 343–344; McCaw Lewis Chapman, ‘Final Report on Mount Maunganui Peninsula, Volume 1’, December 1992 (doc A10), p 21; Desmond Tatana Kahotea, ‘Tauranga Urban Growth Strategy: Cultural Resource Inventory – Features of Significance to the Maori Community (Tangata Whenua): a Report for the Tauranga District Council’, 1992 (doc A17), p 30

277. Document Q9, p 4; doc N2, p 134

278. Document N2, p 134

279. Document Q9, p 4

280. Riri Ellis, brief of evidence, undated (doc Q10), pp 4–6

David Asher had proposed that consideration be given to the preparation of two separate plans 'one for the Eastern side and one for the Western side to avoid tribal friction.'²⁸¹ But because of the county council's policy of encouraging Māori to move into urban areas, Ngāi Tūkairangi's subdivision plan was opposed.²⁸²

Also at the meeting, Te Kani had indicated the desire of local Māori to 'have certain areas of Matapihi set aside as farm lands.'²⁸³ A decade or so later, in 1972, the Matapihi–Ohuki Trust was established under section 438 of the Māori Affairs Act 1953, to administer 58 blocks of Māori land totalling 208 hectares. The trust became active in lobbying to retain rural, rather than urban residential, zoning. In 1976, it wrote to the Local Government Commission saying:

It is true that the residential subdivision of the land would mean a huge increase in values and sale prices for Maori owners. We are not convinced that such economic gains are to the long term advantage of Maori people of this area. Money disappears the same way as men die. It is only the land that remains.²⁸⁴

Even once the Tauranga County Council introduced marae community zones in 1973 (see sec 5.6.4), the problem of zoning restrictions, which prevented Māori landowners from building houses on multiply owned land, was not entirely solved. However, these restrictions were eased somewhat by the council's 1977 decision not to oppose applications for partition of Māori land on which houses had already been built, an exemption that remained in place until 31 March 1981.²⁸⁵

The Matapihi community successfully avoided the chain of events frequently experienced elsewhere in the district – that is, incorporation into the borough, rezoning from rural to residential, increased valuations and rates, followed by subdivision and alienation. But this was not achieved without a determined struggle, and here we note Ngāi Tūkairangi's reference to the vision and leadership of Turi Te Kani.²⁸⁶ The community also had to accept some trade-offs: retaining rural zoning resulted in a lower level of service provision and also some limitations on the amount of housing that could be provided for community members. More recent developments at Matapihi will be discussed in the next chapter.

281. 'Minutes of Meeting held at Matapihi School, Tauranga, on the Evening of 8th April, 1959', pp 3, 5 (doc A38(c), pp 849, 851)

282. Document A41, pp 21–22; doc Q9, p 4. Also see chapter 9 in relation to this proposal and the opposition from local authority officials who espoused an integrationist ethos.

283. 'Minutes of Meeting held at Matapihi School, Tauranga, on the Evening of 8th April, 1959', p 2 (doc A38(c), p 848)

284. Submission by Matapihi–Ohuki trustees to Local Government Commission, 1976 (doc A17, p 42)

285. Document A15, pp 27–28

286. Document Q9, p 5

5.8 PLANNING OBJECTIVES, REZONING, RATES, AND SUBDIVISION: SUMMARY OF EVIDENCE

Local authority planning objectives were to preserve high quality land in the west of the district and to direct further urban development, and commercial and residential expansion, towards the eastern end of the harbour (the area that included much of the Māori-owned land in the district). The Maungatapu case study has illustrated how rural land used for agriculture and horticulture in the eastern areas was gradually rezoned and brought into an expanded urban boundary. Once rezoned residential or industrial, the land was then subdivided for development according to the nature of the zoning. The rezoning increased land valuations, which in turn increased rates, often substantially. Owners of land in residential zones faced pressure to sell as developers began to move into areas earmarked for housing. Pressure to sell was heightened by the rates burden, and the fear of ongoing accumulating rates arrears. Although land was often rezoned some years in advance of urban development, the rezoning generally involved placing immediate restrictions on the types of new activity permitted on the land. Such restrictions could prevent those who wanted to farm their land from earning enough to pay the rising rents. While that problem is one not limited to Māori, an added dimension for the tangata whenua is that the lands in question were often among the last remnants of tribal lands and therefore particularly significant, especially in light of the earlier raupatu.

In areas affected by urbanisation, rates debt (and fear of future rates debt) was an influential factor in decisions by Māori owners and the Māori Land Court to vest land in trust, usually in the Māori Trustee, under section 438 of the Māori Affairs Act 1953. The result was usually subdivision and sale. If such land was not sold, rates charges could build up rapidly, seriously eroding the freehold value of a block. The Māori Land Court generally took the view that it was better to subdivide and sell, with the proceeds being distributed among the beneficial owners – some of whom would be able to use their share, supplemented perhaps by cash, to obtain a section in the new subdivision. It is not clear exactly how much land was affected by such processes. Belgrave comments that a large number of subdivisions were made, but it is difficult to obtain comprehensive data for many of them. Nevertheless, he calculates that for those blocks created after 1959, at least 200 hectares went out of Māori ownership in the ensuing decades.²⁸⁷

However, research indicates that many factors adversely affected the ability of the owners of Māori land to benefit from such subdivision schemes. Urban subdivision rules made the process more expensive than in the country (although it must be remembered that there were more restrictions on subdivision in rural areas). Many owners could not meet the cost of purchasing a section for themselves: for example, owing to fractionation of interests, many had too few shares in the block for the value of their shares to meet the cost of

²⁸⁷ Document T16(a), p 33



Figure 5.9: Pāpāmoa, circa 1970

Photographer unknown. Reproduced courtesy of Tauranga City Libraries (01–496).

a section, or even a deposit on one. It must be acknowledged that such owners would not have been able to derive much monetary benefit from their shares, or build on the land, had it *not* been subdivided. However, the question is whether the small payout received from the proceeds of subdivision was sufficient to counterbalance the loss of tūrangawaewae. Often, too, profits were diminished by the need to sell quickly, before rates debts escalated, without having time to wait until market demand peaked. Then too, while the valuation – based on potential use – might be high, lack of market demand could mean sale price did not live up to the valuation. Residential rezoning, higher rates, and the spectre of future rates arrears all contributed to the subdivision and alienation of Māori land in the Tauranga district after 1950, but the anticipated profits and housing benefits frequently did not live up to expectations.²⁸⁸

In the county, in keeping with planning objectives to preserve agricultural land, subdivision restrictions rarely allowed owners of rural Māori land to partition out their interests into lots of less than 10 acres. Many Māori families were accordingly unable to build houses on ancestral land because it was zoned rural. Other problems arose from the nature of the title, because of the land being in multiple ownership. It was difficult, for example, to raise a mortgage on existing homes where the land on which the house was built was communally owned. For the same reason, it was difficult to borrow money to carry out maintenance.

288. Ibid; doc s6(a), p10

Even if the Māori Land Court was willing to sanction a house section being partitioned out, building permits were sometimes refused because sites did not meet subdivisional standards stipulated in the local authority's district scheme. Situations sometimes arose where owners faced subdivision or usage controls that affected their ability to stay on the land and develop it. Those who had built homes on a block, but were unable to partition out their section, were vulnerable to rates rises because rating legislation made the occupiers of a block liable for the rates levied on it.²⁸⁹

From the late 1960s, rural areas also experienced huge land valuation increases. In part, this was due to there being high demand for horticultural land but a reduced supply because of urban encroachment. Other factors included the conversion of rural 'lifestyle' blocks to higher density residential usage, and increasing pressure on coastal land for holiday homes. The first implication of this pressure on land, and the ensuing valuation increases, was that rates rose accordingly. The second implication was more indirect: when a rent review on leased land occurred, current valuation (based on best potential use) became the basis for setting the rental for the renewed lease. In many cases, tenants surrendered the leases because they were not prepared to pay a higher rental, and the block reverted to the control of the Māori owners. This left the owners in a cleft stick. To pay the higher rates themselves, the owners would need to convert the land to whatever had been deemed 'best usage' (usually horticulture). That, however, would involve raising finance to cover the cost of conversion, and finance was difficult to obtain because the land was usually in multiple ownership.²⁹⁰

5.9 THE SUBMISSIONS OF THE PARTIES

5.9.1 Claimant submissions

Taken overall, the closing submissions of claimant counsel on the issues of rating, urbanisation, and town and country planning in the period from 1886 to 1987 were that:

- ▶ Rating is a form of taxation, yet Māori have had little or no representation on the bodies responsible for introducing and levying those taxes, namely central and local government. Māori values, views, and interests have not been reflected in the assessment of the tax. Nor have they been reflected in subsequent decisions about spending priorities.²⁹¹
- ▶ Rating policy and legislation did not accommodate the unique properties of Māori land, such as its status a 'taonga tuku iho' (a 'treasure handed down', usually with

²⁸⁹. Document s6(a), p 11

²⁹⁰. Ibid

²⁹¹. Counsel for Wai 42(c) and Wai 522 claimants, closing submissions with generic submissions as to socio-economic issues, 24 November 2006 (doc v6), p 17

an understanding of also needing to preserve it for future generations). Other particular characteristics of Māori land are that it often includes tapu sites, it typically has multiple owners, it is not necessarily developable, and it would often be difficult to alienate even if the owners were willing.²⁹²

- ▶ The level of rating imposed on Tauranga Māori did not take into account that they have already contributed much of their tribal estate, either compulsorily or by gift, for the development of the Tauranga region. No other sector of the community has contributed so much land to the development of Tauranga.²⁹³
- ▶ The valuation of Māori land for rating purposes cannot be based on a ‘willing buyer, willing seller’ scenario. Further, Māori place value on aspects which tend not to be taken into consideration in a European system of valuation. Likewise, zoning affects the valuation of Māori land, but takes no account of how Māori themselves wish to use their land.²⁹⁴
- ▶ The Crown failed to provide guidelines to, and restrictions on, local authorities in respect of dealing with rates arrears on Māori land. Tauranga Māori became economically marginalised as a result first of the raupatu and then of a Crown-imposed land administration system which rendered land development problematic, yet the local government rating regime took no account of Māori owners’ general inability to pay.²⁹⁵
- ▶ Local authorities did not deal equitably with Māori in terms of providing infrastructure and services, and in some instances actively withheld services from Māori on the basis of non-payment of rates.²⁹⁶
- ▶ When ancestral Māori land became uneconomic and unmanageable through title fragmentation (a result of the Crown’s land legislation), it was then often alienated for rates debts or for being infested with noxious weeds. Under Acts passed in 1950, 1953, and 1967, receivership leases could alienate the land from Māori owners for 21-year periods. At the end of a lease, owners could be faced with having to resume payment of rates, still without any income with which to do so.²⁹⁷
- ▶ The Māori Trustee owed Māori owners a fiduciary duty when administering their land, irrespective of whether the land was burdened with rates debts or affected by noxious weeds. For a variety of reasons, including under-resourcing, the trustee was not

292. Document U10, pp 5, 8, 19–21, 26

293. Document U10, pp 5, 22, 33–35; counsel for Wai 227 claimants, closing submissions, undated (doc U16), p 17; counsel for Wai 211 and Wai 668 claimants, closing submissions, undated (doc U12), pp 111–113; paper 2.660, p 12

294. Document U10, pp 20–26; doc U12, pp 100–101, 108; doc U16, p 19

295. Document U2, pp 97–99; doc U6, p 11; counsel for Wai 342 claimants, closing submissions, 24 November 2006 (doc U7), pp 14–15; counsel for Wai 255 and Wai 1340 claimants, closing submissions, 24 November 2006 (doc U11), pp 30, 45; counsel for Wai 489 claimants, amended closing submissions, 4 December 2006 (doc U20(a)), p 67; counsel for Wai 210, Wai 637, and Wai 751 claimants, closing submissions, 10 December 2006 (doc U34), pp 53, 86

296. Document U10, pp 13–14, 41–43; doc U6, pp 11–13, 25; doc U12, pp 114–118; counsel for Wai 938 claimants, closing submissions, undated (doc U32), pp 8–9; doc U34, p 52

297. Document U10, pp 12–16; doc U7, p 11; doc U11, p 86

5.9.2

always able to fulfil that obligation. In some cases, for instance, leases were allowed to continue for unnecessarily long periods, or were not properly supervised. In others, the trustee facilitated the alienation of land through subdivision and sale. The Crown should have been more vigilant in auditing the activities of the trustee and in monitoring the effects of the legislation by which the trustee was bound.²⁹⁸

- ▶ The main impact of urbanisation in Tauranga occurred under the Town and Country Planning Act 1953. Under that legislation, local authorities were not obliged to take Māori interests into account when setting their local plans nor did the Crown provide any guidelines on the matter. This was contrary to the Crown's duty of active protection. Subsequent town and country planning legislation offered some concessions to Māori interests but, at least initially, these were narrowly interpreted.²⁹⁹
- ▶ Local government planning schemes, developed under the town and country planning legislation, often involved the rezoning of Māori land, which in turn tended to result in higher rates. The combined effect of the schemes, the rezoning, and the higher rates was usually that Māori land on the urban fringes became swallowed up, subdivided, and alienated. Both central and local government agencies saw the opening up of Māori land in this way as desirable. With respect to the Māori Trustee's role in administering the subdivisions so created, the Crown ought to have been more vigilant in auditing activities so as to ensure that owners were better assisted to obtain sections on their land if they wished.³⁰⁰
- ▶ The Crown's submission that town planning decisions on zoning reflect 'the community's view on the appropriate development for their area' is untenable in the case of Whareroa: there is no evidence of any Whareroa owners supporting the rezoning of their Whareroa lands.³⁰¹

5.9.2 Crown submissions

Crown counsel submitted that:

- ▶ Māori members of Parliament took an active role in debates over rating legislation – for example, Sir Apirana Ngata in 1924 – and Māori were also likely to have made their views known in other ways, such as at the meeting held between John Ballance and Tauranga Māori leaders in 1885.³⁰²

298. Document U10, pp 12, 14–17, 46–50; doc U6, pp 17–18, 28; doc U7, pp 16–17; doc U11, pp 42, 45–47; doc U12, p 81; doc U20(a), p 74

299. Counsel for Wai 362 claimants, closing submissions, 24 November 2006 (doc U1), p 111; counsel for Wai 717 claimants, closing submissions, 24 November 2006 (doc U2), pp 48–49, 97; doc U7, pp 15–16; doc U20(a), pp 70–71; counsel for Wai 540 claimants, closing submissions, undated (doc U31), pp 15–16, 29–30, 82–90

300. Document U1, pp 103–104, 110–114; doc U6, pp 18–19; doc U7, pp 15–18, 22, 29; doc U10, p 50; doc U12, pp 102–108, 118–120; doc U20(a), pp 62–63, 67, 71–74

301. Paper 2.660, pp 13–14

302. Document U27, p 12

- ▶ The Crown has always taken a cautious approach to the rating of Māori land. Having recognised that the unique status of Māori land presented difficulties which affected the levying and collection of rates, the Crown ensured, by legislative means, that rating provisions were applied to Māori land in a gradual way, with the categories of Māori land liable for rates being expanded over time.³⁰³
- ▶ Local government legislation does not stipulate that past contributions by Māori be taken into account when assessing rates relief, and any such provision would raise complex issues. That marae contribute a benefit to the community is already recognised by their exemption from rating. As to any land acquired in circumstances where there may have been Treaty breach, that is a matter to be addressed during settlement negotiations.³⁰⁴
- ▶ With regard to rates enforcement and alienation, receivership leases did sometimes alienate land from owners for 21-year terms, but this was necessary to cover existing rates debts, bring the land into production, and ensure ongoing payment of rates. There is no evidence that land was placed in receivership solely for failure to clear noxious weeds properly: any Māori land unable to pay rates was likely not being farmed at the time.³⁰⁵
- ▶ While sales of land in receivership (or under rates pressures) did occur, the importance of rates as a factor in such sales ought not to be overstated. Although rates debts were present on many Māori lands, the real cause of sale could often be a need to raise capital for housing. Further, in the period from 1949 to 1954, significant amounts of rates on Māori land were written off.³⁰⁶
- ▶ The Māori Trustee is not an agent of the Crown. His role in administering receivership leases was first as a receiver and secondly as an agent for the owners. These roles were enabled under separate sections of the Māori Affairs Act 1953. The provisions struck a balance between facilitating the utilisation of Māori land, thus enabling it to carry a share of the rates, and protecting the interests of the Māori owners of that land.³⁰⁷
- ▶ There is no evidence of systematic failure or lack of resourcing in the Māori Trustee's administration of receivership leases.³⁰⁸
- ▶ Town planning and zoning decisions reflect the community's view on what development is appropriate for their area. Māori had an opportunity to make submissions on the district scheme and thus to comment on, for example, zoning proposals.³⁰⁹

303. Ibid, p 15

304. Ibid, pp 10–12

305. Ibid, pp 16, 21–22

306. Ibid, pp 16, 22

307. Ibid, p 24

308. Ibid, pp 25–26

309. Ibid, p 29

- ▶ From the early 1950s, urban expansion was indeed directed onto land on the eastern side of Tauranga harbour to preserve high-quality agricultural land on the western side of the harbour. A considerable amount of Māori land in areas such as Welcome Bay, Maungatapu, Hairini, and Matapihi was thus regarded as ideal for residential subdivision and for the public amenities to meet the needs of the growing population. However, Māori land was not specifically targeted for rezoning.³¹⁰
- ▶ In the later 1960s to the 1980s, the rezoning of rural Māori land to bring it within urban local authority boundaries could result in higher rates associated with higher land values in urban areas. The evidence presented in the inquiry is insufficient to determine whether local authorities ever considered whether Māori owners were in a position to pay these increased rates. However, nor does the evidence factor in the increased incomes per residential unit (and therefore greater ability to pay rates) over the same period.³¹¹
- ▶ Subdivision and sale were a response to the growth of Tauranga and its associated effects, such as rezoning, on Māori land. The owners themselves decided on subdivision and sale and the Crown did not intervene. It did, though, provide legislative frameworks for the owners to appoint the Māori Trustee to carry out subdivision proposals.³¹²
- ▶ Under the legislation in force, the Māori Trustee did not have any duty to ensure that Māori freehold land would not be alienated out of Māori hands in the course of subdivision and sale. The Māori Trustee's role was simply to carry out the terms of trust as ordered by the court in the trust deed. A term of the trust order, however, was that the beneficial owners should be able to use their shares in the land to acquire sections in the subdivision. A primary purpose of subdivision orders was to enable Māori owners to use their land for housing or to use the proceeds of sale for housing elsewhere.³¹³

The Crown conceded that, until the 1997 case of *Valuer-General v Mangatū Incorporation*, Māori land was valued on the same basis as general land, which is to say that the Valuer-General followed a 1918 court ruling that valuations of Māori land should take no account of alienation restrictions.³¹⁴ As the Court of Appeal later found, the practical difficulties in concluding an actual sale were thus not taken into account in the valuation process.³¹⁵

310. Document U27, pp 29–30

311. *Ibid*, pp 30, 32

312. *Ibid*, p 33

313. *Ibid*, p 28

314. *Ibid*, p 34

315. *Ibid*, p 35

5.9.3 Local authorities' submissions

Counsel presented joint submissions for the Bay of Plenty Regional Council, the Tauranga City Council, and the Western Bay of Plenty District Council, to the effect that:

- ▶ The extent of local authorities' Treaty obligations is determined by statute and by case law. 'The Crown through the legislation tells the local authorities how to honour the Treaty, in what manner, and to what extent.' The three local authorities have met their legal obligations to Māori under the various pieces of legislation that govern them.³¹⁶
- ▶ The Town and Country Planning Act 1953 contained no specific provision for local authorities to have regard for either Māori land or Māori interests. It is during the period when this Act was in force that a number of the highlighted problems occurred. Criticism for this failure in the legislation may be fairly levelled at the Crown.³¹⁷
- ▶ The Town and Country Planning Act 1977 gave some statutory recognition to Māori interests and Treaty rights, but in the following year the Planning Tribunal ruled that 'ancestral land' should be interpreted as meaning only land still owned by Māori. That decision severely limited the usefulness of the Act to Māori, especially in the Tauranga area where much land had been lost. The issue was revisited in 1987 by the High Court, but the Crown did nothing in the interim to amend the Act to clarify what was intended by 'ancestral land'. Planning and zoning decisions were therefore made in a context where Māori concerns were required to be given little statutory weight.³¹⁸
- ▶ The Town and Country Planning Act 1977 made mandatory provision for Māori representation on regional planning committees. Prior to 1988, however, little was done with respect to regional planning schemes, so the provision had little impact. There was no mandatory provision for Māori representation on district or local authorities.³¹⁹
- ▶ In 1974, the Tauranga County Council (predecessor to the Western Bay of Plenty District Council) established marae community zones. Despite claimant criticism that the measure was needed much sooner, the council was the first local body in New Zealand to implement such a policy, and there was no legislative requirement for it to do so. Even under the 1977 Act, making provision for 'marae and ancillary uses, urupa reserves, pa and other traditional and cultural Maori uses' was only discretionary.³²⁰

316. Counsel for local authorities, closing submissions, 12 December 2006 (doc U39), pp 2, 4

317. Ibid, pp 7–8

318. Ibid, pp 9–11

319. Ibid, pp 11–12

320. Ibid, pp 12–14

5.10 TRIBUNAL DISCUSSION, ANALYSIS, AND FINDINGS

We return now to the questions posed at the beginning of the chapter and discuss them in light of the broad sweep of evidence on urbanisation, rating, and planning issues that has now been laid out.

5.10.1 Did the Crown deal fairly with Māori in the way it introduced rating on their land?

(1) Discussion of the facts

In 1924, the Prime Minister, Gordon Coates, famously described the rating of Māori land as ‘that most difficult and thorny question.’³²¹ The Crown says it responded by proceeding in a gradual manner and, over time, expanding incrementally the categories of Māori land for which rates were liable.

Ballance claimed at the end of a hui with Tauranga Māori in 1885 that Crown and Māori were ‘all agreed that the roads must be maintained by rates, and the only question remaining is the amount.’³²² However, Ballance did not acknowledge that roads themselves were a two-edged sword. Certainly they permitted access and land development, but early road-building activity often involved the taking of Māori land, and the accompanying loss of any resources on that land. That Māori in general were not enthusiastic about roads is supported by the lack of response to the Government’s legislative provision, in 1871, for Māori to have their own native districts road boards. Ballance’s 1885 statement that Tauranga Māori agreed that roads must be maintained by rates therefore already implies a double concession from the tangata whenua to the Crown – first, that there should be roads in their rohe, and secondly, that it was acceptable to levy a rate to pay for them.

Ballance did at least acknowledge that there was protest over the level of rating. Alongside this, there was concern that a stamp duty of some 10 per cent was payable when Māori land was alienated – effectively a tax. Although the stamp duty was payable by the purchaser, the practical effect was, as Hori Kerei Taiaroa told the Legislative Council in 1885, that lower prices were offered for Māori land.³²³ It was a situation that persisted until 1904, when the level of stamp duty on Māori land was brought in line with that payable on general land.³²⁴ Of concern to Māori was how the Crown profited from Māori land through the difference between the price it paid on buying and the sum it realised on reselling. In that context, it

321. (Joseph) Gordon Coates, 1 November 1924, NZPD, 1924, vol 205, p 1050 (doc P14, p 6)

322. ‘Notes of a Meeting Between the Hon Mr Ballance and Tauranga Natives’, 21 February 1885, AJHR, 1885, G-1, p 63

323. Hori Kerei Taiaroa, 6 August 1885, NZPD, 1885, vol 52, pp 521–522

324. Native Land Duty Abolition Act 1904. Under the Stamp Act 1882, sch 3, duty on alienations of general land had in most cases been set at 5 shillings for every £50 or part thereof (being half of one per cent). The Stamp Act 1882 Amendment Act 1885, s 20, amended that figure to 7s 6d in every £50 (being three quarters of one per cent).

is relevant to note that Crown pre-emption had been reintroduced in part of the Tauranga area, under the Thermal Springs District Act 1881. Thus, between pre-emption and stamp duty, the Crown was already in a position to derive financial benefit from Māori land with which to fund the machinery of state.

Added to this was the the compulsory acquisition of land for public works and, from Tauranga Māori and others, the acquisition of land through raupatu. By the mid-1880s, after the raupatu and in a time of economic depression, Tauranga Māori were in difficult economic circumstances. Te Mete Raukawa, as we have seen, went so far as to describe them as ‘impoverished’. He and the other leaders meeting with Ballance clearly saw the added burden of rating imposed on Māori landowners in the Tauranga inquiry district as a cause for deep concern.

Ballance did not acknowledge that there was also an issue of equity. A particular bone of contention at the 1885 hui was the rating of land within five miles (eight kilometres) of a public road, not least because the roads in question were often built on land taken compulsorily. The owners felt that, unlike Pākehā, they were paying in land and then paying again through the rating of their remaining land. Some Tauranga Māori also saw rates as unjustly apportioned between owners. We shall return to this matter when we consider whether rating legislation took due account of the tenure system under which Māori land was held.

Despite Tauranga Māori (and Māori from other parts of New Zealand) conveying to the Crown their concerns about the level and nature of rating, categories of land to be rated continued to expand. Within the space of about 30 years from the first introduction of Māori rating, virtually all Māori land had become rateable unless still held under customary tenure. The latter exemption was of no benefit to Tauranga Māori because the Crown had already converted to native freehold title any land ‘returned’ to them after the raupatu.

(2) Treaty analysis and findings

It is clear that Māori members of the House have always had the opportunity to make their opinions known during parliamentary debates on rating. We also agree with Crown counsel that the 1885 hui between the Crown and Tauranga Māori provided a further opportunity for an exchange of views. We accept, therefore, that the Crown went some way towards meeting its duty to consult with its Treaty partner. We further accept that the Crown’s gradualist approach demonstrated a degree of active protection toward Māori. There are nevertheless aspects of the Crown’s actions that cause us concern.

During the 1885 hui, Ballance responded at a very specific level to a number of complaints raised. Arguing in the particular, and pointing the speakers towards various avenues for appeal, he avoided underlying concerns about the basis on which Māori land was being rated. The latter is a matter to which we shall return below, when we discuss valuation. As

to consultation at the national level, we note how small a voice the Māori members had, compared with the Pākehā majority in Parliament, and thus how small their ability was to influence matters. Again, this is an issue to which we shall return.

In examining the introduction of rating on Māori land, we here confine ourselves to concerns around partnership and equity. First, we note the massive shift in population balance that occurred nationally from around 1860 to 1890, fostered by Crown support of settler immigration schemes such as those at Katikati and Tauranga (see ch1). It was a shift that had huge implications for Māori, their interests, and their way of life. It is in this context that we need to examine whether the Crown's actions in introducing rating upheld the principle of partnership inherent in the Treaty. As we discussed in chapter 1, that principle requires each partner to take account of the needs and legitimate interests of the other. While, as we have seen, Tauranga Māori expressed their acceptance (albeit somewhat reluctant) of the Crown's right to impose rates, the Crown appears to have taken little account of the cumulative effect of rating on top of its other actions towards Tauranga Māori, their land, and resources. When rates were first levied on Māori land in Tauranga, their introduction came hard on the heels of raupatu. The Crown already derived considerable financial benefit from Māori land to fund central government activities. It then enacted legislation which enabled local government to further tax Māori in order to provide services that, at the time, were largely of benefit to the Crown and the settler population. Shifting to virtually full rating of Māori land in the space of around 30 years cannot, in the particular circumstances outlined above, be regarded as taking account of the needs and legitimate interests of the tangata whenua partner. We thus find that, in this early period, the Crown failed to uphold the principle of partnership. That failure constitutes a breach of the Treaty.

Further, article 3 of the Treaty conferred on Māori the 'Rights and Privileges of British Subjects'. Māori acknowledged that status by accepting a duty to pay rates. The Crown, however, had a reciprocal duty to deal with Māori equitably, and to ensure that the level of rating was reasonable. In our view, bringing Māori up to the same level of rating as Europeans within the space of three decades was not equitable because of the very different histories and circumstances of the two populations. As O'Keefe has observed: 'It is axiomatic that a tax system should be fair. There are two elements in the principle of fairness – the like treatment of people who are in like circumstances, and the ability to pay.'³²⁵

Certainly, both Māori and Pākehā were affected by the depression of the 1880s and 1890s. However, many low-income Pākehā at that time were not landowners; hence they were exempt from property rates. Most low-income Māori, on the other hand, still had interests in land, but their economic circumstances meant they had little money with which to pay rates. This was particularly so in the Tauranga area, following the raupatu. Further, as we

325. O'Keefe, *The Law of Rating*, p77

have highlighted, Māori had already contributed much to the State's finances via their land. Applying the test of equity, therefore, the Crown's action again constitutes a breach of the Treaty.

In terms of what *would* have been a reasonable timeframe for introducing full rating of Māori land, we have no view about a specific length of time, but the critical factor would seem to be the need to maintain active protection for as long as relative disadvantage persisted. By the early twentieth century, Māori land had become liable for rates in the same manner as if it were European land, yet Māori still faced difficulties over using their land and the Crown had offered little by way of practical assistance. Many of the inequities that had justified a gradualist approach to rating Māori land remained.

In addition to these findings, we have a further comment to make. In our view, the manner in which the Crown introduced rating on Māori land not only breached the principles of the Treaty but had unfortunate downstream effects. We believe it engendered in Māori an early lack of confidence in local government – a lack of confidence which was only exacerbated by the effects of subsequent legislation. At the same time, it led to local authorities – and indeed the general populace – developing a perception of Māori as non-cooperative because they defaulted on rates. We believe that situation was to sour relations between local government and Māori, and between the Pākehā and Māori communities, for many decades to come.

5.10.2 Has the Crown provided for Māori to have sufficient representation at all levels to enable their views to be heard?

(1) Discussion of the facts

Māori formed the larger part of the New Zealand population until around 1858, but had little voice in terms of formal representation. In the first national election, held in 1853, only about 100 of the 5849 enrolled voters were Māori,³²⁶ and Māori were not accorded any place in the House of Representatives until 1867, when four Māori seats were established. There were, at the time, 72 Pākehā members for a settler population of around 216,700. A comparable level of representation for Māori would have demanded 12 seats, not four. By 1871, when members were debating whether to introduce rating on Māori land under the highways boards empowering legislation, there were 79 Pākehā members. At the time, there were around seven times more Pākehā in New Zealand than Māori, yet Pākehā held 19 times as many seats in the House. This lack of equity, given a supposed equal status under the Treaty, was pointed out in an 1884 petition to Queen Victoria signed by King Tawhiao and four other leading rangatira:

³²⁶ Paul Moon, *The Edges of Empires: New Zealand in the Middle of the Nineteenth Century* (Auckland: David Ling, 2009), p 65

5.10.2(1)

Maori representatives were established by the Government, but a prohibitive rule was made, by which the number of members was limited to four, and though the Maoris demanded a representation proportionate to their numbers, this has been refused by the Government up to the present time; and these members have only nominal power, and are unable to redress the Maori wrongs, and yet the Europeans have only an equal status with the Maoris.³²⁷

Between 1893 and 1919, Māori numbers in the House did increase slightly with the election of James Carroll, a ‘half-caste’, to a European seat, but prior to 1967 no one who was *more* than half Māori could stand for election in a general seat – and the gesture of removing the restriction effectively came too late, since by 1967 the number of those who could count themselves more than half Māori was greatly reduced.³²⁸

Given these statistics, while Māori did have some voice in the House, it cannot be said that their representation allowed them anywhere near the same degree of expression and power that Pākehā had, despite their initially greater population numbers. Nor, to begin with, did Māori have any voice in the Legislative Council. Māori were not appointed to the upper house until 1872. That year there were 45 Pākehā councillors and two Māori councillors.³²⁹

In addition to this general imbalance in levels of representation in central government, we note that Tauranga Māori had no specifically local voice in Parliament. The same year that the Legislative Council admitted Māori members for the first time, the upper house rejected provisions which would have resulted in a fifth Māori member in the House of Representatives. This stance of the Legislative Council doubtless rankled with Tauranga Māori as they had reason to believe that the proposed additional seat in Parliament would represent the wider Bay of Plenty. Indeed, the rejection may have given rise to their leaders’ later plea to Ballance for someone from Ngāi Te Rangi to be nominated to the Legislative Council. The plea appears to have fallen on deaf ears. No additional Māori councillors were appointed. That said, the later appointment of King Mahuta to the council, in 1903, may subsequently have appeased those Tauranga Māori who supported the Kīngitanga. The Māori population in general, however, did not fare well in terms of its visibility on the Legislative Council and it is notable that when the Reform Party came to power in 1912, its

327. Tawhiao, Wiremu Te Wheoro, Patara Te Tuhi, Topia Turoa, and Hori Ropihana to Her Majesty the Queen, 15 July 1884, AJHR, 1885, A-2, p 4

328. Waitangi Tribunal, *Maori Electoral Option Report* (Wellington: Brooker’s, 1994), pp 4–7; New Zealand History Online, ‘Maori MPs – Parliament’s people’, 9 November 2007, <http://www.nzhistory.net.nz/politics/parliaments-people/maori-mps> (accessed 4 May 2009); ‘List of Members of the House of Representatives’, NZPD, 1871, vol 10, p iv;

329. Waitangi Tribunal, *Maori Electoral Option Report*, pp 4–7; New Zealand History Online, ‘Maori MPs – Parliament’s people’, 9 November 2007, <http://www.nzhistory.net.nz/politics/parliaments-people/maori-mps> (accessed 4 May 2009); David Green, ‘The Explosive Frontier’, in *Frontier of Dreams*, edited by Dalley and McLean, p 148; W K Jackson, *The New Zealand Legislative Council: A Study of the Establishment, Failure and Abolition of an Upper House* (Dunedin: University of Otago Press, 1972), pp 80, 242;

plans to introduce proportional representation into the upper house included no provision at all for Māori representation.³³⁰

There was also concern about representation at local government level. As we have already noted, in 1882 Matthew Green, the member for Dunedin East, voiced the widely held view that ‘where there is taxation there ought to be representation.’ He was not alone in highlighting the mismatch between that position and the lack of provision for Māori representation on road boards and county councils of the time.³³¹ In our view, such lack of representation can only have fuelled the Māori perception that local authorities were bodies run by and for settlers – and this in turn was likely to generate Māori mistrust about the aims and intentions of those bodies.

To address Māori dissatisfaction with their own perceived powerlessness, James Carroll urged, in 1891, that the Legislature grant them more autonomy, saying: ‘After all, what they ask for is only a species of local self-government, exercised in a manifold degree by their European neighbours.’³³² Legislation enacted in 1900 did give Māori the opportunity to form their own local Māori councils, but those councils were given little real power or support. From 1904 there was at least wider legislative provision for Māori to participate in local body elections as voters, after the Native Land Rating Act 1904 directed that Māori owners or ‘nominated Native occupiers’ were to be listed on district valuation rolls.³³³ However, it is difficult to know how many exercised the option. Tauranga Māori, at least, seem to have pinned their hopes on a direct, face-to-face, approach rather than (or perhaps as well as) trying to exert influence via the ballot box: as we saw (sec 5.7.3), a delegation of prominent Māori landowners addressed a Tauranga County Council meeting in 1908, complaining about the way the 1904 Native Land Rating Act was being applied around the district. The move suggests a degree of frustration at how well their views were being represented on the county council. It was also illustrative of an ongoing Māori preference for *kanohi ki te kanohi* interaction – that is, a desire to be at the decision-making table and discuss matters in person, tribal authority to settler authority.

There are occasional examples of Māori being elected to general seats on local bodies, but it appears to have been a rare occurrence. In our inquiry district, we have seen reference to only two instances: Vic Smith is mentioned as having served on the Tauranga City Council for a time from the mid-1960s, and there is brief note of one of the Tapsell brothers being elected as a Tauranga county councillor in the late nineteenth century.³³⁴ Elsewhere in

330. Jackson, *The New Zealand Legislative Council*, p 85

331. M W Green, 30 August 1882, NZPD, 1882, vol 43, p 715. Others who agreed with Green were Taiaora (p 716) and Moss (p 717).

332. ‘Note by Mr Carroll’ in ‘Report of the Native Land Laws Commission’, AJHR, 1891, G-1 p xxix

333. Native Land Rating Act 1904, s 7(1)

334. Rachel Willan, ‘Hydro-Electricity in the Wairoa River Catchment: Land Acquisition’ (commissioned research report, Wellington: Waitangi Tribunal, 1996) (doc A35), pp 15, 17; Evelyn Stokes, *Ngamanawa: A Study of Conflicts in the Use of Forest Land* (Hamilton: University of Waikato, 1983) (doc A11), p 44. As we have noted, Ward (as cited in Bennion, *Maori and Rating Law*, pp 9–10) implies that Retreat Tapsell was a county councillor in the



Figure 5.10: Tauranga city councillors, 1972. Vic Smith at far left.

Photographer unknown. Reproduced courtesy of Tauranga City Libraries (09–034).

the country, examples of Māori becoming councillors seem equally sparse. It was not until 1977 that legislation, in the form of the Town and Country Planning Act, made a first tentative step towards introducing explicitly Māori representation at the local level, but even then it was minimal. Under that Act, the district Māori council was required to nominate a Māori representative to the regional planning committee (*not* to the regional authority itself) if, in the opinion of the regional authority, there were significant Māori landholdings in the region. We were not given evidence on whether the Act led to Māori representation on the Tauranga regional planning committee. In any case, although this measure was an improvement as far as it went, it still fell far short of having Māori representation on the local authorities themselves – that is, on the bodies that were actually taking the decisions, rather than just on advisory committees. Further, as the Waitangi Tribunal’s *Report on the Manukau Claim* pointed out in 1985:

Bay of Plenty region, but we have not been able to verify this. Retreat’s brother Hans, however, was elected to represent the Maketū Riding of Tauranga County Council in early 1877 (*Bay of Plenty Times*, 3 February 1877, p 2; Stokes, *A History of Tauranga County*, pp 198–199).

While representation of Maori interests on planning bodies is extremely important in ventilating Maori concerns, that is not a complete solution. They must be backed by adequate research facilities and not simply expected to make a contribution to schemes that may have already progressed a distance down the track.³³⁵

In other words, even at the level of advisory committees, Māori need resourcing to participate. They also need to be ‘in on the ground floor’ when ideas are being considered and plans are being drawn up.

Not until the end of the twentieth century did the Crown introduce the possibility of specifically Māori representation on local councils, and we shall look at that issue in the next chapter. We note here, however, that even by the late 1990s there were still only 39 Māori elected members in local government throughout New Zealand, being a mere 3.5 per cent of the total 1123 elected members on 86 different councils.³³⁶

We are not suggesting that all Māori should have to vote on a Māori roll, and only for Māori candidates. For one thing, ‘being Māori’ is now largely a matter of self-identification, and not all those with Māori blood see themselves primarily as Māori. For another, there are situations where Māori may feel they can exert more leverage by voting on the general roll. Nor do we mean to imply that Māori views can only be represented by Māori – any more than Pākehā views can only be represented by Pākehā, or women’s views only by women, and so on. Nevertheless, irrespective of any Treaty-based argument, we would observe that specific population groups are more likely to feel confident that their views are being properly conveyed if they can see people from within their own group represented on decision-making bodies. For Māori, we believe that can be achieved without overturning the principle of ‘one person, one vote’, as we shall discuss in the next chapter.

(2) Treaty analysis and findings

The Crown has argued that, in terms of formal representation, there were Māori members of Parliament who took an active role in debates over rating legislation. While that is true, Māori representation in Parliament never, during the period under discussion in this chapter, came anywhere near a level to proportionally match that of Pākehā. As we have noted, specifically Māori seats were limited to four, and Māori (other than ‘half-castes’) were not entitled to stand in general (European) electorates until 1967.

This seems to us to be a direct undermining of the Treaty’s article 2 promise of tino rangatiratanga. How were Māori leaders meant to lead and represent their people within the framework of the State, if they were not given reasonable opportunity to do so? As

³³⁵. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim* (Wellington: Government Printer, 1985), p 80

³³⁶. Parliamentary Commissioner for the Environment, *Kaitiakitanga and Local Government: Tangata Whenua Participation in Environmental Management* (Wellington: Parliamentary Commissioner for the Environment, 1998), p 77

5.10.2(2)

Te Wheoro argued to Ballance in 1885: ‘it states in the Treaty of Waitangi that the Maori chiefs should be treated in the same way as the people of England, and given the same power.’³³⁷ Instead, the Crown actively circumscribed Māori participation in the making of legislation and policy at central government level. The Tribunal’s *Maori Electoral Option Report* has described Māori as ‘clinging tenaciously’ to what representation they did have, as ‘a last vestige of their lost autonomy – all that was left of the tino rangatiratanga guaranteed to them in the Treaty.’³³⁸ We are of the view that the Crown’s action in initially limiting Māori representation in Parliament constitutes a clear breach of the Treaty.

At local government level, Māori were virtually invisible as a percentage of council membership throughout the period covered in this chapter. Although we are not aware of any specific bar on the eligibility of Māori to stand for local office, the Crown must have known that they were not represented in equitable numbers around council tables. Nevertheless, the only evidence we have of the Crown making specific provision for Māori to have a role in local government is in relation to legislation to permit the creation of separate native district road boards – this being in the 1870s, when Māori were known to be not overly enthusiastic about the idea of roads – and in relation to legislation permitting the formation of Māori councils, which it then under-resourced. Other than that, we have seen no evidence of any Crown initiatives to address the local representation imbalance, or indeed even to investigate why the imbalance existed. This is despite the specific recognition, in the preamble to the Municipal Corporations Ordinance of 1842, that local self-government helped to promote a ‘spirit of self-reliance and respect for the law’ and also served to ‘prepare men for the due exercise of other political privileges’.

In 1994, Justice McGechan gave his views about Māori representation at central government level:

[T]here is no doubt Treaty principles impose a positive obligation on the Crown, within constraints of the reasonable, to protect the position of Maori under the Treaty and the expression from time to time of that position . . . Maori representation – Maori seats – have become such an expression. Adding this together, for my own part I consider the Crown was and is under a Treaty obligation to protect and facilitate Maori representation.³³⁹

In our view, that obligation extends to facilitating Māori representation at the local level as well. The central North Island Tribunal found that article 3 conferred on Māori a Treaty right to ‘self-government through representative institutions at a community, regional, and national level.’³⁴⁰ In the Tauranga area, there is ample evidence of Māori hapū and iwi

337. ‘Notes of a Meeting between the Hon Mr Balance and Tawhiao, at Whatiwhatihoe, 6th February 1885’, 6 February 1885, AJHR, 1885, G-1, p 27

338. Waitangi Tribunal, *Maori Electoral Option Report*, p 6

339. *Taiaroa v Minister of Justice* unreported, 4 October 1994, McGechan J, High Court, Wellington, CP99/94, 69

340. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, p 403

seeking to have a measure of control over their own affairs and to have a say in local government on terms with which they felt comfortable. We believe that the Crown is under an obligation to facilitate the achievement of those aims, and that such an obligation stems not only from Treaty principles and the text of article 3 but from the more general, and widely accepted, principle that there should be no taxation without representation – rating being a local tax to serve local purposes. Local councils where Māori were virtually invisible cannot be seen as properly representative. Further, we are of the view that the local government voting systems in place during the period discussed in this chapter did not ensure that Māori were represented in a manner that best met their needs and preferences. We find that the Crown's failure actively to facilitate Māori representation at a local level constitutes a breach of the duty to protect Māori rights and interests.

For most of the period up to 1987, there was no provision, either, for Māori to act in an advisory capacity to local government. Not until 1977 was there a requirement for Māori to be included on regional planning committees – and then only at the initiative of the regional authority when, in its opinion, there were significant Māori landholdings in the region concerned. Counsel for the Tauranga local authorities acknowledged in his closing submissions that this provision 'did not impact greatly on the operation of the Act due to the limited development of regional planning schemes outside the major centres'.³⁴¹ While informal consultation may have taken place, the Crown's duty of active protection included, in our view, a duty to ensure that there were formal mechanisms for Māori to be consulted and have their views heard by local authorities. For as long as the Crown failed to legislate for such consultative mechanisms we consider it to have been in breach of its duty of active protection.

We also consider that the Crown should have ensured that Māori were appropriately resourced to participate in such consultation and we shall return to this issue in the next chapter.

Lastly, in terms of the benefits of having Māori represented at all levels, we acknowledge the contribution of Sol Kanapu, and point to it as an example of what could be achieved when Māori were actively included in local administration.

5.10.3 Has rating and valuation legislation taken due account of the particular nature of Māori land and the tenure system under which that land is held?

(1) Discussion of the facts

As the Crown has acknowledged, Māori land was, until 1997, valued the same as general land.³⁴² That is, it was valued only as a capital asset, with no consideration of a range of

341. Document U39, pp 11–12

342. Document U27, p 34. A change came about following the case of *Valuer-General v Mangatū Incorporation* [1997] 3 NZLR 641, which we shall discuss in the next chapter.

other aspects. There was no recognition of its value and meaning as a ‘taonga tuku iho’. There was no acknowledgement, prior to the mid-1920s, that it might hold wāhi tapu. The Cemeteries Act 1908 had differentiated between cemeteries and burial grounds, and under the Rating Act of the same year only cemeteries were made exempt from rates; it was not until the Native Land Rating Act 1924 that a specific rating exemption was introduced for native burial grounds.³⁴³ However, no allowance was made for the presence of any other type of wāhi tapu. There were also the complications caused by multiple ownership – complications which had been commented on by national figures such as Coates and Ngata, as well as local body officials, throughout the twentieth century. We have seen, for instance, how burgeoning ownership lists militated against the individual notification of rates owing, while if public notices in the *Gazette* or local newspapers were not spotted, rating debts could accumulate without the owners’ knowledge. As Mr Rolleston commented in his brief of evidence on behalf of Tauranga Māori generally:

I am aware that a number of trusts and incorporations have extensive lists of unclaimed dividends. This highlights the issue. If people cannot be found for the payment of money to them, they are certainly going to be hard to find for the collection of money.³⁴⁴

Further, there is the point that many owners of multiply owned blocks may not have been resident on the land themselves, or directly deriving benefit from any services provided to the land by the local council.

Also in relation to multiple ownership, we have seen how one or more owners named on a valuation roll, in a quasi-trustee capacity for others of their whānau or hapū for example, might find themselves liable for rates on behalf of all the other unlisted owners of that block.

The special status of Māori land and the system of multiple ownership placed considerable constraints on land use and development not encountered by Pākehā landowners. This meant that Māori land was an asset that possessed particular disadvantages as compared with general land. That special status was (and is) tacitly acknowledged through its separate administration by the Māori Land Court. Further, valuing on a ‘willing seller, willing buyer’ basis, and on best potential usage, was inappropriate for Māori land. Māori often had (and have) reasons for not wanting to alienate their land, or not wanting to ‘develop’ it in the European sense. Despite this, virtually all Māori land except customary land was, after 1910, valued and rated as if it were general land. Courts upheld this lack of distinction. We have noted, for example, the 1917 Supreme Court ruling that alienation restrictions should not be taken into account when valuing Māori land.

There is also the problem of valuations being based on potential, rather than actual, usage. In this context, we have noted that in 1976 the Minister of Agriculture and Fisheries, at least, was aware of the downstream impact this could have, commenting on how valuing on

343. Cemeteries Act 1908, s 2; Native Land Rating Act 1924, s 4

344. Document Q1, p 14

potential usage (in this case, kiwifruit growing) could lead to high rentals on Māori leasehold land, ‘making dairy farming prohibitively expensive’. Speaking to the Bay of Plenty Federated Farmers, his concern, however, was clearly more for the lessees than the Māori owners.³⁴⁵ In the period under discussion in this chapter, the Crown appears to have carried out no systematic examination of how different methods of valuation impacted on Māori. We have already cited O’Keefe’s statement that fairness in taxation centres on the like treatment of people who are in like circumstances, and on the ability to pay. He also argues that it is important that any comparison of rating systems should weigh social impact.³⁴⁶ Some Māori in our inquiry have stated or implied a preference for rating on capital value, which tends to result in lower charges on undeveloped land.³⁴⁷ Others have pointed out, however, that rating on capital value creates difficulties for cases such as papakāinga housing, where the value of improvements can result in much higher rates.³⁴⁸ Māori have also advocated a continuation of differential rating.³⁴⁹ In the past, various politicians, too, have voiced views on what effect rating on unimproved value or annual value might have. However, nowhere have we seen reference to any systematic study by the Crown as to whether some forms of valuation might be more equitable for Māori than others.³⁵⁰

Further issues relating to valuation and rating legislation, such as the introduction of a uniform annual general charge, arise in the post-1986 period and will be addressed in the next chapter.

(2) *Treaty analysis and findings*

On the Crown’s own admission, in enacting valuation legislation before 1997 it did not take due account of the particular nature of Māori land, and the tenure system under which that land is held.³⁵¹ That legislation in turn affected levels of rating. Yet Māori, throughout the period under discussion in this chapter, provided many instances to the Crown of how and why the valuation and rating legislation was problematic in the specific context of Māori land.

The central North Island Tribunal discussed at length what the Treaty standards should have been for the political relationship between the Crown and Māori, including whether Māori philosophies and aspirations should have been constraints on the Crown.³⁵² In doing

345. Minister of Agriculture and Fisheries (Stokes, *A History of Tauranga County*, p 405)

346. O’Keefe, *The Law of Rating*, p 15

347. Rolleston and Patuawa, ‘Submission Report’, pp 52–54 (doc Q1, app); Busby Alan Puhipi Murray, brief of evidence, 17 June 2006 (doc R12), p 6

348. ‘Appendix A’, pp 3–4 (doc Q11, app)

349. Rolleston and Patuawa, ‘Submission Report’, pp 52, 54 (doc Q1, app)

350. Although an ‘Issues Paper on the Impact of Rates on Māori Land’ was prepared in June 2007 for the Local Government Rates Inquiry, its short section on valuation does not attempt to discuss the advantages and disadvantages, for Māori, of different forms of valuation.

351. Document U27, p 34

352. Waitangi Tribunal, *He Maunga Rongo*, vol 1, ch 3

so, it quoted extensively from early sources. The views expressed by some of those sources demonstrate clearly that it is not unreasonable to expect the Crown to have passed laws which accommodated Māori world views, philosophies, and aspirations. In 1886, for example, John Ballance – then Native Minister – told Parliament: ‘We should never forget this fact: that the Natives are our fellow-citizens; and, that being so, we ought to study their feelings and sentiments when proposing to pass legislation which must affect their most vital interests.’³⁵³

In enacting valuation legislation that took no account of Māori views about their relationship with their land as a ‘taonga tuku iho’, the Crown demonstrated a lack of regard for a matter of vital importance to Māori. That does not, in our view, constitute a balancing of interests consistent with the principle of partnership. As the Ngāwhā geothermal Tribunal found, ‘the needs of both cultures must be provided for and compromise may be needed in some cases to achieve this objective.’³⁵⁴ Compromise does not consist in giving one set of views total primacy over another. Some Māori land was suitable for commercial use, if that was the wish of the community of owners. What was required was for Māori to freely decide which of their land they wanted absolutely protected, and which they were willing to use commercially. But the Crown’s persistence in viewing land only from a Pākehā perspective, and its failure to empower hapū and iwi to protect their taonga as they wished, represents a failure to uphold the principles of partnership and equity.

And it was not only that the Crown disregarded the Māori view that land is more than just a commodity. As we have discussed above, the Crown, by its own legislation, had actively contributed factors that further rendered the ‘willing buyer, willing seller’ scenario inappropriate as a basis for valuing, and hence rating, Māori land. That is, not only did it fail to carry out its duty of active protection of Māori rights and interests but, in failing to take account of the downstream effects of its Māori land legislation, it effectively made matters worse for Māori. In chapter 1, we have already noted the Tūranga (Gisborne) Tribunal’s view that, in return for Māori having surrendered the power to operate outside the Crown’s laws, the Crown has a reciprocal duty to ensure that its laws do not defeat or neutralise its Treaty guarantees to Māori.³⁵⁵ Valuation legislation, and its flow-on effects for rating, would appear to us to be precisely such a case. Far from ‘avert[ing] the evil consequences which must result from the absence of the necessary Laws and Institutions’, as the preamble to the Treaty phrases it, the Crown itself could be held to have given rise to certain ‘evil consequences’ by the very laws it introduced. In our opinion, the Crown’s valuation legislation, and its subsequent impact on rating, operated to the disadvantage of Māori. The Crown, on the other hand, stood to benefit in that higher land valuations meant higher rating revenue

353. John Ballance, 8 June 1886, NZPD, 1886, vol 54, p 331

354. Waitangi Tribunal, *Ngawha Geothermal Resource Report 1993* (Wellington: Brooker and Friend Ltd, 1993), p 137

355. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, pp 534–535

for local government – which in turn lessened the need for central government to provide subsidies for local projects. We thus find that the Crown was in breach of the Treaty in failing to uphold the principles of partnership and active protection.

5.10.4 In determining levels of rating, should allowance have been made for other community contributions already made by Māori?

(1) Discussion of the facts

Tauranga Māori have made significant contribution to the development of the Tauranga region. They have contributed through giving up, either voluntarily or involuntarily, much of their tribal land. On the land left to them, they have further contributed through the provision of various amenities that are open to the general community. Instances have also been given of situations where Tauranga Māori are self-sufficient in some services, such as having their own sports grounds, yet are additionally required to pay rates designed to cover the cost of providing these self-same services.³⁵⁶

We have no evidence that the value of these contributions has been taken into account by local bodies when rating Māori land. That said, Māori have, for various reasons, benefited from rates remissions on occasions over the years which in some measure provides a counterbalance. Further, as the Crown has pointed out, the fact that marae are often used by the wider community is already recognised in their exemption from rating.³⁵⁷

It is not clear to what extent the Tauranga situation is typical of the rest of New Zealand, although we assume that similar conditions prevailed in the Hauraki inquiry district, at least, since that Tribunal found that the Crown's rating regime should have 'taken into account the considerable, often uncompensated, contribution of land for public works and national and local infrastructure made by Maori, both willingly and compulsorily'.³⁵⁸

(2) Treaty analysis and findings

At a national level, tax rebates have long been available in specific recognition of charitable donations.³⁵⁹ But for the period under discussion here, there has not been any corresponding provision of rating rebates to recognise contributions – particularly contributions in kind – that benefit the local community. It nevertheless seems reasonable that the Crown should have given thought to encouraging the use of targeted rating, or relief via some other mechanism, specifically to offset community contributions made by sections of the local population. In the context of Māori contributions particularly, there is the added dimension of Treaty obligations. From a Treaty point of view, the principle of partnership implies,

356. Document Q1, p18

357. Document U27, p12

358. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 3, p1018

359. Inland Revenue Department, *Tax and Charities: A Government Discussion Document on Taxation Issues Relating to Charities and Non-profit Bodies* (Wellington: Policy Advice Division, 2001), pp15–19

5.10.5

as we noted earlier, ‘a positive duty to act in good faith, fairly, reasonably and honourably towards the other.’³⁶⁰ A legislative regime which permits local authorities to disregard positive contributions made by Māori and then to remit rates debts grudgingly does not seem to us consistent with this notion of mutual respect, and we believe it fails to uphold the principles of partnership and reciprocity.

In terms of prejudice, we acknowledge that, historically, rates remissions by Tauranga local authorities may, to a greater or lesser degree, have counterbalanced the past lack of rebate for community contributions. Nevertheless, the evidence makes it clear that Māori in the area have tended to suffer the stigma of being branded as non-payers of rates. That situation might have been avoided, or at least alleviated, had their rates burden been set more appropriately in the first place.

5.10.5 Has rating pressure resulted in the permanent alienation of Māori land and, if so, to what extent can the Crown be held responsible?

(1) Discussion of the facts

We have no information on rates-related alienations of Tauranga Māori land in the nineteenth century.³⁶¹ We note, however, La Rooij’s caveat that, in the time available for his research, he was not able to investigate systematically the extent of alienations in the period up to, and including, 1924.³⁶²

Before 1893, the law did not allow Māori land to be taken or sold for non-payment of rates. In the period to 1910, as the Crown has stressed, rating was introduced only gradually on Māori land. We are therefore of the view that permanent alienations for reason of unpaid rates are likely to have been minimal before 1910.

From 1910 onwards, most Māori land became rateable unless held under customary title. The latter exemption was, as we have seen, of no benefit to Tauranga Māori because, as a result of Crown action, none of their land remained in customary title. However, the Stout–Ngata commission had recommended in 1908 that most remaining Māori land in the Tauranga area be reserved for Māori settlement, and this initially offered a degree of protection from alienation.

In 1924, responsibility for rates recovery was shifted to the Māori Land Court. From then on, if arrears accrued against the land, it could be the subject of a charging order by the court, and placed in receivership or trust for lease or sale. The limited evidence that we have for 1924 to 1950 indicates that few applications for charging orders actually resulted in orders being made, and there were even fewer subsequent applications for receivership and

360. *Te Rūnanga o Wharekauri Rekohu Inc v Attorney-General* [1993] 2 NZLR 301 (CA) at 304

361. La Rooij does point to one instance of land being taken for non-payment of rates, but it had been wrongly classified as European land and was returned some decades later when the error was discovered (doc P14, pp 22–23).

362. Paper 2.557, pp 2–3

sale. In sum, the indications are that, prior to 1950, little land belonging to Tauranga Māori was actually alienated as a direct result of rating pressures.

From 1950 to 1970, new legislation extended the powers of the court to force the development of ‘unproductive’ Māori land which had not been able to pay rates.³⁶³ Ironically, it was often the tenure system, and the associated difficulties in raising finance, that led to problems in developing the land. As claimant counsel pointed out, too, the problem of ‘noxious weeds’ was also not of Māori making, in that the weeds were ones that had been introduced by European settlers (albeit inadvertently in the main). Be that as it may, a major effect of legislation introduced during this period seems to have been to boost the use of receivership as a means of rates enforcement.

Specific evidence about alienation as a result of rating pressure in this period suggests that a lack of protective mechanisms in the legislation resulted in significant quantities of tribal land being alienated by lease. La Rooij’s figures show that, in the period between 1951 and 1968, over 3700 acres of rural Māori land within our inquiry district were leased out for unpaid rates, mostly for 21-year terms.³⁶⁴ We discuss leasing itself in the next section. Here we are particularly concerned with the relationship between leasing and sale. Where there were problems with receivership leases – especially those resulting in sale – they seem to relate to the leasing of land from which it was actually difficult to earn an economic return. On the evidence that we have, around a quarter of the rural land blocks leased for rates arrears in this period seem to have been sold either during or at the end of the lease, mostly to existing lessees (a few of whom were possibly part-owners).³⁶⁵ It is unclear to what extent rates debt was specifically a causal factor in these sales. What is clear, in our view, is that the *threat* of sale as a result of rates receivership had the effect of placing pressure on already struggling Māori landowners.

We have less information on rural alienations for rates since 1970, but we do know that the hapū on Matakana Island have seen some of their land being leased or sold for rates arrears during this period.³⁶⁶

What, then, is the overall picture for Māori land? Looking across the full span of years covered by this chapter, it seems that permanent alienations of *rural* Māori land have not been numerous, and the majority of Māori rural blocks have been retained in Māori ownership.

The picture is very different for Māori land absorbed into urban areas. The period after 1950 was, as we have seen, a time of rapid urban expansion which created unsustainable pressures for many Māori landowners in these areas. The first pressure was rising rates. As soon as land became zoned residential or industrial, massive rates increases resulted.

363. Under section 34 of the Māori Purposes Act 1950 and section 387 of the Māori Affairs Act 1953

364. Document P14, table 8, pp 88–89

365. *Ibid*, cf table 9, p 104

366. Counsel for Wai 228 and Wai 266 claimants, closing submissions, undated (doc U23), pp 2, 6, 22; doc P14, pp 121–123

5.10.5(1)

Secondly, receivership leases were no longer an option because leasehold was not an attractive proposition for developers. The only real alternative was therefore to sell the land off as quickly as possible, before rates debt ate away its entire freehold value.³⁶⁷ As more and more Māori land became absorbed within urban boundaries, local councils, Government departments, the Māori Land Court, and the Māori Trustee focused increasingly on subdivision and sale. We have seen, for example, how three areas of Māori land in Maungatapu were divided into 322 housing sections and sold off, the great majority passing out of Māori ownership. We believe there is enough evidence to show that these blocks are representative of the situation in other parts of Maungatapu and indeed of Māori land in the Tauranga urban area generally. We acknowledge that, according to La Rooij, rates were specifically mentioned as a factor in only seven sales in the three subdivided Maungatapu blocks discussed.³⁶⁸ However, to our mind, the general evidence points strongly to the role of rating in all the alienations.

An added dimension to the issue of rating alienations is that, under the Māori Affairs Amendment Act 1967, Māori land with fewer than five owners could be ‘Europeanised’, which automatically nullified any rates exemptions that might have been available had it remained Māori land. Because ‘Europeanised’ land passed out of Māori Land Court jurisdiction, there is no easy way of knowing how much of it was alienated, either by lease or by sale, for rates arrears. All we have in the evidence is a newspaper report from September 1972 which mentions that, at the time, Tauranga County was seeking to recover rates owing on 64 sections of Māori-owned general land.³⁶⁹

Throughout all time periods examined in this chapter, local and central government emphasis seems to have been on ‘best utilisation’ – from an economic viewpoint – rather than on what the owners themselves might want (or be able) to do with the land. Māori landowners in Tauranga Moana were subject to continued pressure – in rural areas, to bring their lands into high-revenue economic production or, on the urban fringes, to subdivide and sell as urban growth continued. These imperatives were driven by central and local government concerns rather than by those of the iwi and hapū primarily affected. We recall, for instance, Coates’ words to Parliament in 1924, about using the threat to charge lands, ‘and ultimately to take portions of the same for rates’, as a way of forcing lands into development. Ngata, during the same debate, said: ‘We are conceding here in one session all that the local bodies have been agitating for since the year 1910.’³⁷⁰

367. Document P14, pp 125–126

368. Ibid, table 15, p 143

369. ‘Total Maori rate arrears \$52,000’, *Bay of Plenty Times*, 13 September 1972 (doc P14, p 109)

370. (Joseph) Gordon Coates and Apirana Ngata, 1 November 1924, NZPD, 1924, vol 205, pp 1051–1052, 1056

(2) Treaty analysis and findings

Neither claimant nor Crown arguments focus much on the years before 1950. We simply reiterate, therefore, that before 1893 the law did not allow Māori land to be sold to cover rating debts, and from 1893 until 1924 there were measures in place that gave a reasonable level of protection. Between 1924 and 1950, the likelihood of any permanent prejudice to Māori landowners was lessened by the fact that rates enforcement provisions were not vigorously pursued by local authorities. Nevertheless, from 1924 onwards we believe that the *threat* of rates charging orders presented a potential disincentive to the development of Māori land and encouraged, rather, subdivision and sale – a point we shall return to below.

With the passing of the Māori Purposes Act 1950, rates enforcement provisions on Māori land became more extensive and were used more energetically. We acknowledge that leasing was used to recoup rates debt far more extensively than compulsory sale. Nevertheless, the evidence has demonstrated that forced sales did occur on several occasions, and we must suspect that the incidence was higher. A direct causal link between rates enforcement on Māori land and its subsequent alienation by sale is often difficult to establish in absolute terms, but we cannot ignore that around a quarter of the rural blocks subject to receivership leases between 1950 and 1970 were alienated by sale – either during or at the end of the lease – with most going to non-owners. Also, around the edges of Tauranga and Mount Maunganui, blocks that were rezoned residential or industrial as a result of expanding urban boundaries were heavily affected by rates increases and most were alienated out of Māori ownership. Such scenarios would tend to raise the likelihood of rates debt leading to forced sale. This is directly at odds with the ‘full exclusive and undisturbed possession’ (in English) and ‘tino rangatiratanga’ (in te reo) guaranteed by the plain text of article 2 of the Treaty. In English, article 2 specifically promised Māori that they could retain their ‘Lands and Estates . . . and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession’. We therefore find that, in enacting legislation which permitted receivership sales, the Crown was in direct breach of the Treaty. In line with the Tūranga (Gisborne) Tribunal, we are of the view that ‘no taking can be justified for non-payment [of rates]’.³⁷¹

Apart from forced sales, we believe that rating problems contributed to owners’ own decisions to sell land. In our view, the evidence is sufficient to suggest that rates debt, fear of future rates debt, and fear of compulsory alienation for rates enforcement all loomed large in owners’ thinking when trying to decide what best to do with their land. Moreover, those factors were likely to exert even greater pressure at times when valuations, and hence rates, were rising steeply. In the Hauraki inquiry, the Tribunal found that in addition to forced sales, ‘much Maori land was sold for rates anyway, because there was no development option for the owners to cover the rates otherwise.’³⁷² In our view, the same can be said

371. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 653

372. Waitangi Tribunal, *Hauraki Report*, vol 3, p 1018

5.10.6

of the Tauranga area. Yet the long-term benefits of such sales are questionable insofar as they affect multiply owned land: as we have seen, the money, when divided between many owners, often amounts to very little in terms of individual payouts.

Given the limited amount of land left to Tauranga Māori after the raupatu, the Crown had a duty to ensure that the tangata whenua were in a position to hold on to as much of it as possible. We accept that general land on the urban fringes may also have been affected by rising rates, but note that non-Māori landowners are not subject to the same cultural imperatives to protect remaining tribal lands and resources, maintain ahi kā, and meet the obligations of kaitiakitanga. That is not to deny that non-Māori might develop a deep attachment for land that they own. Nor do we deny that there are Pākehā in New Zealand who have inherited land that has been held in their family for generations. However, loss of tribal land has additional significance for Māori, not least because of the different world view about land which we outlined near the beginning of this chapter. Such loss has a lasting impact on whānau, hapū, and iwi. The evidence points to the Crown being aware of rating as a pressure towards sale, especially in urban areas. In failing to mitigate such pressures, the Crown was in breach of its duty of active protection.

The situation following the Rating Powers Act 1988 will be discussed in next chapter, and we include some recommendations on rates-related issues in our concluding chapter.

5.10.6 How has rating affected Māori aspirations for using their land and to what extent is the Crown responsible for any negative impacts?

(1) Discussion of the facts

In writing about rating, O’Keefe has said that:

taxation should be planned on the one hand to encourage the best use of resources to attain the economic objectives of the country, and, on the other hand, so as not seriously to interfere with individual choice in patterns of production . . .³⁷³

In the context of Tauranga Māori, claimant submissions make it clear that their ‘individual choice’ would take account not only of ‘patterns of production’ but also of patterns of land use more generally. Further, they would regard ‘individual’ as encompassing tribal as well as personal.

We have seen in this chapter, however, how the Crown initially introduced rating as a means to meet its own infrastructure needs and those of settlers, rather than in response to what Māori may have wanted. Later governments then pursued a policy of using the threat of rates receivership and land alienation to force land development, again along lines that

373. O’Keefe, *The Law of Rating*, p77

fitted Government objectives rather than those of Māori. In our view, Māori agency was particularly compromised from 1950 to the late 1980s when rates debt, and the fear of future rates debt, influenced many decisions about land retention and also circumscribed development options. At the same time, Crown policy and legislation meant that the Māori Trustee was drawn increasingly into the administration of Māori land, again impacting on Māori agency. We have seen from the case studies, for instance, how Māori whose land lay on the expanding fringes of urban areas, vulnerable to sudden increases in valuation, were encouraged to put their land into subdivision schemes, for alienation. In rural areas, meanwhile, valuations based on high-return activity such as kiwifruit production could result in hugely increased rates, which again made other usage difficult and led to a higher chance of alienation. In short, the rating regime, by putting a premium on economic return, has negatively affected the ability of some Tauranga Māori even to hold on to their land.

Where Māori did manage to retain their land, the Crown's rating regime has sometimes made it difficult for Tauranga Māori to use it as they wished. Their wish to protect wāhi tapu provides one example. Urupā have been specifically exempted from rates since 1924 but, as we mentioned near the beginning of this chapter, the term 'wāhi tapu' comprises more than just urupā. There are many other wāhi tapu areas in the Tauranga inquiry district where Māori 'best usage' may have been to keep the land undeveloped. However such land would, under the valuation legislation operating in the period under consideration, be rated on its economic potential – an approach that impacted negatively on Māori aspirations to carry out their role of kaitiaki of these sites. Similarly, Māori aspirations to hold on to the last remnants of hapū land might see owners paying higher rates than they could really afford, rather than 'downsizing' and moving elsewhere. Here, too, the Crown's valuation and rating legislation negatively impacted on Māori, this time in relation to imperatives to maintain ahi kā. Where they did seek to develop their land for economic gain, the existence of rates debt exacerbated the problem of trying to raise finance on land in multiple ownership. More difficult to prove (but, by the same token, difficult to disprove) is that rates debt also constituted a psychological burden which adversely affected the morale of tangata whenua throughout the Tauranga district, limiting their chances of success. We would certainly view as serious any such outcome, given already existing burdens on Tauranga Māori such as land loss and dislocation following the raupatu.

In terms of leases to meet rating debts, we note that for much of the first half of the twentieth century, the Waiariki Māori Land Board could lease out the land, but such leases were to be to Māori, and preferably to one of the owners. In later years, receivership leases to non-owners, and indeed non-Māori, were much more common. Again, the Māori Trustee was given wide powers to act as agent for the owners and the evidence points to a considerable workload for the trustee's office. It was often difficult to find lessees, for instance, and we acknowledge that both the Māori Trustee and the county put in a deal of effort to set up

5.10.6(2)

such leases. We also note that activity by Government departments such as the Ministry of Works sometimes cut across the Māori Trustee's endeavours to administer Māori land to best advantage.

Both claimant and Crown counsel accept the research that at least 64 Māori land blocks within the Tauranga Moana inquiry district were alienated by lease to enforce rates payment in the years to 1969. Claimant counsel have pointed out that the usual 21-year terms for receivership leases would seem to be excessively long given the relatively small amounts that were often outstanding. Looking at La Rooij's figures for rural blocks, we would agree that there are indeed hardly any cases where the debt was greater than the equivalent of three years' rent.³⁷⁴ On this point, however, we note that we have not received much evidence whether the owners were *at the time* satisfied or not with the land being leased out for long periods. It is possible that, for some, the relief of having the debt paid off, the ongoing rates covered, and also the prospect of some income – all without losing ultimate ownership – may have outweighed the negative effects of losing direct control of the land. On the other hand, the loss of direct control that resulted from leasing may have been, for some Māori landowners, an aspect for which it would be hard to compensate.

Another problem with receivership leases was that lessees of the land, particularly if they were not owners, could let the state of the land run down when their leases were coming to an end. While it is true that in some such situations, owners may have had the option of litigation, they would need to weigh the cost and uncertainty of outcome against the possible value of an eventual win. This was a further negative impact of the rating regime.

(2) Treaty analysis and findings

Māori aspirations for using their land have not often been well accommodated by the Crown's rating regime. During the period examined in this chapter, that regime was always predicated on best economic usage. Land absorbed into urban areas was particularly badly affected in this respect, because it was valued on the basis of high-yield industrial or residential usage. Māori, on the other hand, often had other priorities such as providing housing for hapū members, preserving wāhi tapu, or maintaining ahi kā. Even where Māori aspirations were for 'development' in a Pākehā sense, rates debt and the land title system, between them, often made it difficult to raise finance – an issue we have already discussed in chapter 3.

The Tūranga Tribunal found that receivership leases were 'understandable' (while also noting that the issue of rates takings was 'not a big one' in the Gisborne area). We agree with that Tribunal's general position, but in light of the experience of Māori in Tauranga where rates takings *have* been a big issue, we would add two riders. First, the Treaty guaranteed to

374. Document P14, table 8, pp 88–89

Māori the ‘undisturbed possession’ of their lands and resources ‘so long as it is their wish and desire to retain the same in their possession.’ As we noted above, it was possible for Māori to derive benefit from having their land leased out, and where owners agreed with the leases we see no problem. Where there may have been Treaty breach is if Māori were opposed to their land being leased out. Such a situation cannot be regarded as ‘undisturbed possession’, and leads us to our second rider.

In light of the limited amount of land remaining to Tauranga Māori after the raupatu, we believe that the Crown had a heightened fiduciary duty to assist tangata whenua retain direct control over it where they wished to. Indeed, the protections put in place by the Crown early in the twentieth century are tacit acknowledgement of this. Even in the second half of the century, we believe that it was not impossible for the Crown to help Māori retain direct control of their land. The Tauranga County Council Empowering Act 1952, for instance, enabled rating concessions to protect currently productive farm land from the effects of rising valuations. Much of that productive land was in the ownership of Pākehā. Land left in Māori hands was often more difficult to develop, for a whole range of reasons – and we have noted how difficult it could be to find lessees willing to take it on – but such land was also affected by rising valuations. Without affirmative action for Tauranga Māori sufficient to redress the developmental and other disadvantages they faced, enacting legislation which permitted alienation of their land for rates arrears (whether by lease or by sale) contravened the Crown’s fiduciary obligation to actively protect Māori in the use of their lands and waters to the fullest extent practicable.

With regard to the role of the Māori Trustee in administering receivership leases, there do seem to have been a few instances where individual owners felt they had not been given all the assistance or information they might have wished. However, we agree with Crown counsel that we do not have sufficient evidence to make a finding about any systematic failure or inability on the part of the Māori Trustee to fulfil his fiduciary obligations. Rather, we note again the lack of cohesion between different government agencies, and other bodies, which added to the difficulties of the Māori Trustee’s task.

This last point highlights that rating was but one factor which affected Māori aspirations for using their land. Apart from the ongoing focus on ‘best economic usage’, governments also developed planning policies which promoted urbanisation. They developed social policies about ‘pepper-potting’. They encouraged infrastructure development. They promoted individualisation of title and advancement of the individual. In combination, such policies and attitudes drove an increasingly large wedge between many Tauranga Māori and their tribal lands and resources. While we do not believe that this was necessarily the Crown’s deliberate intention, we are nonetheless of the view that it was the Crown’s aspirations for Māori and Māori land which all too often drove policy and legislation, rather than the aspirations of Māori themselves.

This brings us back to O’Keefe and his observations about a rating regime needing to balance the interests of state and people. O’Keefe was of course speaking of people in general and he made no distinction between Māori and non-Māori. However, the Crown’s Treaty duty of active protection requires that it should particularly monitor the impact of its policies on Māori. As the Tribunal’s *Te Whanau o Waipareira Report* found, ‘if no consideration is given to a Maori community’s values and aspirations in assessing the performance of Crown agencies, it cannot be said that the Crown and Maori are working together.’³⁷⁵ We agree. Further, in our view the Crown must itself set the standard by giving consideration to Māori values and aspirations when formulating the policy and legislative framework within which Crown agencies (and indeed local bodies and the Māori Trustee) operate. Insofar as the Crown’s rating regime in the period to 1987 undermined Māori aspirations for using their land, we find the Crown to be in breach of the Treaty.

5.10.7 How have urbanisation, town and country planning, and zoning affected Tauranga Māori and to what extent is the Crown responsible for any negative impacts?

(1) Discussion of the facts

The unprecedented urban growth and development that occurred in the Tauranga district in the period after the Second World War coincided with the time when the provisions of town and country planning legislation became mandatory under the Town and Country Planning Act 1953. Those provisions, as we have seen, specifically mentioned the need for district schemes to ‘promote and safeguard the health, safety, and convenience, and the economic and general welfare of [the district’s] inhabitants, and the amenities of every part of the area.’³⁷⁶ Despite this holistic view of planning, the resultant schemes seem to have focused above all on infrastructure and economic development. Public works takings for urban infrastructure, the planned development focus on lands in the eastern part of the inquiry district, the large rates rises that accompanied the rezoning of land as residential or industrial, and the unforeseen repercussions of some urban planning and development costs, notably subdivision, all had a cumulative impact on owners of Māori land. The case studies of Whareroa (in the previous chapter) and Maungatapu – and even, to an extent, Matapihi – are vivid illustrations of this.

In our view, the situation has been further exacerbated for Māori by the lack of a coordinated approach between Government departments. We already saw in the previous chapter how the plans of Māori landowners in Whareroa – plans backed by the Māori Land Court, the Māori Land Board, and the Department of Māori Affairs – were then stymied by the Department of Forestry and the Ministry of Works. Similarly, in the present chapter, we have seen how plans by Māori Affairs to improve the standard of Māori housing in

375. Waitangi Tribunal, *Te Whanau o Waipareira Report* (Wellington, GP Publications, 1998), p 231

376. Document s4, p 9; Town and Country Planning Act 1953, s18

Maungatapu were hampered by the Ministry of Works' inability to specify what land would be needed for the motorway. In passing, we also acknowledge Māori Affairs support for Matakana Māori, in the face of a receivership application lodged by the county council. In short, the Māori Affairs Department's efforts to secure a better outcome for Māori seem to have been of little avail in the face of central and local government policies to prioritise economic growth, infrastructure development, and urbanisation.

The argument put forward by Crown counsel is that town planning objectives reflected the views of the community at the time they were formulated. However, Graham Bush highlights the non-representative nature of local councils and planning bodies at least up to the 1970s, and implies doubt as to how far their thinking would in fact have reflected broader community views: 'As late as the 1970s our local rulers were anything but representative of the community from which they were drawn – the archetypal councillor was a middle-aged middle-class male.'³⁷⁷

As we have seen, the 'archetypal councillor' was also Pākehā. The situation does not appear to have changed much by 1980. Speaking about rural areas at a conference that year, Evelyn Stokes described how 'many [Māori] feel that county councils which are dominated by Pākehā farmers have little sympathy with Māori aspirations.'³⁷⁸ Further, although the Public Bodies Meeting Act 1962 conferred a legal entitlement on citizens to attend meetings of public bodies, it seems that local authorities did not widely encourage their constituents to exercise that entitlement.³⁷⁹ Most local councils did not canvass the cultural and developmental needs of Māori landowners in the areas that had suddenly become vulnerable to planning objectives – although we note the work of Sol Kanapu, for the Tauranga County Council, as perhaps something of an exception to this. Nor did the law require Māori needs and aspirations to be protected. Such needs encompass not only development aspirations but the cultural responsibility of Māori to hold onto tribal lands for future generations – an imperative that distinguishes Māori from, for example, Pākehā farmers at the edge of town who may also be facing zoning changes, increased rates, and a need to sell their farm. In referring to Māori aspirations for their land, Sir Edward Durie once commented that he was not aware of 'any other group of people that have so many interests in land, the use of which is denied to them by town planning.'³⁸⁰ And in 1998, the Commissioner for the Environment was still pointing to a general lack of understanding of Māori views, saying: 'Improving tangata whenua participation at decision-making levels would assist in foster-

377. Bush, *Local Government*, p 42

378. Evelyn Stokes, 'The Effects of Land Use Policies on Rural Communities: Some Maori Perspectives', in *Towards A Land Use Policy For Rural New Zealand: Report on the Rural Depopulation and Resettlement Seminar*, edited by Garth Cant and Anne O'Neill (Wellington: Department of Lands and Survey, 1980), p 23

379. Bush, *Local Government*, p 81

380. E T Durie, 1974 (doc A15, p 27)

5.10.7(1)

ing greater awareness of Māori values and perspectives . . . and more constructive attitudes generally, amongst other council members and the wider public.³⁸¹

The Crown has argued that planning laws could be used to protect Māori needs, even though Māori were not specifically mentioned, but we regard that as an insufficient level of protection. Further, the Crown's position is difficult to defend because the Crown and local government were well aware of the systemic disadvantage Māori landowners faced when attempting to develop their land and to deal with rising rates. Mohi Tawhai had warned Parliament as early as 1882 that by the time Māori had paid all the various charges on their land, the worth of that land would be eaten up and the owners would lose it. And Māori concern about the effects of the 1953 planning legislation had been feeding through to the Government for some years before any move was made to introduce the revised Town and Country Planning Act in 1977. Even in 1980, Evelyn Stokes was still warning that: 'Many Maori people are deterred by the apparently complex procedures of the Town and Country Planning Act which are operated by Pakeha bureaucrats.'³⁸² In that context, we have noted the impenetrable language in which potentially relevant clauses in planning documents were couched.

Residential and industrial zoning generally resulted in the partition or subdivision of Māori land. This cut across the ability of Māori to retain and manage their land for their own community purposes and effectively became another way of alienating much of it. Here, we again recall the case of Maungatapu, which we have examined in some depth. However, we also note the example of certain Hairini blocks where rating charges were described as nibbling mice that had now 'grown into tigers'. The owners tried to obtain a rural zoning but were unsuccessful. The result was a decision to subdivide the land concerned, with most of it being sold.³⁸³ We do acknowledge, however, the commendable initiative taken by the Tauranga County Council to meet some Māori needs with the development of marae community zones in 1973. We also acknowledge that urbanisation and the creation of subdivisions brought many Māori easier access to jobs.

The case of Matapihi, which saw Māori landowners proactively take steps to avoid the adverse repercussions of rezoning and rates rises, would at first seem to validate the Crown's argument that it was possible for Māori as local body constituents to exert effective input into decisions surrounding local government boundaries and rezoning. However, we note that protecting Matapihi came only at the cost of great effort, and the hapū involved still lost other tribal land at Whareroa and Maungatapu.

In short, the impact of urbanisation and rates rises experienced by the owners of Māori land in the Tauranga district after the Second World War was inextricably linked to town

381. Parliamentary Commissioner for the Environment, *Kaitiakitanga and Local Government*, pp 77–78

382. Stokes, 'The Effects of Land Use Policies on Rural New Zealand', in *Towards A Land Use Policy For Rural New Zealand*, edited by Cant and O'Neill, p 23

383. Document G1, pp 149–150

and country planning. Planning objectives in the Tauranga district involved directing urban residential and industrial development onto eastern areas that contained much of the remaining Māori-owned land. Once rezoned, this land was valued and rated on its residential, commercial or industrial potential, despite the fact that much of it was multiply owned and undeveloped. Rates arrears quickly accrued and to clear this debt and/or to prevent future debt, many blocks were placed in the hands of the Māori Trustee for subdivision and sale under section 438 of the Māori Affairs Act 1953. Moreover, any potential advantage to be derived from subdivision or other forms of land development was frequently reduced, and sometimes even neutralised, by planning decisions and requirements that had been formulated without any reference to Māori cultural or developmental needs. Additionally, costs associated with subdivision sometimes ate into any profits received. Even where overall revenue was high, fractionation of shares meant that individual payouts were rarely sufficient for owners to retain a toehold on their now subdivided tribal land.

(2) Treaty analysis and findings

The Treaty guaranteed that Māori should retain tino rangatiratanga over their land and resources, and that they should be able to keep those taonga for as long as they wished. Inherent in the concept of tino rangatiratanga is a notion of being able to decide how to use (or not use) the land and resources held. In a previous chapter, we have discussed the Treaty right of development. As set out by the central North Island Tribunal, that right includes ‘the right of Māori to retain a sufficient land and resource base to develop in the post-1840 economy, and of their communities to decide how and when that base is to be developed.’³⁸⁴ However, under the Town and Country Planning Act 1953 there were no specific protections around Māori land or Māori interests, nor any consultation or representation requirements apart from those generally available to the wider public. Local authorities were not required to take into account the traditional and cultural uses of Māori land when rezoning or when planning urban infrastructure. As a result, entire planning documents such as the Tauranga County district scheme for 1969 could be drawn up without making a single mention of Māori or their needs. While we accept that Māori needs and wishes could to some extent be accommodated under general provisions, we can nevertheless see how easy it would be for Māori to feel themselves invisible. Certainly the situation did not reflect the status of Māori as a Treaty partner. Further, we do not consider that the legislation ensured sufficient protection of Māori land and resources – a matter of critical concern in the Tauranga area given the limited amount left to tangata whenua. As the Manukau Tribunal observed, there is a duty on the Crown not to confer authority on an independent body without ensuring that the body’s jurisdiction is consistent with the Crown’s Treaty promises.³⁸⁵ We therefore

384. Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 890

385. Waitangi Tribunal, *Report on the Manukau Claim*, p 73

5.10.8

find that, in the period to 1977, the Crown was in breach of the Treaty in respect of its town and country planning legislation.

The 1977 Town and Country Planning Act brought greatly needed improvements to the regime, although many of its measures still did not go far enough for Māori. Of significance in the context of the present chapter is that it at least provided for the recognition, in planning documents, of land uses that could better accommodate a wide range of Māori aspirations. By providing for the possibility of a Māori presence on advisory planning committees, it also took a first small step towards facilitating formal Māori representation at local government level.

As a final comment, we would observe that in terms of the nation's growth and development, urbanisation in the Tauranga area was perhaps inevitable once the decision had been made at central government level to locate a major port there. However, town and country planning decisions which caused that urbanisation to be focused on the eastern end of the harbour, in precisely those areas where much of the remaining Māori land lay – namely Whareroa, Maungatapu, Hairini, and Welcome Bay – were highly prejudicial to Tauranga Māori in terms of their ability to retain an adequate land and resource base.

We will address more recent planning and urbanisation issues in the next chapter.

5.10.8 Have Tauranga Māori received equitable treatment in terms of services provided and, if not, to what extent can the Crown be held responsible?

(1) Discussion of the facts

La Rooij has suggested a 'dismal symmetry' whereby councils were reluctant to provide services because Māori did not (or could not) pay their rates, and Māori were reluctant to pay their rates because they saw no hope of receiving any services.

The evidence presented in this inquiry seems to suggest that predominantly Māori areas of the Tauranga region have not been particularly well provided with services. Witnesses from Hūria (Judea) and Matapihi, for example, point to their houses being without running water in the 1930s. Witnesses from Matakana gave evidence of poor service provision on the island over a prolonged period of time, and a number of other witnesses commented about a lack of facilities such as footpaths in areas around the western side of the city. Other evidence of poor provision of service will be discussed in the next chapter.

Nevertheless, the evidence is not sufficiently conclusive to prove that the areas in question were poorly served simply because they were predominantly Māori. From the information we have, it would seem that most of the areas concerned were rural at the time the problems were occurring. Hūria, for example, did not become part of the Tauranga urban area until 1945. A number of other places on the western fringes were not absorbed within the city boundary until much later than that. Matapihi and Matakana are still rural. No evidence was given to us about the general level of provision in rural areas, and it is possible,

therefore, that the lack of services might simply be a function of what was practically possible in rural areas rather than whether the areas were Māori or non-Māori. A possible exception is where the predominantly Māori sections of roads received different treatment from those that were predominantly non-Māori, although even there we do not know whether the sections all had the same zoning. In short, we have received no systematic comparison of service provision to different sectors of the population, and nor have we received any comparison of service levels in rural and urban areas. We therefore cannot come to any definitive conclusions about whether or not there was equity of service to Māori.

On the payment side, we note that, in the early years, rates collected on Māori land in Tauranga Moana were negligible. In that context, O’Keefe’s comment about taxation needing to be based on like treatment of people in like circumstances, and on their ability to pay, is again pertinent. We have already expressed our view on whether it was reasonable, in the circumstances of the time, to have introduced full rating of Māori land by the early twentieth century. By the 1950s, rates collection on Māori land in Tauranga county had improved and was no worse than for most other comparable counties, and indeed better than many. And by 1986, Tauranga Māori appear to have reached a position where they were responsible for a rather *lower* percentage of the rates debt than would be commensurate with their demographic percentage of the population as a whole. This suggests to us that despite the difficulties they faced, Tauranga Māori have done their best to uphold their side of the equation.

(2) Treaty analysis and findings

In light of the above discussion, we can make no formal finding as to whether, in the period up to 1987, there was Treaty breach in regard to service provision to Tauranga Māori. However, we would observe that the principle of equity alone – irrespective of any other arguments – would demand that Māori certainly receive no lesser provision of services than fellow citizens residing in like areas.

5.11 CHAPTER SUMMARY

In this chapter, we have looked at a range of questions relating to rating, urbanisation, and town and country planning in the period to 1987. We have come to the conclusion that, during that time, the Crown’s legislative regime to regulate these matters did *not* require local bodies to take sufficient account of the unique nature of Māori land and the Māori relationship with it. Nor did it require those bodies to act in accordance with the principles of the Treaty of Waitangi.

Further, we have drawn attention to the cumulative impact of the Crown’s legislation and policy on these matters. Increased valuations, rates pressures, zoning restrictions, and the

impact of public works, all interacted and affected Māori ability to hold on to their remaining land and use it as they wished. Also evident is a lack of coordination between the various departments, bodies, and agencies involved. Had the Crown ensured that its Government departments, the Māori Trustee, local bodies, and other government agencies took a more integrated and cohesive approach when dealing with the issues relating to Māori land, the end result may have been less prejudicial to Māori and less Māori land may have been lost. Local relations between Māori, local bodies, and the wider community were also adversely affected. Māori were stigmatised as non-ratepayers and ‘a problem’. Local bodies were perceived by Māori as Pākehā-dominated and, for the most part, not to be trusted.

That said, towards the end of the period, there are signs of some improvements and we shall examine subsequent developments in the next chapter.

5.12 MAIN CONCLUSIONS AND FINDINGS IN THIS CHAPTER

From the present chapter, we would draw attention to the following conclusions and findings:

- ▶ In the early years, the Crown exercised a measure of active protection in adopting a gradual approach to the rating of Māori land, but it was insufficient given the degree of Māori disadvantage.
- ▶ The Crown has breached the Treaty in not providing for equitable levels of Māori representation at central and local government levels, thus undermining Māori ability to defend their rights and interests (in this instance, in respect to the rating and zoning of their land).
- ▶ On the Crown’s own admission, valuation legislation (which in turn impacted on rating) did not, prior to 1997, take due account of the particular nature of Māori land and the tenure system under which it is held.
- ▶ Any forced taking of Tauranga Māori land for rates debt was unjustifiable, particularly in light of the limited amount of land left to Tauranga iwi and hapū after the raupatu.
- ▶ In failing to mitigate rating pressures that resulted in, or contributed to, non-compulsory sales, the Crown was in breach of its duty of active protection.
- ▶ Māori aspirations for using their land have often not been well accommodated by the Crown’s rating regime, which aimed to foster best economic usage as its primary concern.
- ▶ In the period to 1977, the Crown was in breach of the Treaty in respect of its town and country planning legislation, which offered no specific protections around Māori land or Māori interests.

- ▶ Despite, rather than because of, the Crown's rating and planning regimes, there are instances where the Tauranga County Council took some commendably proactive steps to address Māori concerns. We note, in particular, the appointment of a Māori rates officer in the late 1950s, and planning provision, from 1976 onwards, for marae community zones.
- ▶ We make no formal finding as to whether there was Treaty breach in respect of service provision to Tauranga Māori, but we note that the principle of equity would demand that Māori receive no lesser provision of amenities than fellow citizens residing in like areas.

CHAPTER 6

**LOCAL GOVERNMENT, 1988–2006:
RATING, VALUATION, AND MĀORI REPRESENTATION**

As a general proposition and in the context of Tauranga, there is no reason why rating cannot become a basis for a positive relationship with the iwi, hapū and whanau of Tauranga Moana. It could also be used as a catalyst for facilitating the sound use, development and retention of iwi, hapū and whanau lands and resources without compromising the rangatiratanga of the iwi, or hapū or whanau concerned.

Rahera Ohia, Ngāti Pūkenga¹

The year 1988 is a convenient breakpoint in the story of local government, and its impact on iwi and hapū through planning, rating, and zoning. This chapter continues the themes introduced in the previous chapter. However it discusses them against a very different legislative backdrop because, in the 1980s, the Crown significantly reshaped legislation in ways that were intended to address Treaty of Waitangi relationships.

6.1 THE ISSUES TO BE ADDRESSED

Many of the claims before us that concern the post-1988 operation of local government focus on a specific area of activity – such as zoning, housing development, resource management and, especially, rating. However, as the previous chapter has shown, the levying of rates cannot be seen in isolation; it is vitally connected to many other land-related issues of concern to Māori. As one of the main components of local government funding, rating plays a crucial part in planning, particularly for urban growth. It is closely linked to

1. Rahera Ohia, brief of evidence, 27 May 2006 (doc Q20), p7

strategic community planning which, since 1988, has been by means of the district plan and the long-term council community plan. District plans outline different zones within the areas they administer, and specify land uses and development restrictions. Because zones have a determining effect on the rates levied, any changes in zone (particularly from rural to urban or industrial) impact significantly on Māori land and its owners. That is the case now and will continue to be so, as Tauranga City continues to expand. The operation of local government in all its facets is thus integrally linked with Māori land development issues, now and for the future.

In this chapter, we therefore look at a wide range of contemporary planning, local government, and rating issues. Because rapid urbanisation and ongoing commercial, industrial, and residential development continue throughout the Tauranga Moana district, a number of the questions posed in the previous chapter remain relevant here. Some new issues have also surfaced post-1988. There has, for instance, been increasing delegation of central government functions to local authorities through legislation such as the Resource Management Act 1991. This has particular implications for Māori, whose primary Treaty relationship is with the Crown. Our first question, therefore, is:

Has the Crown, in delegating functions to local government, ensured that its Treaty responsibilities to Māori are being maintained?

In answering that question, we shall look particularly at how the principles of partnership and active protection translate into activities like consultation and capacity-building.

We then return to the question of representation, already raised in the previous chapter. Here, we examine it in the context of more recent legislative changes, and ask:

Can the Crown meet its Treaty obligations to Māori, and the specific requirements of the Resource Management Act 1991 and its amending Acts, if Māori are not, as of right, represented on district and regional councils?

We also look again at valuation, this time in light of the changes introduced as a result of the *Mangatū* decision and the Rating Valuations Act 1998. Our question in this chapter is quite specific:

Is the mandate of the Valuer-General, as set out in the Rating Valuations Act 1998, consistent with the Crown's obligations under the Treaty of Waitangi and the insights incorporated into Te Ture Whenua Māori Act 1993?

Lastly, we look at the overall impacts of urbanisation, district planning, zoning and rating in more recent times, and consider:

How have urbanisation, district planning, zoning, and rating affected Tauranga Māori since 1988, and to what extent can the Crown be held responsible for any negative impacts?



Figure 6.1: Tauranga Harbour Bridge under construction, 1987

Photographer unknown. Reproduced courtesy of Tauranga City Libraries and *Bay of Plenty Times* (01–487).

6.2 SETTING THE CONTEXT

The reshaping of the legislative landscape between 1988 and 2006 coincided with a period of dramatic change in Tauranga Moana's built environment, especially on the lowlands around the two main centres of urbanisation. Local and regional government in the region was reconfigured, and the new councils introduced new policies and initiatives to address the ongoing urban growth and infrastructure development. These changes had substantial impacts on Tauranga Moana Māori, and particularly the marae communities adjacent to the expanding urban area.

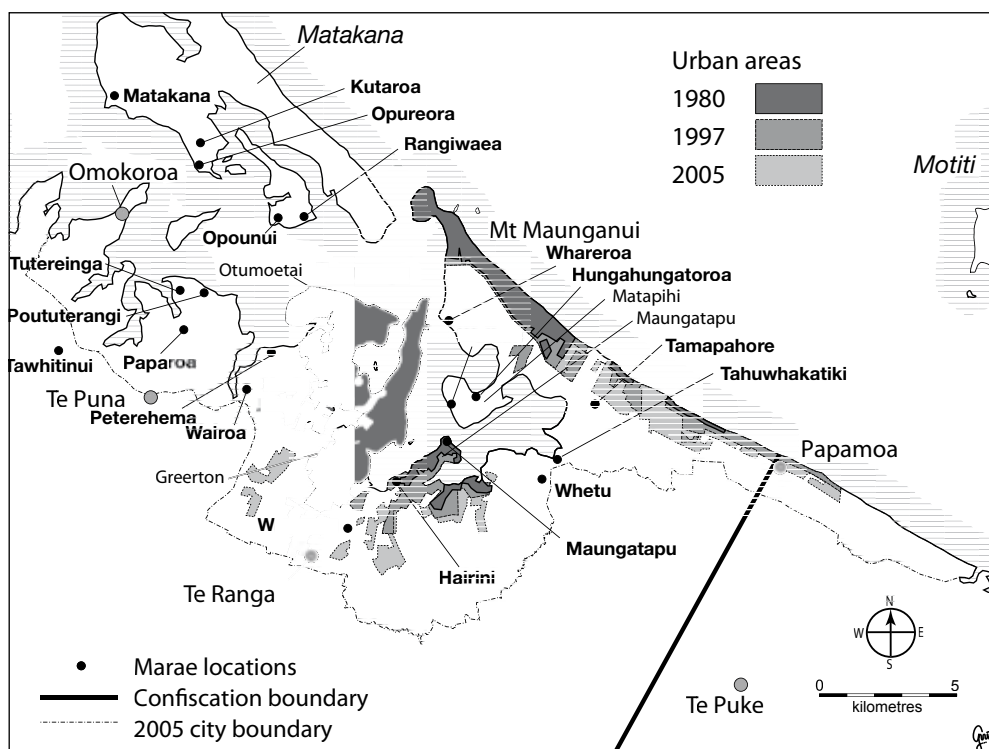
6.2.1 Urban and infrastructure expansion continues, 1988–2006

As the central North Island hinterland and Tauranga Moana lowlands grew in productivity, Tauranga City became one of New Zealand's fastest growing urban areas. The population increased from just under 60,000 in 1986 to 103,632 in 2006.² The port of Tauranga and the airport were upgraded and expanded. Urban transport corridors were created westwards towards Hamilton and the Waikato, southwards towards Rotorua and the central

2. In November 2008, Tauranga became New Zealand's fifth largest urban area, ahead of Dunedin and Rotorua, but some distance behind Hamilton. John Cousins, 'Scram Dunedin – Tauranga's the Big Smoke Now', *Bay of Plenty Times*, 15 November 2008, using information provided by Statistics New Zealand.

TAURANGA MOANA, 1886–2006

6.2.2



Map 6.1: Tauranga Moana marae and urban expansion, 1980–2005

North Island, eastwards towards Whakatāne and Kawerau, and northwards towards the Coromandel and Auckland. The Tauranga Harbour Bridge, linking the central city with Whareroa and the airport, was opened in March 1988. These developments, and the associated demand for commercial, industrial, and residential lands, had major impacts on Māori-owned lands and the marae communities shown in map 6.1.

6.2.2 The legislative landscape, 1988–2006

Legislation covering local government, resource management, rating, land valuation, and the manner in which each of these related to Māori, was modified significantly between 1988 and 2006. Four sets of legislation were especially important: the Resource Management Act 1991 and its amendments; Te Ture Whenua Māori Act 1993; the Rating Valuation Act 1998; and four local government Acts passed in 2001 and 2002. Each of these Acts had a different gestation period, and each responds very differently to Treaty of Waitangi requirements.

(1) Resource Management Act 1991

The Resource Management Act 1991 has had a profound impact on the operation of local government and the manner in which territorial authorities interact with iwi and hapū. Under the Act, local authorities are required to recognise and provide for the relationship

of Māori with their ancestral lands, waters, sites, wāhi tapu, and other taonga; to have particular regard for kaitiakitanga; to take into account the principles of the Treaty of Waitangi; and to have regard to any iwi planning documents.³

(2) Te Ture Whenua Māori Act 1993

Te Ture Whenua Māori Act 1993 came after 10 years of sustained consultation between the Crown and Māori. Its reforms had been triggered by the Māori land march from Te Hāpua to Parliament in 1975, and were supported by a report entitled *Kaupapa* released by the New Zealand Māori Council in 1983.⁴ The Māori Affairs Committee of Parliament took time to ensure that the legislation met the needs of all affected, and the Bill was passed with the strong support of all political parties.⁵ Central to the Act were the reaffirmations that:

Māori land was more than a commodity to be sold, traded or exchanged. Māori land was central to the Māori way of life and therefore needed to be retained in Māori ownership for the benefit of future generations. . . .

Land is a taonga tuku iho of special significance to Māori people . . .⁶

Te Ture Whenua Māori was designed to promote the retention of Māori land in the hands of its owners, their whānau, and their hapū. It also aimed to facilitate the occupation, development, and utilisation of Māori land for the benefit of Māori. For the first time, this was legislation providing a strong conceptualisation of land from a Māori perspective, and containing a clear statement of intent by the Crown. The Act has been applied by the Māori Land Court, and has been recognised to a limited extent in the local government legislation. It is, however, largely detached from the land valuation legislation, to which we now turn.

(3) Rating Valuations Act 1998

The intention of the Rating Valuations Act 1998 was to devolve the task of valuing land for rating purposes away from a central Government department. Instead, valuing land would become the responsibility of local authorities and the professional valuation services they contracted.⁷ The role and responsibility of the Valuer-General would be to exercise quality

3. Resource Management Act 1991, ss 6(e), 7(a), 8, 61(2)(a)(ii). The workings of the Act will be discussed in more detail in chapter 8 on the environment.

4. See Ngā Kaiwhakamārama i Ngā Ture, *Toitū Te Whenua: A Guide To Te Ture Whenua Māori Act 1993* (Wellington: Ngā Kaiwhakamārama i Ngā Ture, 1996), p 6

5. The Bill was introduced by Doug Kidd and received strong support from Koro Wetere, Paul East, Ian Peters, Dr Bruce Gregory, Michael Laws, Joy McLauchlan, and Christopher Laidlaw: 3, 4, 9 March 1993, NZPD, 1993, vol 533, pp 13,656–13,667, 13,740–13,743, 13,759–13,764.

6. Ngā Kaiwhakamārama i Ngā Ture, *Toitū Te Whenua*, pp 6–7

7. The localisation of valuation in 1998 was a return to a much earlier status quo. Prior to the 1896 Valuation of Land Act which nationalised the process, each local authority was responsible for its own valuation.

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control and provide templates to ensure that the valuation systems used were ‘nationally consistent, impartial, independent and equitable.’⁸

Since April 1986, it has been Crown policy to recognise the implications of the Treaty of Waitangi in all proposed legislation.⁹ However, the Rating Valuations Act slipped through the net. There is no interface between Te Ture Whenua Māori and the Rating Valuations Act, in which land is defined in very different language as ‘all land, tenements, and hereditaments, whether corporeal or incorporeal, in New Zealand, and all chattel or other interests in the land, and all trees growing or standing on the land’.¹⁰

There is no Treaty clause in the valuation legislation. The Valuer-General is not required to take into account Māori cultural values with respect to land, and there is no requirement that the valuation system be Treaty-compliant. The Valuer-General plays a strategic role on behalf of the Crown, but is left unsupported by legislative mandate or by specialist staff with expertise in tikanga Māori.

(4) Local government legislation

Local government reform was instituted at the same time as resource management law reform, but followed a very different trajectory. Government, as part of its structural reforms of the 1980s, was intent on reducing the number of local authorities and changing the culture of governance and management.¹¹ There was intense and sustained interaction between the Minister for Local Government, the Local Government Commission, and local authorities, but minimal engagement with Māori. Although Māori made substantial submissions, the Local Government Amendment Bill was introduced to Parliament before the closing date for public submissions. It met widespread opposition, not just from Māori.

Despite this, legislation needed to support the work of the Local Government Commission was passed in 1988, in advance of the 1989 local authority elections. The commission completed its work on schedule, and reduced the number of local government bodies from 625 to 94.¹² Other matters to do with local government, including electoral law and Māori involvement, were brought together in a Local Government Amendment (No 8) Bill. Although brought to Parliament, the Bill lapsed in 1990 when the Labour Government was voted out of office.¹³

8. Rating Valuations Act 1998, s 4(1)(b)

9. R McClean and T Smith, *The Crown and Flora and Fauna: Legislation, Policies and Practices, 1983–1998* (Wellington: Waitangi Tribunal Publications, 2001), pp 22. G Palmer, *New Zealand's Constitution in Crisis: Reforming the Political System* (Dunedin: John McIndoe, 1992), p 82

10. Rating Valuations Act, s 2(1)

11. G Bush, ‘The Historic Reorganisation of Local Government’, in *The Fourth Labour Government: Politics and Policy in New Zealand*, edited by M Holland and J Boston (Auckland: Oxford University Press, 1990), pp 232–250

12. *Ibid*, p 243

13. J Hayward, *The Treaty Challenge: Local Government and Māori* (Wellington: Crown Forestry Rental Trust, 2002), p 9

There was a degree of confusion over Māori involvement in local government during the 1990s: the Resource Management Act gave strong prompts to councils but the local government legislation gave no guidelines. Some councils were open to Treaty challenges and responded positively to the Act, while others saw no need to work closely with iwi and hapū.

As the 1990s progressed, local bodies and others gradually accumulated working experience of the legislation and there was a substantial body of information and analysis available by 2000 when the Government initiated a comprehensive review of local government legislation.¹⁴ Earlier mistakes were nevertheless repeated when the Government released a substantial policy document before engaging with Māori or providing opportunity for Māori and local government to find common ground. The Government, again under pressure from the three-yearly local government electoral cycle, introduced a Local Government Bill to Parliament in December 2000. The legislation was then separated into three strands with different degrees of urgency. The Local Electoral Act was passed in 2001, while the Local Government Act and the Local Government (Rating) Act became law in 2002, along with a Local Electoral Amendment Act.

Through this legislation, the Crown requires local government to help it discharge some of its Treaty obligations. Councils must provide opportunities for Māori to contribute to decision-making, and are asked to foster Māori capacity to do this. Councils are also asked to operate personnel policies which recognise the aspirations and employment needs of Māori.

It was in 2001, too, that Māori representation at local government level was addressed in legislation for the first time. Submissions to the local government reviews in 1988 and 2000 by iwi and other Māori organisations had pointed to the need for Māori to be represented in greater numbers on city, district, and regional councils.¹⁵ The late Sir Robert Mahuta, writing in 1988, summed up the problem as he saw it by asking: ‘How do we overcome

14. Government agencies and academics contributed equally to the pool of information. See, for example, T Whareaitu, *The Resource Management Act; Kia Matiratira; A guide for Maori* (Wellington: Ministry for the Environment, 1992); Te Puni Kōkiri, *An Introduction to Environmental and Resource Management Planning; Mauriora Ki Te Ao* (Wellington: Te Puni Kōkiri, 1993); Local Government New Zealand, *Liaison and Consultation with Tangata Whenua: A Survey of Local Government Practice* (Wellington: Local Government New Zealand, 1997); P Nuttall and J Ritchie, *Maori Participation in the Resource Management Act* (Hamilton: Centre for Māori Studies and Research, Tainui Māori Trust Board, 1995); H Matunga, ‘Walking the Talk: Incorporation of Iwi Policy into the Process of Local Government’, *Planning Quarterly*, No 109, March 1993, pp 4–6; J Hayward, ‘Local Government and Maori: Talking Treaty?’, *Political Science*, vol 50, no 2, pp 182–194. Local Government New Zealand took an important initiative when it commissioned Sir Geoffrey Palmer and Mei Chen to complete a research report: M Chen and G Palmer, *He Waka Taurua – Local Government and the Treaty of Waitangi* (Wellington: Local Government New Zealand, 1999)

15. The Bridgeport Group, *Reform of Local and Regional Government: Synopsis of Submissions on Bill for the Establishment of Maori Advisory Committees in Local Government and Explanatory Statement* (Wellington: Department of Internal Affairs, 1990); AC Neilsen, *Review of the Local Government Act 1974: Synopsis of Submissions* (Wellington: Department of Internal Affairs, 2001)

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the preponderance of white middle aged males on local authorities (especially the rural ones)?¹⁶ It was a question that was to remain unanswered for more than a decade.

Then, in the Bay of Plenty – a region where 28 per cent of electors identified as Māori – the district council took the initiative of preparing a local and private Bill seeking approval for Māori constituencies. Parliament passed the Bay of Plenty (Māori Constituency Empowering) Act in October 2001, making provision for Māori wards as of right. At the national level, Government made provision in the Local Electoral Act of the same year for Māori wards and Māori electoral rolls at local government level.¹⁷ The generic Local Electoral Act requires councils to give public notification of any such intention and provides for a poll of all ratepayers, non-Māori and Māori alike. We return to this topic in section 7.5.

Then in 2002 the Local Government Act was introduced ‘to provide for democratic and effective local government that recognizes the diversity of New Zealand communities.’¹⁸ The Act makes it clear that it is ‘the Crown’s responsibility to take appropriate account of the principles of the Treaty of Waitangi’ and requires local authorities ‘to maintain and improve opportunities for Māori to contribute to local government decision-making processes.’¹⁹ The provisions of the Act are thus directed to the ways in which councils can help the Crown to meet its Treaty obligations.

There are specific provisions for how Māori can participate in the decision-making processes. Councils must establish and maintain processes for Māori to contribute; they must consider the ways in which they can foster the development of Māori capacity to contribute; and they must provide relevant information to enable Māori to do so.²⁰

The Act sets out the processes and general content of each council’s key planning document, the long-term council community plan, and states the consultative obligations of local authorities. The plan must describe the activities of the local authority and the intended community outcomes; allow for ‘integrated decision-making and the co-ordination of resources’; and provide ‘a long-term focus for the decisions and activities of the local authority’.²¹ Where decisions are made which will affect Māori, particularly decisions involving land or a body of water, local bodies must ‘take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, wāhi tapu,

16. R Mahuta, ‘Reform of Local and Regional Government: A Tainui Perspective’, *New Zealand Geographer*, vol 44, no 2, 1988, pp 84–85. Robert Mahuta was knighted in 1997, some time after this article was published.

17. These provisions were not included in the Local Electoral Act 2001. When the Local Electoral Amendment Act 2002 was passed they were inserted into Local Electoral Act as ss 3(c)(ia), 19Z, and 19ZA to 19ZH inclusive.

18. Local Government Act 2002, s 3

19. *Ibid*, s 4

20. *Ibid*, s 81(1)

21. *Ibid*, s 93(6)(a)–(d)

valued flora and fauna, and other taonga.²² Councils must ensure that they have in place processes for consulting with Māori.²³

The Local Government Act 2002 is, however, less specific than the Resource Management Act 1991 about consultation with iwi and hapū. There is a general requirement to ‘carry out a process to identify [desired] community outcomes’, which must be done at least once every six years, but each authority can decide how it consults, and with whom.²⁴ In addition, the requirement in the Local Government Act for councils to ‘establish and maintain processes to provide opportunities for Māori to contribute to the decision-making processes of the local authority’ is an implied link to their obligations under the Resource Management Act, which the Local Government Act complements. The Local Government Act, and the Government agencies which support it, have a focus on fostering relationships with Māori, building capacity, and promoting best practice.

The legislation also encourages transparency. Having identified desired community outcomes, each local authority is required to put out its long-term council community plan and, in function of that, a series of annual plans. Copies of both types of plan are to be made publicly available and also deposited with the Auditor-General and the Parliamentary Library.²⁵ Progress towards the desired community outcomes then has to be reported on at least every three years, although again the local authorities can choose for themselves how the monitoring and reporting is to be done.²⁶ That said, each long-term council community plan must contain a report from the local authority’s auditor on the extent to which the authority has complied with the requirements of the Act, and how well the authority’s performance measures have provided for ‘the meaningful assessment of the actual levels of service provision.’²⁷ The Act also requires each local authority to prepare an annual report, the purposes of which are:

- (a) to compare the actual activities and the actual performance of the local authority in the year with the intended activities and the intended level of performance as set out in respect of the year in the long-term council community plan and the annual plan; and
- (b) to promote the local authority’s accountability to the community for the decisions made throughout the year by the local authority.²⁸

Again, a copy of each annual report is to be sent to the Auditor-General and the Parliamentary Library.²⁹ We note these provisions in some detail because we shall later dis-

22. Ibid, s77(1)(c)

23. Ibid, s82(2)

24. Ibid, s91(1), (3)

25. Ibid, ss 93, 95

26. Ibid, s92(1), (2)

27. Ibid, s94(1)(a), (c)

28. Ibid, s98(2)

29. Ibid, s98(6)

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cuss how well the Crown can be said to be monitoring the effects of its legislation in terms of Treaty compliance.

As a postscript to this section, we note that, at the time of finalising this stage 2 report, a Local Government Act 2002 Amendment Bill was before the House. While many of the clauses related to financial matters, there were other provisions aimed at simplifying consultation and decision-making processes. On the one hand, these included an intended waiver of the need to consider community views at four different points in the decision-making process. On the other hand, in terms of facilitating Māori involvement, it was proposed that there be a new requirement to indicate, in the authority's long-term plan, 'any steps that the local authority intends to take . . . to foster the development of Māori capacity to contribute to the decision-making processes of the local authority over the period covered by that plan.'³⁰

6.2.3 Reconfiguring local government in Tauranga Moana

In 1989, the major structural reforms designed by the Local Government Commission were implemented through the Local Government Amendment Act (No 2) 1989.³¹ Under these reforms, the local authorities in Tauranga Moana were re-organised and the former Tauranga City Council, Mount Maunganui Borough Council, and Tauranga County Council were abolished. These bodies were replaced by a new Tauranga District Council (renamed Tauranga City Council in 2004), a Western Bay of Plenty District Council, and a Bay of Plenty Regional Council which is now known as Environment Bay of Plenty (see maps 6.2, 6.3, 6.6). Among their many functions, these bodies are responsible for levying rates on Māori land, providing services and facilities to the communities they serve, and generally managing the growth of the area.

For the sake of completeness, we note that there are also areas on the north-western edge of our inquiry district that are not covered by any of the above local bodies. Prior to 1989, these areas came under Ōhinemuri County and Piako County. Since the local government reforms, they are covered by the Hauraki District Council and the Matamata-Piako District Council. The evidence presented to us did not refer to either of these councils, and nor were they represented at hearing.

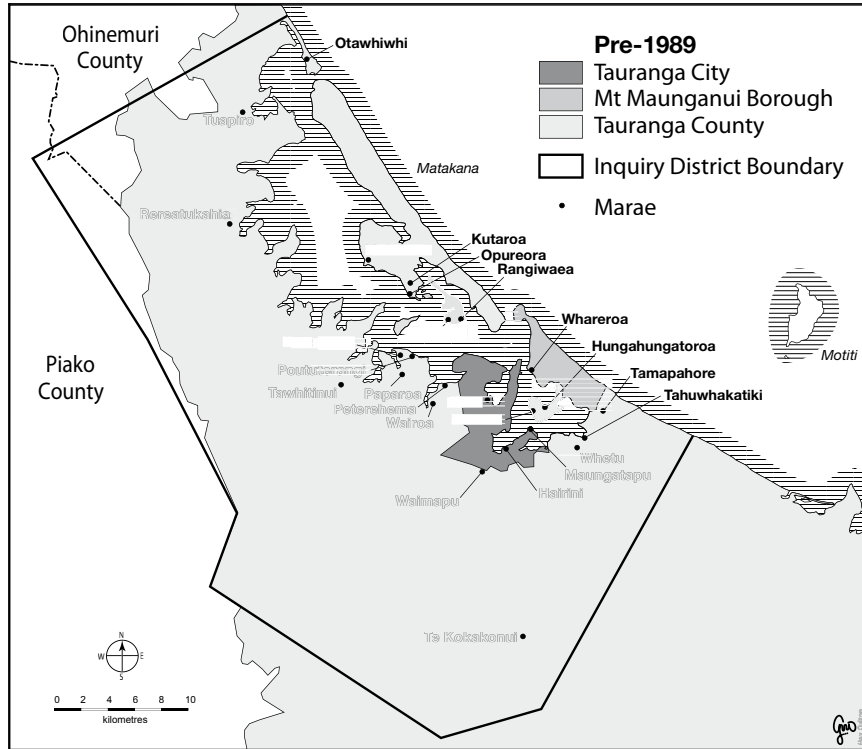
We also note that Mōtiti Island and Tūhua (Mayor Island) are administered directly by the Department of Internal Affairs.

30. Local Government Act 2002 Amendment Bill, s8, sch 10, cl 8, <http://www.parliament.nz/en-NZ/PB/Legislation/Bills/Default.htm?p=3> (accessed 28 June 2010)

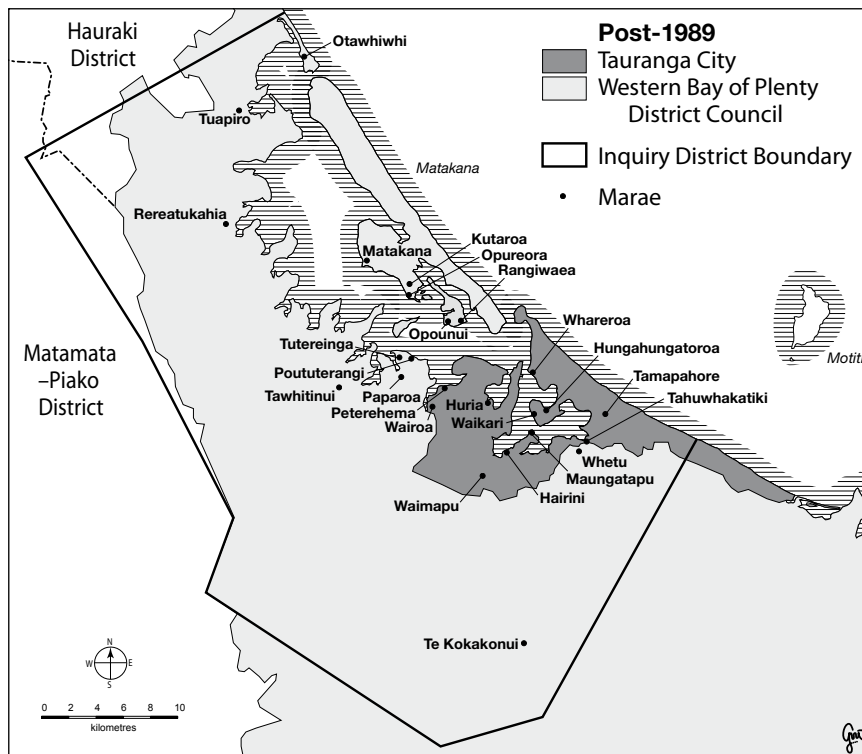
31. Under these reforms, Palmer notes, 'the number of territorial authorities were reduced to become either a city or district council (the town council and county council identities being abolished)' (Kenneth Palmer, 'Legislation Governing Town and Country Planning in Tauranga' (commissioned research report, Wellington: Waitangi Tribunal, 2006) (doc s4), pp 5–6).

LOCAL GOVERNMENT, 1988–2006

6.2.3



Map 6.2: Local authority boundaries pre-1989



Map 6.3: Local authority boundaries post-1989

6.2.4 The rating powers of local government: the legislation

Rating issues were addressed in some detail in the Local Government (Rating) Act 2002, as well as the Local Government Act 2002. The provisions of these Acts thus form an important backdrop to the more recent work of Tauranga Moana local authorities in the areas of rating and rate relief.

(1) Local Government (Rating) Act 2002

The Local Government (Rating) Act was designed to give local authorities flexible powers to set, assess, and collect rates to fund local government activities, and they must do this in a transparent and consultative manner so that ratepayers can ‘identify and understand their liability for rates.’³²

The Act also contains provision for Māori land to be exempted from rates.³³ Types of non-rateable Māori land include:

- ▶ Māori burial grounds of not more than two hectares;
- ▶ Māori customary land;
- ▶ land (again of not more than two hectares) that has been set apart under section 338 of Te Ture Whenua Māori Act and that is used as a marae or meeting place;
- ▶ land that is a Māori reservation;
- ▶ Māori freehold land of not more than two hectares, on which a Māori meeting house is erected; and
- ▶ Māori freehold land that is declared non-rateable by virtue of an Order in Council.³⁴

For land that is rateable, three kinds of rates may be charged: general rates, targeted rates and a uniform annual general charge (UAGC). The latter is a flat rate that may be levied either as ‘a fixed amount per rating unit’ or as ‘a fixed amount per separately used or inhabited part of a rating unit.’³⁵ A targeted rate, on the other hand, is linked to specific functions identified in the council’s annual plan, and can be levied on all rateable land or on particular categories of rateable land in particular localities. That is, targeted rates can be applied uniformly or differentially.³⁶

The Act contains provisions specifically for the rating of Māori freehold land not otherwise exempted from rates.³⁷ It addresses the rates liability of owners, lessees, residents, and other users of multiply owned Māori land, and provides for the appointment of a person

32. Local Government (Rating) Act 2002, s 3(c)

33. Local Government (Rating) Act 2002, s 116

34. Ibid, sch 1, cls 10–14

35. Ibid, s 15(1)

36. Ibid, ss 16–17

37. Ibid, pt 4

to receive rating notices.³⁸ It clarifies that for multiply owned land not vested in a trust, the user is liable for rates.³⁹

The powers of local authorities to ask the Māori Land Court for charging orders for unpaid rates are set out in the Act.⁴⁰ The matters that must be taken into account by the Māori Land Court are detailed and are cross-linked to the objectives of Te Ture Whenua Māori.⁴¹ The court may make an order for payment of the rates by the Māori Trustee or another trustee holding income from the land.

The Act specifies that each local authority must establish policies for the remission and postponement of rates on Māori freehold land and, if their policy is to provide such relief, gives them the power to remit or postpone all or part of the rates, including penalties for unpaid rates. It also sets out the criteria to be considered by the council when the rate relief policy for Māori land is determined.⁴² Councils may, however, choose not to offer remission or postponement of rates.

(2) Local Government Act 2002

There are linked provisions for the remission of rates on Māori land in the Local Government Act 2002. Under that Act, each local authority is required to adopt a policy on the remission and postponement of rates on Māori freehold land, which must be published in its long-term council community plan.⁴³ The Act recognises, and sets out in detail, the range of circumstances which surround Māori land. Councils must consider these circumstances before they determine their rating policy. The provisions dealing with rates relief recognise the complexity of the issues surrounding Māori land and identify them clearly. Councils thus receive guidance from the legislation, but may still decide that there will be no rates relief for Māori freehold land. Where a rates relief policy does exist, we note that the amending legislation currently before Parliament would, if passed, introduce a requirement to review it at least every six years.⁴⁴

The 2002 Act also links rating to community planning by requiring local government to state what capital expenditure is planned under the long-term council community plan, in order to meet 'increased demand for community facilities resulting from growth', and to say how that expenditure will be funded.⁴⁵

38. The local authority may ask the Māori Land Court to appoint a person to receive the rating notice. Local Government (Rating) Act 2002, s 94.

39. Local Government (Rating) Act 2002, s 96(1)

40. Ibid, s 99

41. Ibid, s 100

42. Ibid, ss 114–115

43. Local Government Act 2002, s 102(4)(f) and sch 11

44. Local Government Act 2002 Amendment Bill, s 24, <http://www.parliament.nz/en-NZ/PB/Legislation/Bills/Default.htm?p=3> (accessed 28 June 2010)

45. Ibid, s 106(2)(a), (b)

6.3 RATING POLICY AND PRACTICE IN TAURANGA MOANA AFTER 1988

Having surveyed the relevant legislation, we now turn our attention to the current rating policies and practices of local authorities in this inquiry district. The evidence is available from four main sources – the policy statements for the three councils as presented in their long-term council community plans; the evidence of council witnesses, in particular David Petersen from the Tauranga City Council; the evidence of the claimants, in particular Riri Ellis, Rahera Ohia, and Te Pio Kawe; and the commissioned report prepared for the Tribunal by Marinus La Rooij.⁴⁶ Written evidence and oral testimony from other expert witnesses is also considered.

All three councils have clear and transparent policies for the remission and postponement of rates on Māori freehold land, based on the pattern laid out in the Local Government Act 2002.⁴⁷ Environment Bay of Plenty rates are collected on its behalf by the Tauranga City Council and Western Bay of Plenty District Council. Environment Bay of Plenty considers that any policy variations between the councils in the region are not significant, and it follows the policies and practice of the other councils.⁴⁸

6.3.1 Tauranga City Council's rating policy

In 1997, the area deemed rateable by the then Tauranga District Council (renamed Tauranga City Council in 2004) was 31,485 acres (12,742 ha). Some 4259 acres (1723.5 ha) of that was held by Māori in multiple ownership, which that year yielded \$361,699 in rates.⁴⁹

Under the provisions of the Local Government (Rating) Act 2002, the Tauranga City Council set out the following rating policy statements for 2006 to 2007:

- (a) A Capital Value rating system will be used as the basis for assessing General Rates;
- (b) A UAGC will be charged to each separately used or inhabited part of a rating unit, and the UAGC will be maximised. (This means the total UAGC revenue assessed will amount to 30% of Council's total rates revenue requirement.);

46. The evidence of Tauranga City Council witness David Peterson features in greater detail since the Western Bay of Plenty District Council staff mentioned rating only in passing: David Peterson, brief of evidence on behalf of Tauranga City Council, 2 October 2006 (doc T8). For claimant evidence see Riri Ellis, brief of evidence, undated (doc Q10); doc Q20; (Ronald) Te Pio Kawe, brief of evidence, 4 July 2006 (doc R65). See also Marinus La Rooij, 'The Rating of Maori Land in Tauranga County' (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc P14)

47. Tauranga City Council, *Council Supporting Policy: Remission and Postponement of Rates on Maori Freehold Land*, Minute Reference MO7/57.2 of 28 June 2007; Western Bay of Plenty District Council, *The Long Term Plan, 2006–2016*, Tauranga, 2006, p 273

48. Environment Bay of Plenty, *The Ten Year Plan, 2006–2016*, 2 vols (Whakatāne: Environment Bay of Plenty, 2006), vol 2, p 57

49. George Evans, summary of doc A60, 1999 (doc F12), pp 12–13

(c) Targeted rates will be used where Council considers it appropriate to rate one or more groups of property to reflect a specific benefit received.⁵⁰

David Peterson of the Tauranga City Council told us that the council uses four targeted rates. Two (for economic development and ‘mainstreet’) were levied on commercial properties only. The other two, applied on a general basis, were for water (‘a fixed base rate depending on size of water meter connection, and consumption rate based on the amount of water used’) and wastewater (‘a fixed rate amount per connection’).⁵¹

When setting general rates, the Tauranga City Council has, since July 2004, used a capital value method to assess rateable values, ascertained for the council by registered valuers. City-wide valuations take place every three years, ‘to redistribute the general rate across all rateable properties in the district.’⁵² Mr Peterson explained, however, that because the rating revenue requirement is ‘determined in the financial budget adopted by Council’, an increase in property values ‘does not necessarily mean that ratepayers will pay more rates.’⁵³ We discuss the valuation of land for rating purposes in section 6.4 below.

Mr Peterson also gave evidence about the rates remission policies that Tauranga City Council has in place for Māori land. There is a clear and positive policy for rates remission. He confirmed that the level of remission can ‘range from 100% to nil’. Situations taken into account when deciding on remissions include those where:

- ▶ no economic or financial benefit is obtained from the land;
- ▶ land is not occupied;
- ▶ land is not utilised;
- ▶ there are wāhi tapu; and
- ▶ land is physically inaccessible.⁵⁴

Many land parcels where the above factors apply may, in addition, not be subject to targeted rates because they have no service connections.⁵⁵

Postponement of rates is another policy option for Māori land, used when there is the potential for land to be sold ‘in the foreseeable future’. For such land, a small portion of the rates may be payable immediately and the rest recouped when the land is sold. Alternatively, a decision may be taken to recoup the entire outstanding amount when the land is sold. Noting that there were six Māori freehold properties with postponements in place, Mr Peterson considered that postponement has a beneficial strategic function in reducing financial pressures on land that could potentially be sold for urban development.⁵⁶

50. Document T8, p 3

51. Ibid

52. Ibid, pp 6–7

53. Ibid, p 7

54. Ibid, p 8

55. Ibid

56. Ibid

Mr Peterson noted that these policies had been revised and reviewed during 2002 and 2003, a process which involved the Tauranga Moana Tangata Whenua Collective. Proposed changes were again reviewed in 2004 during the development of the 2004–2014 long-term council community plan. The main change suggested was that council must (a) proactively determine remissions applicable to all Māori freehold land in the district, without waiting for applications, and (b) only charge property rates that were considered collectable.⁵⁷ Mr Peterson denied claimants' assertions that rating remissions were applied sporadically and that landowners have to lobby council for rates relief to be considered. On the contrary, he said, Tauranga City Council's rating policies since June 2004 show that the council 'proactively applies remissions to multiply-owned Māori land, regardless of whether owners apply for such remissions'.⁵⁸

As to the UAGC, it is a rating mechanism that has been available to councils for a long time, under the Rating Powers Act 1988 and the 2002 Act. It is currently applied to each inhabited portion of each rating unit, and has been especially contentious from a Māori perspective. Until the 2002 Act, only one UAGC was levied per property or 'rating unit'. According to Peterson, this 'created a significant inequity', especially with 'properties such as apartments which contain multiple dwellings yet are on single title'. These would pay only one UAGC. By contrast, 'one house on a single title' also paid the same UAGC. This meant that 'in real dollar terms, some households were paying only \$1.90 towards their share of one UAGC whereas other similar households were paying the full \$430 charge'.⁵⁹ Accordingly, new rating policies were developed and included in the 2003 draft annual plan for public consultation. Among these was the proposal to assess UAGCs on 'each separately used or inhabited part of a rating unit'.⁶⁰ Peterson noted that an unusually high number of public submissions were received on this proposal, most opposing it – particularly those from people living in retirement villages.⁶¹ Despite this, the Tauranga City Council switched to levying the UAGC as a charge per dwelling, not per property. A major aim was to prevent properties such as expensive high-rise apartment buildings accessing services for multiple dwellings while only paying rates for a single property. Of particular concern to Tauranga iwi and hapū, however, is the effect on papakāinga.

In his evidence, Hemi Rolleston (who has been a rates officer for Tauranga City Council and Whakatāne District Council) drew the Tribunal's attention to the ongoing difficulty of collecting rates on multiply owned Māori land. A report co-authored by him in 2004 (discussed further below) showed that Māori land blocks at that time averaged 62 owners, the average size of a Māori land block was 2.97 hectares (just over seven acres), and the average arrears were \$6897. Noting that the Māori Land Court does not keep an updated register

57. Document T8, p 9

58. Ibid, p 14

59. Ibid, p 10

60. Ibid

61. Ibid

of owner contact details, Mr Rolleston said that it was common for Māori land to have a significant number of owners who are not locatable or who are deceased (possibly without having completed succession orders), or who own very minor interests in the block.⁶²

Another witness, Rahera Ohia, was keen to explore whether rates might be used in a way that would ‘produce more effective outcomes for the iwi, hapū and whanau of Tauranga Moana.’⁶³ In her view, a major problem with economic development and city growth at present was the ‘increasingly expensive rates’, which meant that ‘cash-strapped Māori land-owners’ often saw alienation of their land as ‘the only option for easing the pressure.’⁶⁴ Was it not possible, she wondered, for rating to be ‘used as a catalyst for facilitating the sound use, development and retention of iwi, hapu and whanau lands and resources without compromising the rangatiratanga of the iwi, hapu or whanau concerned’? She said that failure to use rating as a constructive tool was stifling Māori development and preventing the growth of Māori assets.⁶⁵ She urged the Tribunal to recommend that a rating review be conducted, in partnership with the Crown.⁶⁶

6.3.2 The 2003 rating review and the Rolleston–Patuawa report

Tauranga Moana Māori responded with enthusiasm when a comprehensive rating review commenced late in 2003.⁶⁷ Together with the Tauranga City Council they established the Tauranga Moana Tangata Whenua Collective rating working party, which commissioned an independent review on the effect of the Tauranga City Council’s proposed rating policies on Māori landowners.⁶⁸ This substantial report, by Hemi Rolleston and lawyer Jolene Patuawa, was presented to the council as part of its rates review and was subsequently made available to the Tribunal.⁶⁹ Its key findings can be summarised as follows:

- ▶ The essence of Māori grievances in relation to valuation and rating is that neither system takes proper account of, or makes provision for, the Māori world view.⁷⁰
- ▶ The valuation of land must take into account the fact that Māori owners may wish to put their land to ‘non-use’ rather than use; undeveloped land may provide much treasured privacy and separation for Māori communities from the increased development and urban spread.⁷¹

62. Hemi Rolleston, brief of evidence, 19 May 2006 (doc Q1), p14

63. Document Q20, p 6

64. Ibid

65. Ibid, p 7

66. Ibid, p 9

67. Document T8, p 11

68. Ibid

69. Hemi Rolleston and Jolene Patuawa, ‘Submission Report on the Rating of Māori Land in Tauranga’, 2004, p 9 (doc Q1, app A, p 23)

70. Rolleston and Patuawa draw on the insights of Pita Rikys at this point. See, for example, P Rikys, ‘Valuation of Maori Land for Rating Purposes: Time for a Change?’, *New Zealand Law Journal*, January 1992, pp 26–29

71. Document Q1, app A, pp 10, 16

6.3.2

- ▶ Residential building consents on Māori land reveal the ‘woeful state’ of development of Māori land for housing, at a time when Tauranga is one of the fastest developing areas in the country: in 10 years, only 35 building consents had been issued for Māori land, compared with over 11,000 for general land.⁷²
- ▶ Rating charging orders create further obstacles to Māori land development, as owners are reluctant to make applications to the court to lease, occupy, partition, or succeed to blocks for fear that they will have to clear the order.⁷³
- ▶ The value to the community of past rating contributions has been overlooked due to the compulsory nature of many such contributions. There is also a general perception that the contributors have been compensated; and local government anyway sees the matter as a central government issue (notwithstanding that the benefit is largely received locally).⁷⁴
- ▶ Similarly, current contributions are not valued appropriately: there is little recognition that the community benefits from well-functioning marae, sporting clubs and grounds, as well as social services and education.⁷⁵
- ▶ The enforced contribution made by raupatu must be considered when assessing the fairness of rates on Māori land. (Drawing on the Waikato Raupatu Claims Settlement Act 1995 and the historical reports presented to the Tribunal during its stage 1 hearings, the report sets out a historical overview of these events.)⁷⁶
- ▶ Together with compulsory acquisitions and rating alienations Tauranga Māori have also made significant donations of land and land use which has been of immense benefit to the Tauranga community.⁷⁷
- ▶ Tangata whenua are concerned about proposed rating policy, and state that the UAGC per dwelling should not apply to Māori land. They also believe that Māori land should be liable for lower general rates than residential or commercial properties.⁷⁸
- ▶ As a result, special value and postponement value rating should continue. But the UAGC should be removed per separately used or inhabited portion of a property on Māori land.⁷⁹

Further elaborating on some of the above points, in his oral evidence to this Tribunal, Hemi Rolleston urged that local bodies give consideration to the contributions of Tauranga Māori, both voluntary and enforced, ‘as per the discretion within the legislation and the policy’.⁸⁰

72. Document Q1, app A, p 12. This figure does not indicate the respective number of hectares involved.

73. Ibid, p 14

74. Ibid, p 18

75. Ibid

76. Ibid, p 19

77. Ibid, p 23

78. Ibid, p 44

79. Ibid, p 53

80. Document Q1, p 11

The Rolleston and Patuawa report raises a number of issues which we shall return to later in the chapter. For now, we merely observe that it is not clear why there was subsequently such a low level of engagement between those who made the submission and those who sit at the council table, set the policies, and make the decisions about such important subjects as zoning, papakāinga housing, and the implementation of the UAGC.

6.3.3 Rating and the provision of services

The provision of services, and the relationship between rating and services, have already been traversed in the previous chapter; here, we confine our discussion to the period from 1988 to 2006. Hemi Rolleston, who is familiar with the situation of communities across the rohe, said in evidence that ‘one only needs to look around [to] see the dearth of council-provided services in Māori communities’, even today.⁸¹

The examples cited in chapter 5 for the period up to 1988 have their counterparts in the period from 1988 onwards. One claimant living on the western side of Cambridge Road at Te Reti (south-west of Hūria), told how their side of the street had no streetlights or footpaths until about the 1990s – unlike the eastern side of the street, which had mostly Pākehā housing.⁸² Similarly, a Ngāti Kāhu claimant said there had been a footpath along a section of Stage Highway 2 where the residents were mostly Pākehā, long before it was extended to the marae.⁸³ And we have already noted, in our previous chapter, how it took forty years of lobbying before Ngāti Hangarau finally managed, in 1999, to get a footpath put in along Bethlehem Road, to promote the safety of their school children. At the time of our hearing, Ngāti Hangarau witnesses said they still had no sewerage system other than septic tanks and soak-holes. They had been told that a zoning change from marae community zone to marae urban would ‘allow the installation of sewerage (at a cost) etc when it became available.’⁸⁴ Te Karehana Wicks told us about a block of Ngāi Tauwhao land at Ōtāwhiwhi (namely Katikati lot 1 at the western end of Tauranga Moana), which is the site of their marae, urupā, and some housing. Surrounded by blocks of general land that mostly carry high-value kiwifruit and avocado orchards, their approximately 54 acres of Māori land is, she said, ‘seen as comparable’ by the valuers and local council. However, it suffers from poor drainage, with parts of it ‘effectively a swamp’. ‘What really aggrieves us’, she went on, ‘is that the Council drains [the opposite] side of the road through our land into the Moana. The existing storm water drain runs through our property and was put there illegally.’⁸⁵

81. Ibid, p17

82. Desmond Matakokiri Tata, brief of evidence, undated (doc F20), p 4

83. Ngaronoa Reweti Ngata, brief of evidence, 12 November 1998 (doc C20), pp16–17

84. James Tapiata, brief of evidence, undated (doc D10), pp 8–9

85. Te Karehana Wicks, brief of evidence, 1 June 2006 (doc Q47), paras 3, 4.1, 8.1, 11.5, 22, 31, 34

Matakana claimants likewise described a lack of services, despite residents having been ‘charged all the same standard charges for reserves, utilities etc.’⁸⁶ Busby Murray told the Tribunal:

we get a road that goes to nowhere . . . we get no rubbish collected, no water mains, and worst of all we get no sewerage, despite the fact that we have the sewerage pipeline which comes across our island and spurts out everyone else’s into our water.⁸⁷

One of the few council contributions, he said, was the removal of wrecked cars once every six years. Mr Murray also commented that Matakana Islanders provide many of their own facilities – including a rugby club and field, and a sports and recreation club that they had built themselves by fundraising (albeit with ‘some support’ from council).⁸⁸ He further pointed to the lack of subsidy for the ferry service to the mainland, which costs \$40 for the return trip. Overall, he felt there had been a lack of equity in the provision of services to Matakana residents as compared with ‘others in the region, who get full access to all amenities and utilities’. Riria Murray added: ‘[T]he water, well we don’t get any. The rubbish collection we arrange ourselves (and pay ourselves) and the road . . . is terrible, it’s just waiting for an accident to happen’. She asked, ‘why should I pay for something that I am not getting?’⁸⁹

The situation is much less clear-cut on the Matapihi Peninsula, which is still zoned as rural, even though it is effectively a service corridor between two busy urban areas.⁹⁰ The residents have worked hard to retain their rural zoning, but express concern at the level of services they receive. The lack of reticulated water, for instance, has been an issue ever since a water main was installed through the peninsula in 1938 to provide water to Mount Maunganui. The Native Department commented at the time that reticulation ‘would be of great value to the Maoris [in Matapihi] whose only source of supply at present are tanks and wells’. However, it went on to say: ‘The difficulty of the collection of the rates would be an obstacle . . . as the Maori residents of this area are not in good financial circumstances’. The department thus declined the Tauranga Borough Council’s request to take on liability for the project, and the project did not proceed.⁹¹ The claimants did acknowledge at our hearing that their water reticulation had improved recently, but they continue to lobby for better amenities such as adequate street lighting and improved drainage.⁹² Carlo Ellis told us, for instance, that ‘we have to maintain all of the reserves. Until very recently roads were not

86. Busby Allan Puhipi Murray, brief of evidence, 26 June 2006 (doc R12), p 6

87. Ibid

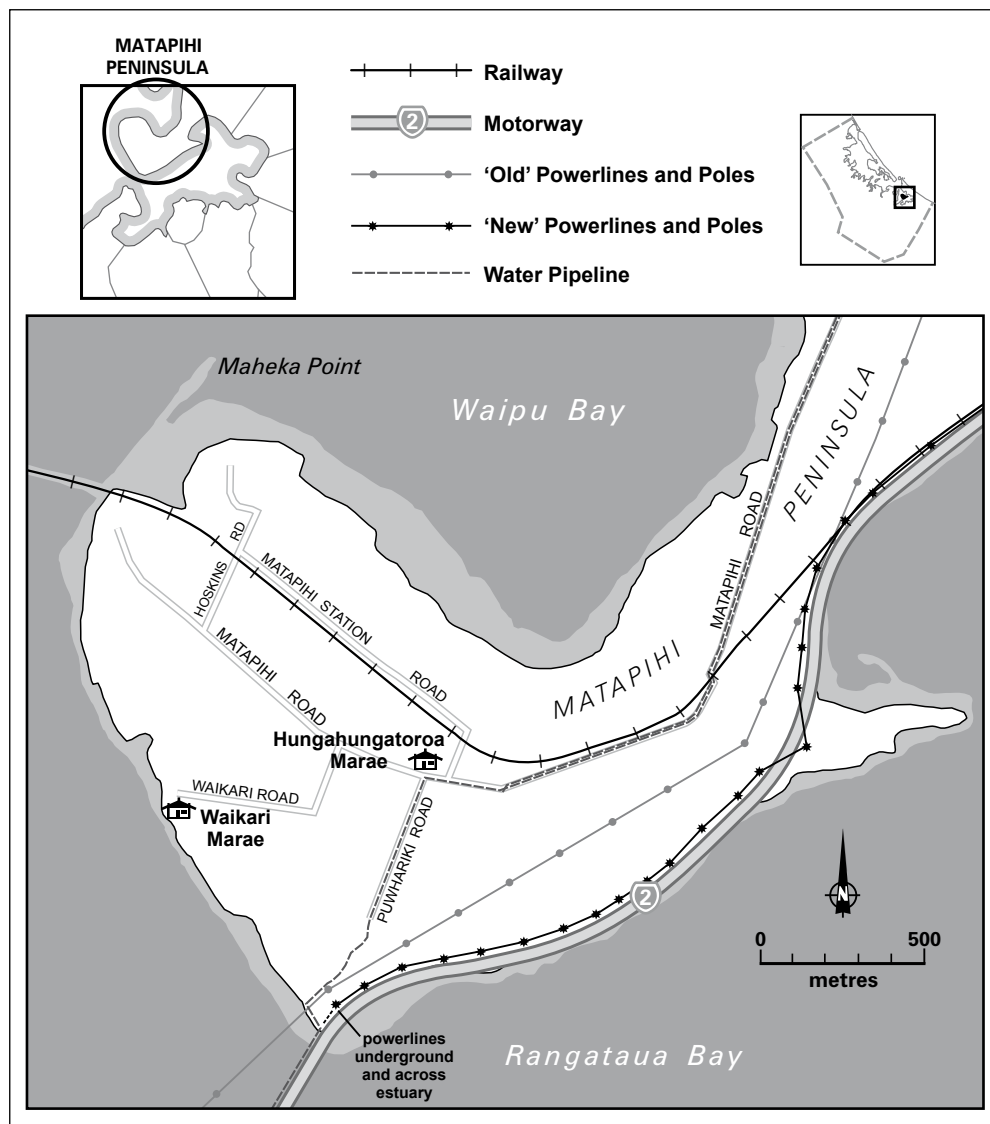
88. Ibid

89. Riria Murray, brief of evidence, 17 May 2006 (doc Q3), p 2

90. Document Q10, pp 6–7

91. Document P14, pp 57–58; Heather Bassett, ‘Mangatawa’ (commissioned research report, Wellington: Waitangi Tribunal, 1996) (doc A44, p 20)

92. (Albert) Puhirake Ihaka, brief of evidence, undated (doc H4), pp 6–7



Map 6.4: Matapihi's role as a service corridor

sealed. All of the houses at Matapihi are on septic tanks. We also have to pay for our own rubbish collection.⁹³

We are not convinced that urban services should be provided to rural ratepayers, Māori or non-Māori. Parallel complaints are made by Māori and non-Māori in most other rural areas. Nevertheless, the 'service corridor' nature of Matapihi does seem to call for a degree of compromise. In this context, we note that proposals by Tauranga City Council to lay a southern sewerage pipeline through the Matapihi Peninsula and along a Māori roadway

93. Carlo Ellis, brief of evidence, undated (doc Q11), p 9

provided the opportunity for Ngāi Tūkairangi to enter into negotiation with the council. Mr Ellis explained:

We have proposed that the papakāinga houses and the Marae at Hungahungatoroa, Mahiwahine, and Waikari Marae be joined to the sewage scheme and that the Council also guarantee water supply to all Matapihi homes as both these water and sewage lines run through our District. Previously all Tauranga City Council rate payers have benefited from the water pipeline running through Matapihi, except ourselves. It is only fair that for running the water and sewage pipelines through our land, we get some benefit.⁹⁴

David Peterson, giving evidence for Tauranga City Council, did not address the extent to which Tauranga Māori receive the benefit of services for their rates. Nor did he provide details of any monitoring done by the council. Instead he listed the range of services that the council provides for ratepayers generally. These cost the council about \$100 million a year, and include stormwater and wastewater; transportation; parks, gardens, reserves, beaches, and sports fields; urban developments such as museums, libraries, visitor information, and waterfront development; customer services; swimming pools, halls and indoor facilities; public health, environmental safety, and civil defence; support to other agencies; corporate costs; and rubbish and waste.⁹⁵

In the preceding chapter, we chose to make no formal finding on the provision of services. However, we expressed the view that the principle of equity demands that Māori receive no lesser provision than fellow citizens residing in like areas. We reiterate the point here: the onus is on local councils to monitor service provision, and to ensure that all of their residents, Māori and non-Māori, receive services appropriate to their rural or urban zoning, and are charged rates which match the level of services provided.

There is one more reflection we would make as we leave the subject of rating. Rates, in common with taxes, contribute to the public good. Māori and non-Māori should contribute alike. That being the case, however, the public good must not be monocultural: it must embrace Māori good alongside non-Māori good. There are questions to be asked about the manner in which the public good is perceived and services are provided in Tauranga Moana. Are Māori needs for community benefit understood and recognised in the same manner as non-Māori needs? Further, do Māori sites, Māori heritage, and Māori environmental resources receive the same level of protection as non-Māori sites and resources? We

94. Mahaki Ellis, brief of evidence, undated (doc Q9), p 13. It appears from a May 2007 report in the *Bay of Plenty Times* that agreement may have been reached concerning the pipeline, with the hapū removing its objections in return for improvements in the water supply and the development of a new land-use plan. John Cousins, '1.5m Deal Seals Matapihi Pipeline', *Bay of Plenty Times*, 1 May 2007, <http://www.bayofplentytimes.co.nz/storyprint.cfm?storyID=3732009> (accessed 2 May 2007)

95. Document T8, pp 4–6. Mr Peterson went on to list other services, such as community housing and parking, which are funded not by rates but by direct charges to those who use them.

will explore these questions further when we move to environmental matters in chapter 7 and cultural heritage in chapter 8.

6.3.4 The UAGC and papakāinga

The UAGC component of rating charges has been particularly contentious in Tauranga City. As noted earlier, the city uses a combination of capital value rating, together with targeted rates for things like water and wastewater, and a UAGC to cover a variety of other services. Under the provisions of the Local Government (Rating) Act 2002, the city has used the UAGC to the maximum 30 per cent of total rates levied by the council and, from 2003 onwards, has levied this on each inhabited part of each rating unit.

To illustrate the effects of the UAGC for tangata whenua, we refer to an example raised specifically as part of the Wai 211 Ngāi Tūkairangi claim, but which has wider application throughout the inquiry district.

The Hungahungatoroa papakāinga is located on the Matapihi Peninsula, not far from State Highway 2 between Mount Maunganui and Tauranga. It comprises a number of houses and flats built on ancestral Māori land beside the marae to provide affordable housing for kaumātua, kuia, and whānau.⁹⁶ Mahaki Ellis gave evidence about the cost of developing the scheme in the 1990s:

We had to pay for the entire infrastructure including roading, water supply, electricity and storm water drainage. We also had to pay various fees to the Council imposed on us under the Resource Management Act and pay for environmental impact assessment reports.⁹⁷

Since 2003, the imposition of the UAGC charge on each individual dwelling has had a major impact on those living there. The trustees of the Hungahungatoroa blocks have tried many times to persuade the Tauranga City Council that the UAGC is inappropriate to papakāinga.⁹⁸ Carlo Ellis, for example, noted that he had attended ‘three formal meetings with TCC [Tauranga City Council] officials, two at Hungahungatoroa and one at the offices of TCC.’⁹⁹ A meeting was held in March 2004 at Hungahungatoroa Marae to hear the issues raised by the Trust about the UAGC.¹⁰⁰ In its submission to the council, the Hungahungatoroa 1B2B/1B2A trust stated that ‘the living concept of papakāinga, [is] a traditionally influenced means of retaining and utilizing our ancestral lands consistent with Tikanga Māori.’¹⁰¹ They continued: ‘it is impossible to compare those examples [apartment buildings and retire-

96. Document Q9, p 12

97. Ibid

98. Document Q11, p 5; doc Q9, p 12

99. Ibid, p 6

100. Document T8, p 11

101. Document Q11, annex A, p 3

ment complexes] with Papakāinga. Attempting to do so continues to erode the foundations that make us tangata whenua.¹⁰² Drawing on the Rolleston and Patuawa submissions, the trustees further submitted that:

- ▶ confiscation and public works takings confined Ngāi Tūkairangi to the Matapihi Peninsula and Whareroa area and severely restricted their economic capacity;
- ▶ the papakāinga trust is an attempt to ensure survival as a community and continued use of ancestral lands by developing affordable housing around the marae; and
- ▶ the full implementation of the UAGC destroys those benefits.¹⁰³

The council did not, however, alter its policy towards papakāinga to recognise these circumstances. Despite acknowledging that the Rolleston and Patuawa report had ‘provided additional information’ and ‘clarified rating issues affecting Māori land’, the only concession the council made was to extend the phase-in period of its new UAGC policy until June 2007.¹⁰⁴

Carlo Ellis, presenting evidence for Ngāi Tūkairangi Trust, described the impact of the decision on his people.¹⁰⁵ For the Hungahungatoroa blocks in the papakāinga development, contributions for individual housing units had increased from \$170.42 to \$766.45 per annum. Mr Ellis stated that ‘this increase is unattainable for many of the licensees who are beneficiaries or low income earners.’¹⁰⁶

Despite the difficulties that the UAGC has caused for licensees in the papakāinga, Mr Ellis was careful to point out – as did several witnesses who spoke to us about their rating issues¹⁰⁷ – that ‘the Trust has always paid its rates in full and on time’. The trust has managed this by paying the rates itself and then recovering them from the licensees. Ellis notes:

Historically, the most demanding task the Trustees have faced is the collection of rates from each licensee and that was when the rates were at the lower figure. There is little or no possibility that many of the licensees will be able to meet the subsequent increase. Historically there have been some licensees who have fallen more than a year behind in the payment of rates and the Trust has always honoured the payment and facilitated recovery.¹⁰⁸

In light of these circumstances, the trust asked the council to reconsider the rates. In response, the trust was offered two options: to ‘step out’ the increase over five years or to

102. Document Q11, annex A, p 2

103. Ibid, pp 6–7

104. Document T8, p 11

105. Document Q11

106. Ibid, p 7. Mr Ellis is not specific about the dates. Our understanding from Mr Peterson’s evidence under cross-examination (transcript 4.7, pp 48–66) is that the increase took place in 2004 and was phased in over four years. Other evidence from Mr Ellis suggests a phased-in increase of 300 per cent in the first year, increasing to 670 per cent in the longer term (doc Q11, app A, p 1).

107. See, for example, James Tapiata, brief of evidence, 25 May 2006 (doc Q46), para 10.6; Wiremu Haora, brief of evidence, 23 May 2006 (doc Q28), p 6

108. Document Q11, p 7



Figure 6.2: Mahaki Ellis (left) plants the first tree in front of new papakāinga housing at Hungahungatoroa Marae, Matapihi, 1990

Photographer unknown. Reproduced courtesy of *Bay of Plenty Times* (A6335).

remit the rates on an individual by individual basis. Both options were unacceptable to the trust – essentially because, in its view, those affected were unlikely ever to be in a position to meet the significantly increased charges. Carlo Ellis said that after this unsuccessful negotiation, the council sought to recover the rates and indicated that they would take out a charging order. He added that this ‘was avoided when the Trustees met with Mayor Stuart Crosby and agreed to part payment at the previous rate level.’¹⁰⁹ Mr Peterson noted, however, that there is ‘no remission policy that provides a remission based specifically on papakāinga developments.’¹¹⁰

Tauranga Moana claimants, in general, indicated that they have made numerous attempts to persuade the Tauranga City Council that the UAGC is inappropriate for papakāinga. The Rolleston and Patuawa research report expands on these concerns. The submissions have been heard, and the report has been read by the officials, but the council has been unwilling to change its policy.

The local government rates inquiry, working on a much wider canvas and across the whole of New Zealand, reached a parallel conclusion about UAGCs when they reported in 2007. We will return to this in section 6.4.2. At the present time, we understand that work

109. *Ibid*, p8

110. Document T8, p12

on rating policy in relation to Māori land is also being carried out by Te Puni Kōkiri, but we have not seen the results of that work.

6.3.5 Rating and zone changes

Zoning and rezoning, introduced into Tauranga following the Town and Country Planning Act 1953, continued to be used as planning tools in the period from 1988 to 2006. It was a key issue for claimants, especially for those with land within or adjacent to the expanding urban areas of Tauranga and Mount Maunganui. From a Māori perspective, the most important zoning changes have been those from rural to urban residential. We heard from many tangata whenua witnesses fearful about the zone changes they face now and in the future, as Tauranga's urban growth continues. Mahaki Ellis, for example, indicated that the people of Matapihi want to keep their rural zoning. Although this means they may not have all the services and are constrained in their ability to develop housing, they are nonetheless better able to maintain their community life. In the meantime, already strained Māori groups are having to engage in expensive and time-consuming efforts to resist zone changes that they see as likely to adversely affect the life of their communities.¹¹¹

It is clear that zoning changes have generally resulted in increased land prices – a situation which in turn has tended to increase rates and add to the pressure to sell land.¹¹² The response to that pressure has varied, often depending on whether the land was general land or multiply owned Māori land. As the urban area has continued to expand, trends which, according to La Rooij, characterised the 1960s and the 1970s have rippled onwards into the 1980s, 1990s, and 2000s: 'While most Pakeha farmers either cashed in on the increasing valuations, or redeveloped their land into intensive horticulture, Māori landowners faced economic paralysis.'¹¹³

The same economic pressures, intensified by zoning, have impacted on papakāinga in multiple ways which have been spelt out by claimant and expert witness evidence. Marae community zoning, introduced by Tauranga County Council in 1973, was an important innovation which has enabled some Tauranga Moana Māori to live in proximity to their marae.¹¹⁴ Others, outside the designated areas, were unable to build houses.

111. Ngāti Kāhu and Ngāti Hangarau provide an example from Bethlehem. See section 6.7.1 for a more recent update.

112. Claimant counsel, closing submissions with regard to rating and urbanisation, 24 November 2006 (doc U10), p 36

113. Document P14, p 149

114. Tauranga County Council took this initiative in advance of the Town and Country Planning Act 1977. Other local authorities followed this example, some using the designation 'marae community zones', others 'papakāinga zones'. (E Stokes, 'The Effects of Land Use Policies on Rural Communities: Some Māori Perspectives', in *Towards a Land Use Policy for Rural New Zealand*, edited by G Cant and A O'Neil (Wellington: Land Use Advisory Council, Lands and Survey, 1980), pp 19–24; doc A15, p 23

Andrew Ralph, manager for environmental policy at Tauranga City Council, gave evidence about the operation of the district plan in the city, the submission processes associated with consultation on the new plan, and subsequent changes to the plan. Many of these plan changes were prompted by urban growth pressures and the zoning changes that these would require.

In discussing Māori aspirations for using their land, the Tauranga urban growth study commented, ‘What appears to be wanted are extensive residential neighbourhoods near the marae with recreational facilities and the opportunity for agricultural production on adjacent lands.’¹¹⁵

The district plan has, however, curbed these aspirations. In 1991–92, the Tauranga District Council commissioned an urban growth study, which involved a number of consultation meetings with tangata whenua.¹¹⁶ While a number of changes were made to the plan in light of the study, Ralph noted that ‘no changes were made to the transitional plans in relation to Māori land issues or Marae Community Zoning over and above existing provisions.’¹¹⁷ The current district plan does include provisions for marae community zones (at chapter 19) and rural marae community zones (at chapter 21) but, apart from these, no cultural distinction is made in relation to other planning zones such as business, rural, or conservation. Mr Ralph acknowledged that this approach had ‘caused some tension, particularly in relation to permitted housing in rural areas.’¹¹⁸

One consequence of the urban growth study referred to above was plan change no 1, which sought to rezone significant amounts of rural land to residential in five new ‘urban growth areas’: Bethlehem, Pyes Pā, Ōhauiti, Welcome Bay, and Pāpāmoa. While this plan change was proceeding through the Planning Tribunal, Ngāti Kāhu made an objection (*Ngāti Kāhu v Tauranga DC* [1994]). As a result of the decision in this case, north and west Bethlehem were left with rural zoning, while residential zoning became operative everywhere else. Since that plan change, Mr Ralph stated, the council has been negotiating with both Ngāti Kāhu and Ngāti Hangarau to develop an urban growth plan for this area. According to Mr Ralph, ‘the essence of this plan was to open up north-east Bethlehem to urbanisation but retain west Bethlehem as rural.’ This was in response to Ngāti Kāhu’s wish to retain rural zoning, but was appealed by Ngāti Hangarau, leading to Environment Court mediation.¹¹⁹ Plan change no 15 in 2003 introduced a new papakāinga zone for the marae lands and extended the residential A zone over other land.¹²⁰ These changes were still in

115. Andrew John Ralph, brief of evidence on behalf of Tauranga City Council, 28 September 2006 (doc T7), p 4

116. The enlarged urban authority, created in 1989 by combining Tauranga City, Mount Maunganui Borough, and portions of Tauranga County, was initially named Tauranga District. It is now known as Tauranga City.

117. Document T7, p 5

118. *Ibid*, p 8

119. *Ibid*, p 5

120. *Ibid*, p 6

6.3.6

process at the time of the stage 2 hearings. (We will note some more recent developments in the context of our discussion and analysis, at section 6.7.1.)

Mahaki Ellis told the Tribunal that although the Ngāi Tūkairangi lands on the Matapihi Peninsula were currently zoned rural, ‘we have a genuine fear that our status as a rural zone will change’. He observed that councillors are ‘under considerable pressure from developers and other interested parties in Tauranga to open up Matapihi’. In light of this pressure, he added: ‘it is my personal belief that one day Matapihi will be rezoned. The consequences could be disastrous for Māori land owners at Matapihi if they do not start now to plan for other economic uses of their lands and to have full ownership and control.’¹²¹ (Again, more recent developments are noted at section 6.7.1.)

6.3.6 Housing and land development: costs and consultation

The diverse rating and urbanisation issues that affect tangata whenua in this inquiry district are integrally linked to land development – or more accurately, to constraints on land development. In terms of local government, development is part of the challenge posed by present and future urbanisation. The 2002 changes to the local government legislation require councils to consult widely with tangata whenua. In many consultation meetings since the early 1990s, tangata whenua have continually reiterated that they want to house their whānau, hapū, and iwi members in residential areas on their own land, which they want to be able to develop as they see fit.

A key concern for Tauranga iwi and hapū, in terms of both current and projected urbanisation, is the development constraints placed on their lands as a result of zoning and the corresponding housing restrictions. If housing is permitted on their lands, Māori face the costs of the resource consent process, including the payment of development impact fees and other charges.¹²²

Tangata whenua witnesses gave evidence to the Tribunal about the complications they experienced with these restrictions in their attempts to develop their land. Lance Waaka, for example, gave evidence about the difficulties that Ngāti Ruahine (of Ngāti Ranginui) had with housing at Poike and Waimapu, saying that the housing restrictions and building consent costs were prohibitive for housing development.¹²³ He also described the difficulties of undertaking housing development in an area zoned rural: ‘if you want to build more houses on your land, you need to subdivide the land or try to get the zoning changed to rural residential’. He noted, however, that ‘the problem with changing the zoning means

121. Document Q9, p 14

122. Development impact fees are designed to ensure that the effects of a new development, such as a housing subdivision, are met by the developer, not the community at large. The fees may, for example, be used to pay for street upgrades or a new sewerage system

123. Lance Hori Waaka, brief of evidence, 22 May 2006 (doc Q5), p 19–20

that if your land is rural residential, you get stung with bigger rates.’¹²⁴ James Tapiata told the Tribunal that because the Ngāti Hangarau land at Bethlehem was zoned marae rural – zoning for which only limited services are provided – the council allowed it a capacity of 50 houses.¹²⁵ If the hapū want to increase the housing capacity, the services would need to be upgraded – which would, according to the council, require a zone change to urban marae. Mr Tapiata stated that hapū were resisting this change as it would mean an increase in rates. Moreover, they are concerned that even if they agreed to a zoning change, the upgrade of services would take a long time to eventuate.¹²⁶

Mahaki Ellis gave evidence about the housing development constraints that the people of Matapihi had experienced. He stated that, due to the rural zoning of the area and the council’s bylaws, they were permitted only two houses per block of land: ‘As an example, I am an owner in and lessee of Otumoko 2B. That block is 11 hectares, we are only permitted to have two houses on that block of land.’¹²⁷

Mr Ellis considered that the only way around this constraint was to allow papakāinga housing on all Māori land.¹²⁸ He spoke about his role as a trustee of the Mahiwahine 2B Trust, and the trust’s attempts at developing a papakāinga scheme there:

The only available source of finance is the Housing New Zealand which require security of 100% in assets, for example, land or cash. In this case, the owners have agreed to partition a section of land as security to enable the Trustees to borrow the money and build the homes for owners to rent or buy.¹²⁹

Riri Ellis, a trustee of the Hungahungatoroa 1B2B2 Trust and the Ngāi Tūkairangi Trust, also spoke about housing development constraints. As houses were scarce on the Hungahungatoroa 1B2B2 block and there were several whānau members wanting to purchase, there had been serious friction and much distress to those concerned: ‘I now see that what I was experiencing was as a result of the complexities associated with multiple ownership of Māori land and in particular what takes place where there is limited opportunity to access affordable housing on limited Māori land resources.’¹³⁰

Dr Ellis also spoke about other difficulties faced when building houses on Māori land, including the limited provision for marae zoning, kaumātua flats, and papakāinga. In many cases, further papakāinga developments require a resource management consent for a variation to the district plan, and development impact fees need to be paid.¹³¹ She commented

124. Ibid, p17

125. Document Q46, para 20. Mr Tapiata’s evidence was given in 2006. Assuming his figure of 50 houses is correct, it would seem that the 30-house restriction, present in 1992, had by then been increased.

126. Document Q46, para 22

127. Document Q9, p11

128. Ibid, p12

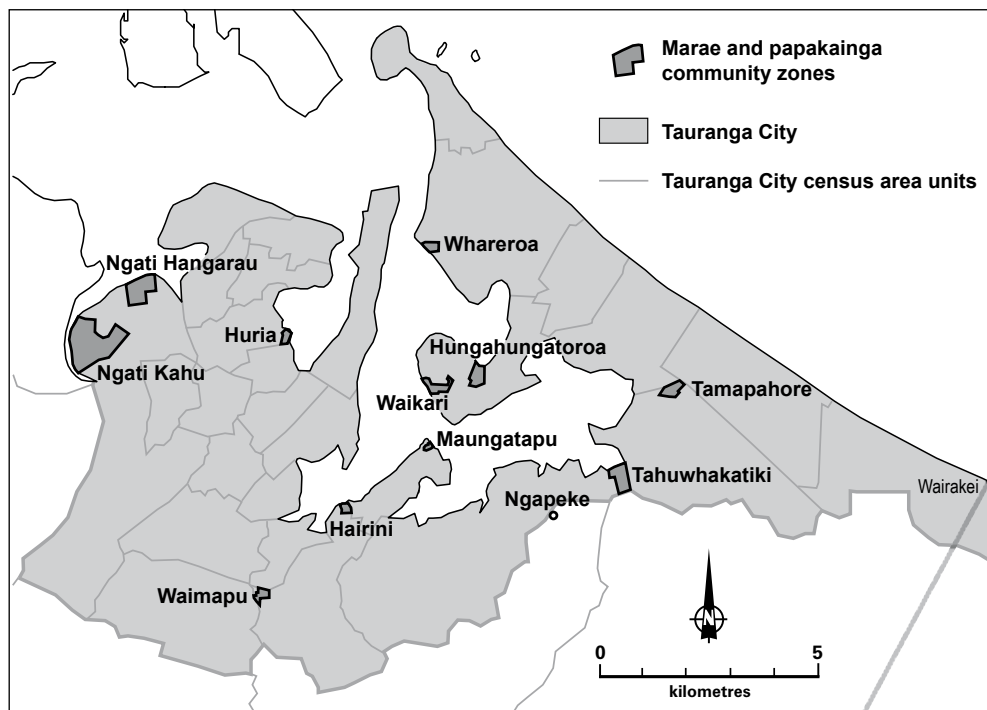
129. Ibid

130. Document Q10, p3

131. Ibid, p18

6.3.6

TAURANGA MOANA, 1886–2006



Map 6.5: Marae and papakāinga community zones within the Tauranga urban boundary, as at 2010

that, ‘on top of existing compliance costs such as building consents, resource management fees, and increased rates a single family may be charged anywhere between \$20,000 to \$40,000 before they can even consider to look at actual housing construction costs.’¹³²

In Dr Ellis’s view, despite the various policies in place to promote housing developments on Māori land, the most important factor in ensuring their success is in fact ‘the voluntary availability and dedication of capable, experienced, willing and stubborn trustees who have the vision, commitment and perseverance to bring about positive change for their whanau.’¹³³

Glenn Snelgrove, chief executive officer of the Western Bay of Plenty District Council, was of the view that the district plan did ‘recognize and provide for Māori concerns’. He told the Tribunal that, through the plan, important initiatives for Māori housing and papakāinga zones were being provided for in rural zones; he listed nine papakāinga zones within the council’s jurisdiction.¹³⁴ In addition to the two dwellings permitted as of right, owners of multiply owned Māori land can, he said, build ‘one dwelling per 4000m sq in rural zoned land’; ‘one dwelling per 800m sq in residential and papakāinga zones’; and ‘one dwelling per 350m sq where a wastewater system is available in a residential zone.’¹³⁵ Mr Snelgrove

132. Document Q10, p 19

133. Ibid

134. Glenn Snelgrove, brief of evidence, 29 September 2006 (doc T4), p 3

135. Ibid, p 4

added that some or all of any financial contribution could be waived.¹³⁶ He said that a review of housing development on multiply owned Māori land, undertaken in Western Bay of Plenty in 2004–05, had produced several tangible outcomes: a report, a re-examination of financial contributions, the establishment of a forum, an information pack, adoption of SmartGrowth definitions of papakāinga and Māori developments, and a pilot project to establish papakāinga housing at Makahae Marae (although, as claimant counsel pointed out, this is outside the Tauranga Moana inquiry district).¹³⁷ The report Mr Snelgrove referred to is a substantial one which contains a number of specific recommendations to the district council.¹³⁸

In short, it is clear that Tauranga Māori do not find it easy to navigate the intricacies of the planning and resource consent processes. On the other hand, there is evidence of good liaison between local iwi and local authority staff.

6.4 THE VALUATION OF MĀORI LAND FOR RATING PURPOSES

6.4.1 The Mangatū Incorporation example

The valuation of Māori land for rating purposes has been a contentious issue throughout New Zealand. In the Gisborne district, the matter was highlighted when the Mangatū Incorporation, holding 73,000 hectares (180,387 acres) of hilly country, received a valuation in excess of \$40 million. The landowners appealed the valuation, on the grounds that no allowance had been made for its Māori freehold land status. The High Court agreed in 1996, but the Valuer-General lodged an appeal in the following year.

The Court of Appeal's exploration of the issues raised in *Valuer-General v Mangatū Incorporation and Others* (1997) contains important insights. Under examination was whether the constraints on alienation of Māori freehold land enacted by Te Ture Whenua Māori Act in 1993 should be taken into account when valuing land under the 1951 Act. In its decision, the Court of Appeal accepted that the 1993 Act did impose significant constraints on the sale of Māori freehold land. It found that the value of the 'owner's estate or interest therein' had to take these constraints into account when selling to persons outside the preferred classes of alienees. It also found that the value had to take into account the disadvantages which could arise from continuing multiple ownership.¹³⁹

136. Ibid, p 4. Mr Snelgrove confirmed that dispensations had been granted but was unable to indicate the numbers or the amounts: Glenn Snelgrove, under cross-examination by Michael Sharp, stage 2, fourth hearing, 29 November 2006 (transcript 4.7, pp 80–81)

137. Document T4, pp 4–5

138. The report, 'Development of Housing on Multiple Owned Maori Land in the Western Bay of Plenty', was prepared for the Western Bay of Plenty District Council Māori Forum in 2005 and then presented to the full council. It is available in full in document T4, attachment 7, pp 53–93.

139. Kenneth Palmer, 'Comment on Valuation and Rating of Maori Land' (commissioned research report, Wellington: Waitangi Tribunal, 2006) (doc s4(a)), p 3

In this inquiry, we heard evidence from Professor Kenneth Palmer, an expert in local government legislation who also acted as the incorporation's legal counsel in the *Mangatū* case. He told us that before taking the case, he had come to the view that 'the practices of Valuation New Zealand . . . in according land and capital values to Māori land appeared to be inappropriate and inaccurate.'¹⁴⁰ This opinion was put to the test by the *Mangatū* case and ultimately supported by the Court of Appeal's decision – which accepted that the practical difficulties involved in obtaining agreement from multiple owners, and the significant conditions imposed by Te Ture Whenua Māori Act 1993, had not been given adequate weight in the valuation of the *Mangatū* land.

Professor Palmer outlined the outcome of the Court of Appeal's decision for the *Mangatū* Incorporation. A new valuation was carried out by two independent valuers who recommended to the Land Valuation Tribunal that the *Mangatū* properties should be valued at 20 to 50 per cent below open market value.¹⁴¹ The Valuer-General made a counter-submission: he acknowledged the Court of Appeal decision, but argued that any reduction should be minimal, at not more than 5 per cent.¹⁴² The Land Valuation Tribunal concluded that: 'after much consideration . . . with respect to the two pieces of land in question, the parameters of the discount applicable range between 5% and 15%.'¹⁴³

Professor Palmer, as counsel for the *Mangatū* Incorporation, recommended that they appeal the second decision. The *Mangatū* Incorporation were, however, unwilling to do so: engaged in the practical tasks of farming, they had neither the time nor the resources to pursue further litigation at the Court of Appeal level.

Professor Palmer considered that the compromise outcome within the 5 to 15 per cent parameters was a 'wholly inadequate response and recognition of the principles articulated in the *Mangatu Incorporation CA* decision.'¹⁴⁴ He pointed out that, for rating purposes, the market which should be considered 'was primarily that of the economic ability of the members of the preferred classes of alienees, to pay for the land or shares in the land.'¹⁴⁵ That is, if the preferred class of alienees for Māori land was Māori, then the valuation needed to reflect what they might be able to pay. Valuation New Zealand, however, seemed 'adamantly opposed' to taking account of financial well-being when assessing Māori land values. On the other hand, he noted that some Māori owners voiced concerns about what the impact of a reduced rating value would be on rental value if the land were leased, and pointed out that the *Mangatū* Incorporation had put forward the view that if land were leased outside

140. Document 54(a), p3

141. *Ibid*, p5. The two independent valuers were Peter Wright, of Lewis Wright, Gisborne, and Jack Charters, of Colliers Jardine, Auckland.

142. *Ibid*, p5

143. *Ibid*, p6

144. *Ibid*, p7

145. *Ibid*

the preferred class of alienees, then 'leasehold value' should 'be defined and related to the open market leasehold value.'¹⁴⁶

In short, the *Mangatū* decision gave rise to much important discussion, and drew attention to the spirit and intent of Te Ture Whenua Māori. The lasting result has been some limited adjustments to valuation practice. After the decision was handed down, the Office of the Valuer-General issued guidelines for valuers to use when assessing the value of Māori land for rating purposes (see table 6.1 over). The maximum single adjustment, for multiple ownership in excess of 2000 owners, is 10 per cent. The adjustments for urupā are only 1.5 per cent and for kaimoana sites 0.5 per cent. That is, multiple ownership, set out in the upper portion of the table, is given much greater weighting than the cultural and spiritual dimensions listed in the lower portion.

What has been the impact of these guidelines for owners of Māori freehold land in Tauranga Moana? David Peterson told us that they are now used by Tauranga City Council valuers, which means that, in Tauranga City, a maximum of 10 per cent reduction is allowed for multiple ownership, and a maximum of a further 5 per cent for sites of special significance, including pā, urupā, and wāhi tapu sites.

Rolleston and Palmer share the view that the maximum 15 per cent reduction is inadequate. Indeed, in Professor Palmer's view, there is 'apparent recognition by Parliament of the inadequacy of the land valuation outcomes' in that the Local Government Act 2002 requires councils to establish a policy on the remission and postponement of rates on Māori land.¹⁴⁷ In Palmer's observation, it was 'commonplace' prior to the Local Government (Rating) Act 2002 for farm land to be granted up to 25 to 30 per cent reduction; therefore, applying this standard, 'a reduction in the value of Māori land from open market values by 25–30 per cent is not without precedent and justification.'¹⁴⁸ Furthermore, evidence presented in the *Mangatū* re-hearing substantiated a reduction of up to 45 to 50 per cent. Professor Palmer also considered that the guidelines for Māori land should distinguish between valuations made for different purposes, noting that there could be valuations for rating, internal or external leasehold rental determination, insurance of buildings, borrowing, compensation payments, and alienation.¹⁴⁹

The local government rates inquiry, the subject of the next section, also considered the valuation of Māori land and the implications of the *Mangatū* decision.

146. Ibid

147. Document s4(a), p 10

148. Ibid

149. Ibid, p 11

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6.4.1

The land should be initially valued as general land with the following adjustments:

Initial discount for multiple ownership

Number of owners	Discount (%)
Under 10	3.5
10–24	4.0
25–49	5.0
50–99	6.0
100–499	7.0
500–999	8.0
1000–1999	9.0
Over 2000	10.0

Additional discount for special significance sites

Special significance of specific sites	Discount (%)
Pā site	1.50
Urupā	1.50
Rūnanga sites	1.50
Whaiwhai sites	1.50
Indigenous forest	1.50
Kāinga	0.50
Access trails	0.50
Garden sites	0.50
Kaimoana sites	0.50
Other wāhi tapu sites	0.50
Maximum	5.00

Table 6.1: Valuer-General's guidelines for district valuation of Māori freehold land subject to the restrictions of Te Ture Whenua Māori Act 1993

Source: Hemi Rolleston and Jolene Patuawa, 'Submission Report on the Rating of Māori Land in Tauranga', 2004 (doc Q1, appendix C to appendix A)

6.4.2 Report of the local government rates inquiry 2007

As our hearings were drawing to a close at the end of 2006, the local government rates inquiry panel was convened. It undertook research and public consultation in early 2007, and reported to the Minister of Local Government in the middle of that year.¹⁵⁰ Because of its relevance to issues under investigation in this inquiry, we advised the parties to the Tauranga Moana stage 2 inquiry that we wished to consider the panel's report in making our findings.¹⁵¹ We received no objections.¹⁵²

The local government rates inquiry received more than 900 submissions, and the panel travelled widely to meet with local government, the general public, and Māori.¹⁵³ The panel's view was that local government worked well in general terms, but was under pressure because of increasing expenditure. The focus of their attention was thus on the funding of local government and the extent to which the rating systems, set out by the Local Government (Rating) Act 2002, were sufficient, sustainable, efficient, and equitable.¹⁵⁴

Māori made an important contribution to the review process, and particular attention was given to the rating of Māori land and the relationships between Māori landowners and councils.¹⁵⁵ Ngāti Tūwharetoa, however, was critical of the lack of Māori representation on the inquiry panel:

Ngāti Tūwharetoa is unhappy that the Inquiry Panel itself has no Māori representation given that special attention is to be given to the impact of rates on land covered by Te Ture Whenua Māori Act 1993. This is a severe oversight as the perspective of Māori should have been given priority in the appointment of the panel. We have concerns as to the ability of the panel to adequately understand or address issues of importance in relation to Māori Land.¹⁵⁶

Māori and non-Māori submitters alike were agreed on the complexity of Māori land issues, but four themes, in particular, were underscored by Māori and identified in the analysis document:

- ▶ the impact of rates on land covered by Te Ture Whenua Māori Act 1993;
- ▶ the valuation of Māori land;
- ▶ the levels of understanding and the performance of local government; and

150. Local Government Rates Inquiry Panel (D Shand, G Horsley, and C Cheyne), *Report of the Local Government Rates Inquiry* (Wellington: Local Government Rates Inquiry, 2007), pp 29–31

151. Paper 2.668

152. See papers 2.670 and 2.669 for the Crown and claimant counsel responses. Crown counsel stated that 'the Crown is still considering its response to the [local government rates inquiry] Panel's report', and claimant counsel emphasised that the inquiry panel was examining the issue from a national point-of-view, and did not 'fully resolve the issues canvassed in the Statement of Issues and addressed by the evidence and submissions provided'.

153. *Report of the Local Government Rates Inquiry*, p 31, app 3, pp 268–271

154. *The Local Government Rates Inquiry: Background Information for Interested Parties*, February 2007

155. See esp *Report of the Local Government Rates Inquiry*, pp 211–266

156. Submission 913, Ngāti Tūwharetoa (D Shand, *Funding of Local Government: Analysis of Submissions* (Wellington: Local Government Rates Inquiry, 2007), p 52)

6.4.2(1)

- ▶ the lack of a Treaty framework for rating and valuation.

The Hauraki Māori Trust Board and the Federation of Māori Authorities both addressed the latter theme. The federation's view was that '[a] Central Government overarching Treaty framework should be developed and implemented by Local Government to encompass the Treaty relationship, taking into consideration the Māori view of land as more than a commodity'.¹⁵⁷

While our focus must be firmly on rating issues in Tauranga Moana, we have nonetheless been assisted by the inquiry panel's broader findings. Among the most salient were the following.

(1) The basis for rating

According to the inquiry panel, 'it is council expenditures that drive rates; property values are only a means to distribute the burden of rates'.¹⁵⁸ The panel found that because of the flexibility given to councils, the systems adopted by individual councils are 'complex' and contain 'many different components'. The Local Government Rating Act requires rating policy to be set out in each council's revenue and financing policy. It was the panel's view, however, that 'key issues such as the basis on which differentials or targeted rates are set are often not well explained'. While acknowledging that some councils undertook 'robust analysis of cost and benefits to different classes of ratepayers', the panel considered that 'in others, there is little analysis or transparency'.¹⁵⁹

The panel also addressed issues of equity and affordability, and recommended that central government agencies carry out research into the affordability of rates for households in the two lowest income quartiles.¹⁶⁰ It noted that affordability of rates is 'more of an issue for Māori and Pasifika households'.¹⁶¹ The panel held the firm view that 'in fixing their overall rating policies, councils should have regard both to services consumed and to ability to pay'.¹⁶² A number of recommendations for research and monitoring were directed to this end.¹⁶³

157. Submission 767, Federation of Māori Authorities (Shand, *Funding of Local Government: Analysis of Submissions*, p 53). Compare submission 932, Hauraki Māori Trust Board (Shand, *Funding of Local Government: Analysis of Submissions*, p 53).

158. *Report of the Local Government Rates Inquiry*, p 7

159. *Ibid*

160. *Ibid*, pp 187–194, and recommendation 37, p 188

161. *Ibid*, p 12

162. *Ibid*, p 8

163. See, for example, recommendation 37 on research by central government agencies, and recommendations 41 and 42 on monitoring and 'robust evaluation' of rate rebate schemes. These recommendations arise out of chapter 12, 'Sustainability and Affordability of Rates', *Report of the Local Government Rates Inquiry*, pp 183–209.

(2) Papakāinga housing

Noting that this was an option designed to enable Māori to establish homes and live in community on land under multiple ownership, the panel pointed to the difficulties Māori had experienced in establishing such housing:

Some of these matters, such as the perceived reluctance of councils to authorise the establishment of papakāinga areas, are not related to rates. However, there are a number of rating issues, including the rise in rates caused by a sharp increase in land values adjacent to the papakāinga area, the level and affordability of these rates and the limited services being provided. There was also a concern about the use of capital value rating, impact of uniform annual general charges being applied to papakāinga housing, and the inability to access the rates rebate scheme because of multiple ownership. There was also considerable anxiety about the ability to pay rates, and questioning of whether the level of rates was appropriate for Māori land in multiple ownership. These issues were seen by some as a threat to the sustainability of some papakāinga housing communities.¹⁶⁴

(3) The uniform annual general charge

Many submissions to the panel, from Māori and non-Māori alike, commented on the UAGC. The panel recommended that the power to set such charges be removed from the Local Government (Rating) Act.¹⁶⁵ They summarise the arguments:

Differentials and UAGCs tend to be set arbitrarily without explicit justification in terms of the services to be funded. There is little transparency of the criteria that are being used. With the removal of differentials and fixed charges, the rating system would comprise only a general rate and targeted rates – plus the possibility of user charges. Thus higher rates charged to businesses through a business differential would be removed. That is not to say that businesses might not be charged higher rates based on targeted rates for particular services. But this would have to be based on the requirements for setting targeted rates provided in the LGRA. And the removal of UAGCs would not prevent councils setting uniform targeted rates.¹⁶⁶

Instead of a UAGC, the panel advocated recovering the costs of public services from general rates, or from targeted rates which specify not only the purpose of the rate but also the cost to be recovered, the group of properties to be targeted, and the calculations involved.¹⁶⁷

The panel further recommended that rating differentials be removed from the Local Government (Rating) Act.¹⁶⁸ Aware that some councils had previously used this mecha-

164. *Report of the Local Government Rates Inquiry*, p 219

165. *Ibid*, recommendation 5, p 130

166. *Report of the Local Government Rates Inquiry*, executive summary, recommendation 52, p 7

167. *Ibid*, pp 128–130

168. *Ibid*, recommendation 8, p 134

6.4.2(4)

nism to protect farming from urban encroachment, the panel suggested that the needs of rural property owners would be better met by the use of equitable targeted rates across all sectors, by rate postponement mechanisms, and by valuations based on productive value rather than market value.¹⁶⁹

The panel noted, however, that developing rating policies in light of these recommendations would take time and adjustment, and therefore suggested that the changes need not be implemented before the 2012–13 long-term council community plans.

(4) Valuation instruments and methodologies

The property valuation rolls are an important instrument affecting all ratepayers. A large number of submitters – from local government, Māori, residential, rural, and business ratepayers – raised concerns about the quality of information on the property valuation rolls.¹⁷⁰ In response, the panel commissioned its own investigation on the matter, and concluded that capital value rating is more reliable than assessed value rating. It thus recommended that ‘a common rating system, based on capital value, be promoted across the country for general rates.’¹⁷¹ The panel also had concerns about valuation methodologies and the consistency of the valuations carried out at local authority level. They met with the Valuer-General and were not reassured that the current system was robust. They could see two ways to address these issues and brought alternative recommendations:

12. That the previous model of a central government valuation authority be re-established to increase the level of professional resources applied to rating valuations.

13. As an alternative to recommendation 12, that the resources of the Valuer-General’s Office be increased to facilitate better quality control of valuations and encouragement for councils to better maintain the valuation roll and data bases.¹⁷²

We will return to the mandate of the Valuer-General in section 6.7.2.

(5) A new approach to valuing Māori freehold land?

The impact of valuations on Māori land is, as we have already seen, a contentious issue. The panel probed the extent to which valuations take into account the physical, legal, and cultural constraints on the sale of Māori land, and concluded:

Valuations for rating purposes are premised on a hypothetical sale between a willing buyer and a willing seller. It is clear that, for many Māori, the idea of basing the rating of Māori land on a hypothetical market value is alien and difficult to accept. It is only rarely

169. *Report of the Local Government Rates Inquiry*, executive summary, recommendation 8, pp 132–134

170. *Ibid*, p 134

171. *Ibid*, recommendation 9, p 136

172. *Ibid*, p 140

that Māori land can be sold and then only after a long process and with the agreement of the Māori Land Court.¹⁷³

The panel heard the concerns of Māori submitters, and noted the constraints on sale imposed by Te Ture Whenua Māori and the findings of the Court of Appeal in the *Mangatū* decision.¹⁷⁴ It observed that, through this Act and through the Local Government (Rating) Act, Parliament has recognised that the rating of Māori land is fundamentally different and needs separate consideration; however, there is no parallel recognition in the Rating Valuation Act.¹⁷⁵ The panel considered that attempts by the Valuer-General to address the issues surrounding Māori land by means of a discount formula (see table 6.1 above) have offered, at best, a short-term palliative.¹⁷⁶

Ultimately, the panel concluded that a more fundamental change was needed – in short, a whole new approach to the valuation of Māori freehold land.¹⁷⁷ It pointed to a report prepared for them by Whaimutu Dewes and Tony Walzl, which suggested that Māori land covered by Te Ture Whenua Māori should not be rateable for general rates – but, in situations where the land is occupied, targeted rates should be applied to cover the costs of the services provided.¹⁷⁸ The panel did not comment specifically on that suggestion, but instead recommended more generally that ‘a new basis for valuing Māori land for rating purposes be provided that explicitly recognises the cultural context of Māori land, the objectives of Te Ture Whenua Māori Act, and the inappropriateness of valuations for rating purposes being premised on the ‘market value’ of Māori land.’¹⁷⁹ It continued: ‘Consideration should be given to a new system for the valuation of Māori land being located within Te Ture Whenua Māori Act rather than the Rating Valuations Act.’¹⁸⁰

That general recommendation was then broken into seven specific recommendations, namely that:

- ▶ the relationship between the Treaty of Waitangi and rating law be addressed;
- ▶ a new basis for valuing Māori land for rating purposes be established;
- ▶ the Government set up an explicit programme of work to do this;
- ▶ the work programme should include developing a consistent approach to rates remission on Māori land;

173. Ibid, p 218. They add in a footnote that the actual definitions are contained in the Rating Valuations Act 1998.

174. *Valuer-General v Mangatū Inc* [1997] 3 NZLR 641 (CA)

175. *Report of the Local Government Rates Inquiry*, p 223

176. Ibid, p 223

177. The Māori Trustee and the Federation of Māori Authorities were among those who pointed out the limitations, conceptual and practical, of the Valuer-General’s guidelines.

178. W Dewes, and T Walzl, *Issues Paper on the Impact of Rates on Māori Land*, report prepared for the local government rates inquiry, 2007, p 12

179. *Report of the Local Government Rates Inquiry*, p 224

180. Ibid

6.5

- ▶ the work programme also be linked to programmes assisting the productive development of Māori land;
- ▶ Māori land made general land under the 1967 legislation, which is still in Māori ownership, be allowed to revert to the status of Māori freehold land;
- ▶ central Government collaborate with local government to get a consistent approach to rates remissions for Māori land.¹⁸¹

The panel also called for a better relationship between Māori landowners and councils, to address the history of mistrust felt by Māori landowners because of past land sales for non-payment of rates. It recommended that central government should, in partnership with local government and Māori, ‘establish an explicit programme of work aimed at addressing the entrenched problems of rating on Māori land.’¹⁸² A further recommendation was that the Society of Local Government Managers – drawing on the wide pool of expertise available among Local Government New Zealand, central government, and Māori – should develop a training programme ‘to build capacity and knowledge with local government to effectively address rating and other related issues on Māori land.’¹⁸³

6.5 LOCAL GOVERNMENT REPRESENTATION

Mention of the need to build capacity and knowledge of Māori issues within local government brings us to consideration of how well Māori themselves are represented in different forums. How effectively can Māori have their views represented on each of the three local authorities that cover the Tauranga Moana inquiry district? Drawing on the evidence given by representatives of these authorities, this section outlines their representation policies, processes, and mechanisms. We also consider the testimony of tangata whenua witnesses who have been engaged in these processes.

6.5.1 Environment Bay of Plenty

On 1 November 1989, all or part of 25 different authorities were amalgamated to form the Bay of Plenty Regional Council, now known as Environment Bay of Plenty. It describes its mission as to promote ‘the sustainable management of our natural and physical resources for present and future generations.’¹⁸⁴

181. *Report of the Local Government Rates Inquiry*, recommendations 58–64, pp 225–226

182. *Ibid*, recommendation 60, p 226

183. *Ibid*, recommendation 64, p 226

184. Paul Malcolm Dell, brief of evidence, 27 September 2006 (doc T3), p 2

We received detailed evidence about the establishment of a Māori constituency for Environment Bay of Plenty from Paul Dell, group manager (resource management), and Antoine Coffin, senior cultural adviser for Boffa Miskell Limited (whose evidence was commissioned by the Tribunal).¹⁸⁵ They also drew our attention to a 1993 report on Māori representation options by Judge Peter Trapski and to the subsequent legislation empowering the Māori constituency (passed in October 2001).¹⁸⁶

The results of the local government elections in 1995 were the catalyst for a new electoral initiative in the Bay of Plenty Region. At the time, Māori made up 28 per cent of the region's population (compared with 14 per cent nationally) and Environment Bay of Plenty had an iwi liaison officer and three Māori liaison committees. In the local government elections, however, no Māori were elected. Māori stood as candidates, but when the results were announced, all 11 elected councillors were non-Māori.¹⁸⁷ Neither Māori nor the elected council were comfortable with this outcome.

The manner in which the situation was resolved is an indication of what can be done with goodwill, clear thinking, and good process. In 1996, the three Māori liaison committees set up a working group to investigate the establishment of a Māori constituency for the Bay of Plenty region. In response to the group's report, Environment Bay of Plenty set up a six-member working group (three Māori, three council-designated) which recommended publicly notifying the proposal to establish a Māori constituency.¹⁸⁸ It was also decided to appoint Judge Peter Trapski, a retired District Court judge resident in Tauranga, as hearing commissioner to hear any submissions made in response to the notification. His selection recognised that there were Treaty and constitutional issues involved, along with local political issues. Importantly, Judge Trapski was seen by iwi and community alike as a person of integrity and sound judgement.

Judge Trapski summarised the situation as follows:

For some years there has been the perception, particularly among Māori that:

- ▶ there is no Māori representation at the Council table;
- ▶ the present system of election to the Regional Council with constituencies based only on area and population, does not properly recognise the high proportion of Māori people living in the Bay of Plenty;

185. Document T3; Antoine Coffin, 'A Study of Environmental Planning in Tauranga since 1991' (commissioned research report, Wellington: Waitangi Tribunal, 2006) (doc s7). Both presenters were subject to detailed cross-examination.

186. PJ Trapski, 'The Proposal to Establish a Māori Constituency for Environment BOP (the Bay of Plenty Regional Council): Report from Hearings Commissioner', 6 August 1998, <http://www.envbop.govt.nz/Counril/Maori-seats.aspx> (accessed 14 November 2008); Bay of Plenty Regional (Māori Constituency Empowering) Act 2001

187. Trapski, 'Proposal to Establish a Māori Constituency', p 2

188. Ibid. The three members designated by the council were the council chairman, the chairman of the Resource Planning Committee, and the general manager.

6.5.1

- ▶ direct representation would enable the Council to have a greater understanding of its responsibilities to Māori people under the Resource Management Act and would also give Māori people a better understanding of sustainable management of the environment;
- ▶ direct representation would guarantee increased Māori participation in local government activities.¹⁸⁹

The public were notified that Environment Bay of Plenty's intention was to promote a local Bill through Parliament to change the electoral provisions for the Bay of Plenty Region. Māori voters would choose to go on the general roll or the Māori roll, and seats would be apportioned between the two rolls. The mechanism, Judge Trapski noted, was not entirely new: it had been used for a time by the Auckland Regional Council, but repealed in 1992 as part of a larger package of local government legislative reform.¹⁹⁰

Judge Trapski received more than a thousand written submissions, listened to 157 oral submissions and questioned those making oral submissions. He set out the arguments for and against, and examined the constitutional arguments advanced by the Royal Commission on the Electoral System when it considered parliamentary seats in 1986. He noted that section 45 of the Electoral Act 1993 provided for Māori electoral districts in order to provide just representation, on the basis of the Māori population's proportion of the general population of the country.¹⁹¹

The Bay of Plenty proposal, he concluded, wholly conformed with Parliament's stated intentions for the delivery of democracy at the national level. It was constitutionally sound and democratic. But two major arguments had been advanced against the proposal. The first was that the proposal would lead to separatism or apartheid. Judge Trapski replied:

That view is not shared by Maori. They say the implementing of the Proposal would in fact heal the wounds of separatism; it would emphasise the concepts of partnership and of proportional representation. It would get to the Council table people who were truly representative of the population at large, and once those representatives get to the Council table, they would become part of a team which would together work on the business of the Council.¹⁹²

The second argument was that the proposal would create a privileged position for Māori, to which the judge responded:

While the Proposal is based on the privileged position of Maori in New Zealand, it would give Maori no more voting power than the general population. Like everyone else, Maori

189. Trapski, 'Proposal to Establish a Māori Constituency', p 2

190. Ibid, p 3

191. Ibid, pp 3–7

192. Ibid, p 7

will have only one vote. Those who elect to go on the Maori roll are committed to voting on that roll, for one of the candidates offering themselves for election in their particular ward of the Maori constituency. They are able to vote only for candidates offering themselves in that ward and they have only one vote.¹⁹³

Judge Trapski thus recommended that the Bay of Plenty Regional Council promote the proposal for a Māori constituency. Council weighed up the two ways to do this: it could seek a mandate from ratepayers, or a mandate from Parliament. Council chose the latter, as it was highly likely that an electorate that had failed to elect any Māori councillors would reject the Māori constituency option.¹⁹⁴

The Bay of Plenty Regional Council (Māori Constituency Empowering) Act was passed in 2001 and used for the 2004 elections. Three Māori wards were created and three of the 14 councillors were elected by Māori voters who had opted to enrol on the Māori parliamentary roll.¹⁹⁵ The three Māori wards are named after prominent landmarks on the Bay of Plenty coast (see map 6.6 over). Mauao is the mountain at the entrance to Tauranga Harbour; Ōkūrei is the point at Maketū; and Kohi is the point adjacent to the mouth of the Whakatāne River. Traditional names and traditional landscape features are thus recognised in the contemporary political landscape.¹⁹⁶

Mr Dell, of Environment Bay of Plenty, noted that the establishment of Māori wards was a contested one, completed in the face of ‘very public and vocal opposition’ which had now ‘dissipated to a modest level’.¹⁹⁷ Aware that this is the only local authority with separate Māori wards and that the Bay of Plenty ‘test case’ is being watched by other authorities, he chose his summing-up words carefully:

The benefit to tangata whenua in our region from having the Māori wards established is self evident. They now have guaranteed voices at the Council table contributing to the decision making on their behalf as a matter of right. The establishment of the wards through an Act of Parliament means that the constituencies cannot be easily removed. The number of representatives may change but the principle of special representation will remain as long as there are Māori seats. Prior to the establishment of the Māori seats, Māori were clearly dependent upon the goodwill of the majority non-Māori voters of our region.¹⁹⁸

193. Ibid, p 8

194. The Local Electoral Bill which was before Parliament in 2001 included provision for councils to introduce Māori wards. The Local Electoral Amendment Act, passed in 2002, inserted these provisions into the Local Electoral Act 2001. Councils can thus resolve to have Māori wards, issue a public notice that this is their intent, and provide opportunity for a poll of all voters.

195. Document T3, pp 6–7

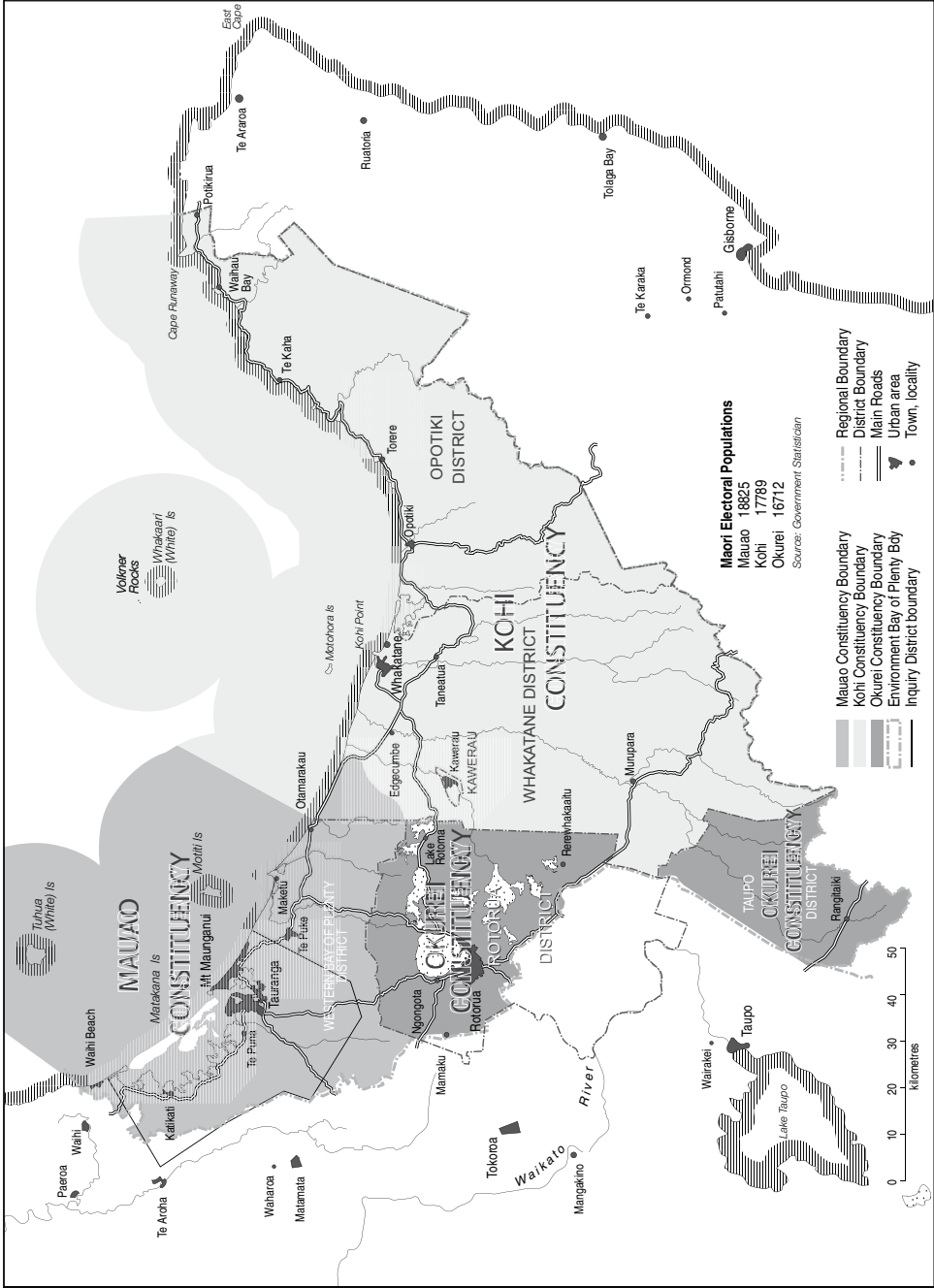
196. Ibid

197. Ibid, p 7

198. Ibid

TAURANGA MOANA, 1886-2006

6.5.1



Map 6.6: Māori constituency boundaries for Environment Bay of Plenty

(1) Other avenues for Māori participation

Māori participation in Environment Bay of Plenty is not solely limited to the elected representatives on the council. The Māori Regional Representation Committee – the council body responsible for lobbying for the Māori seats – comprised 26 members as at September 2006. Now made up of an ex-officio chairman, six councillors (including those representing the three Māori wards), and 19 iwi and hapū representatives,¹⁹⁹ the committee holds four meetings per year, for which members are paid a meeting fee plus travel reimbursements. Mr Dell described the committee as ‘essentially a liaison committee and its purpose is to provide an effective communication link between the Council and the respective iwi and hapū organizations’. In his view, the ‘influence and effectiveness of the MRRC [Māori Regional Representation Committee] on Council policy can be seen through its instrumentality as the driving force behind the establishment of the Māori wards.’²⁰⁰ We were told that Environment Bay of Plenty was undertaking a comprehensive review of all its committees, and that the committee would be reviewed by an independent consultant by November 2006.²⁰¹ We have no information on the outcome.

In addition to the Māori councillors and members of the Māori Regional Representation Committee, Environment Bay of Plenty has a Māori standing committee (made up of the three Māori councillors and three general councillors) that meets every six weeks. Mr Dell commented that ‘the current review of the MRRC noted above has deferred the possible nomination of additional iwi members from that committee, for Council confirmation.’²⁰²

Within the operational side of Environment Bay of Plenty, there is a Māori policy section located within the strategic policy group. Three full-time staff make up the section, including a manager, a resource planner, and clerical support worker. Their role is to deal with ‘Māori policy issues and advice to the Council’. Funds are available for iwi liaison and, in 2006, \$30,000 was allocated to assist hapū and iwi ‘who wish to prepare their own iwi planning documents for lodgement with council’. Mr Dell stated that the ‘Council recognizes the need for full time staff dedicated to dealing with Māori issues in order for effective participation by tangata whenua in our processes to take place.’²⁰³

Finally, Mr Dell described the ‘Treaty of Waitangi toolbox’ that Environment Bay of Plenty has created ‘as a response to years of debate on the Treaty of Waitangi’. It includes the various versions of the Treaty, the council’s statutory obligations regarding the Treaty, and the various initiatives that the council has implemented to acknowledge the Treaty’s role in its work within the region.²⁰⁴ It is available to council staff and to the public.

199. Ibid, pp 7–8

200. Ibid, p 8

201. Ibid

202. Ibid

203. Ibid

204. Ibid, pp 8–9

6.5.1(2)

(2) Encouraging Māori participation

Mr Dell also described the more general policies and initiatives by which Environment Bay of Plenty encouraged Māori participation. He said there was ‘an “open-door” policy to all hapū and iwi members on issues relevant to Council’s jurisdiction’:

Individuals or groups are free to approach council directly on any matters of concern to them relative to council activities if they do not wish to be represented by their hapu or iwi organizations. This policy applies equally to all persons whether or not they are hapu or iwi members.²⁰⁵

In order to keep a record of contacts for tangata whenua representatives of the region, the council also maintains an iwi database, although this is ‘primarily for internal use by our staff’. Mr Dell noted that ‘the database is constantly being updated and forms part of Council’s overall communication strategy with tangata whenua’. He also noted that, on the council’s website there is a specific ‘iwi subsection’ that provides updates of council initiatives of interest to hapū and iwi, as well as a bi-monthly pānui (newsletter) outlining Māori activities.²⁰⁶ Lastly, Mr Dell indicated the council’s interest in working with individual hapū and iwi on specific projects, citing the example of Pāpāmoa Regional Park as an ‘inaugural initiative’ of this kind.²⁰⁷ We comment further on the park in our chapter on cultural heritage (ch 8).

When cross-examined about inconsistencies between local bodies in terms of how they deal with tangata whenua, Mr Dell countered that iwi and hapū themselves have different preferences about ways of interaction:

in my own dealings with many iwi and Māori throughout this region, I find that every one of them has a different approach, a different way they wish to engage, so I would actually think prescription to an nth degree could in fact not be good for anybody. There has to be a balance.²⁰⁸

Counsel for Waitaha noted that Environment Bay of Plenty had recently resolved to reduce the number of councillors from 14 to 10, which would include abolishing one Māori seat. It seems the resolution had been adopted despite a vast majority of submissions being against the idea, and the reason for the council’s move was not made clear to us.²⁰⁹ We note, however, that the Local Government Commission has subsequently ruled that only one seat would be lost (from the Rotorua constituency), and that the three Māori seats would be

205. Document T3, p 9

206. Ibid

207. Ibid

208. Paul Dell, under cross-examination by claimant counsel Jolene Patuawa, stage 2, fourth hearing, 30 October 2006 (transcript 4.5, p 11)

209. Paul Dell, under cross-examination by claimant counsel Areta Gray, and under questioning by Judge Milroy, stage 2, fourth hearing, 30 October 2006 (transcript 4.5, pp 35, 44–45)

retained.²¹⁰ In cross-examination, Mr Dell affirmed that the council was determined to protect the existence of Māori seats. He also observed that it seemed hapū wanted to be more involved, rather than necessarily letting iwi speak for them.²¹¹

6.5.2 Western Bay of Plenty District Council

Glenn Snelgrove, chief executive of the Western Bay of Plenty District Council, said that tangata whenua participated at governance level through two dedicated Māori groups: the Māori Forum and the Māori Rates Working Party. He did not elaborate on Māori participation in the council's operational side, but noted that the council was one of the first local authorities to appoint a full-time Māori liaison officer. He also referred to 'Māori liaison staff'²¹² and 'consultation guidelines to assist Council staff when consulting Māori'.²¹³

Mr Snelgrove explained that the Māori Forum is administered under the policy committee, while the Māori Rates Working Party is administered under the operations committee. He said the Māori Forum had been created in 1991 in response to the Resource Management Bill and the establishment of a Māori advisory committee by Local Government New Zealand. Initially a working party, the forum was retained by council to provide ongoing advice, its principal function being 'to consider matters of concern to tangata whenua referred to it by Council and, if it wishes to do so, to make submissions or resolutions on those matters to Council'.²¹⁴ The forum was able to request that any matter be referred to it, and to draw council's attention to any matter concerning tangata whenua that was not currently under consideration.

The Māori Forum was reviewed in 2005, as required by the long-term council community plan, and subsequently restructured. It now has:

- ▶ recommendatory powers directly to council;
- ▶ administrative support and resources;
- ▶ the ability to conduct its meetings informally;
- ▶ remuneration at the current councillors' meeting allowance;
- ▶ a tangata whenua chair, with the mayor holding the position of deputy chair; and
- ▶ training provided when and where appropriate.²¹⁵

210. John Cousins, 'Singular Move sees all Maori Seats Stay', *Bay of Plenty Times*, 11 April 2007, <http://www.bayofplentytimes.co.nz/local/news/singular-move-sees-all-maori-seats-stay/3729441/> (accessed 12 April 2007)

211. Paul Dell, under cross-examination by claimant counsel Spencer Webster, stage 2, fourth hearing, 30 October 2006 (transcript 4.5, p 36)

212. Document T4, p 6; Glenn Snelgrove, under cross-examination by claimant counsel Spencer Webster, stage 2, fourth hearing, 29 November 2006 (transcript 4.7, p 97)

213. Document T4, p 7

214. Ibid

215. Ibid

Although the forum initially had only an iwi focus, Mr Snelgrove said that provision had been made more recently to allow a mix of iwi and hapū representatives.²¹⁶ He also made the point that hapū could feed their views to the constituted iwi authorities with whom the council worked.²¹⁷ However, Te Karehana Wicks told us of occasions when the council had needed to engage with her hapū at an operational level and commented that there was ‘no overall structure to ensure that engagement with our hapū occurred in a proper manner.’²¹⁸

With regard to the option of Māori wards, Mr Snelgrove said that council had elected to retain the five existing wards but the issue would next be reviewed in 2013.²¹⁹ Countering Antoine Coffin’s view that Western Bay of Plenty District Council’s representative structures were not as good as those of Environment Bay of Plenty and Tauranga City Council, Mr Snelgrove described his council’s structures as appropriate for a diverse district with 11 different iwi and said that ‘what’s fit for one may not be fit for another.’²²⁰ He acknowledged that having hapū protocols in place might improve consultation, however, and said that, as chief executive officer, he would like to see a more inclusive approach in the future.²²¹

6.5.3 Tauranga City Council

In terms of population and capital value, Tauranga City Council is by far the larger of the two district authorities within our inquiry. It plans for, and services, areas where rural and urban Māori live in large numbers, and where previously rural Māori communities are experiencing the greatest impacts of urban and infrastructure development.

Stephen Town, chief executive of Tauranga City Council, told us that Tauranga City Council has established ‘a number of initiatives . . . to foster Māori involvement in TCC [Tauranga City Council] decision making processes.’²²² These include the establishment of ‘agreed protocols’ between the council and local hapū and iwi, and the establishment of the Tauranga Moana Tangata Whenua Collective (made up of hapū and iwi representatives), the Kaumātua Forum, and the Tauranga City Council Tangata Whenua Committee.²²³ The first Tangata Whenua Collective was established in 2000 and is funded by the council. It has a two-fold role:

216. Document T4

217. Glenn Snelgrove, under cross-examination by claimant counsel Jolene Patuawa, stage 2, fourth hearing, 29 November 2006 (transcript 4.7, p 85)

218. Te Karehana Wicks, brief of evidence, 26 June 2006 (doc R25), p 6

219. Glenn Snelgrove, under cross-examination by claimant counsel Jolene Patuawa, stage 2, fourth hearing, 29 November 2006 (transcript 4.7, pp 87–88)

220. Glenn Snelgrove, under cross-examination by claimant counsel Spencer Webster, stage 2, fourth hearing, 29 November 2006 (transcript 4.7, p 96)

221. Ibid, p 102

222. Stephen Michael Town, brief of evidence, 2 October 2006 (doc T5), p 3

223. Ibid, pp 4–5. Mr Town said that some 11 protocols had been signed by October 2006 and four more were progressing towards agreement.

- (a) To provide a Tangata Whenua forum for Tangata Whenua within the Tauranga City Council area to discuss and debate their local authority issues and concerns, and to advance and protect the interest of Tangata Whenua.
- (b) To provide an opportunity for the Tauranga City Council and the Collective to discuss and develop Council concepts, policies, projects and procedures that impact on Tangata Whenua.²²⁴

The Kaumātua Forum was formed in 2002 to enable kuia and koroua of Tauranga Moana to raise their issues and concerns directly with the mayor, chief executive, and staff – in other words, to enable mutual and direct access between council decision-makers and tangata whenua leaders, rangatira ki te rangatira.²²⁵

The role of the council's Tangata Whenua Committee, also established in 2000, is to provide 'strategic leadership and advice' to the council, tangata whenua, and the wider community 'in respect of environmental, social, economic and cultural outcomes relating to tangata whenua'.²²⁶

In addition, the council has a takawaenga Māori unit, set up in 2000, whose function is 'to work across all levels of the organization (governance, management and operational) to assist in the understanding and addressing of Māori issues'. The unit is located within the 'City Directions' section of the organisation, which deals with strategic planning and policy development, and has three full-time positions.²²⁷

Lastly, Mr Town pointed to 'memoranda of understanding' which can be 'developed as the need arises through a collaborative process'. As existing examples, he cited two memoranda that had been drawn up with Ngāi Tamarāwaho, one relating to roading and the other to the monitoring of major city infrastructure projects.²²⁸

When questioned about Māori involvement in the governance side of Tauranga City Council, Mr Town stated that the council did not currently have Māori wards, having last considered the matter in June 2005. However, the possible establishment of Māori wards would be among the representation issues reviewed by council before the 2010 elections.²²⁹

Under cross-examination, Mr Town acknowledged that tangata whenua groups might feel that 'from time to time' their voice was still not heard, but said he thought there was sometimes 'misalignment about consultation and agreement and the difference between the two'.²³⁰ When questioned about the lack of specific provision for Māori representation

224. Ibid, p 5

225. Ibid, p 4

226. Ibid, p 5

227. Ibid, p 6; organisation structure chart, http://www.tauranga.govt.nz/knowledgebase/tabid/624/qid/276/tctl/1332_ViewQuestion/Default.aspx (accessed 2 November 2009)

228. Document T5, p 6

229. Ibid, p 7

230. Stephen Town, under cross-examination by claimant counsel Jolene Patuawa, stage 2, fourth hearing, 29 November 2006 (transcript 4.7, p 3)

6.5.4

on council, given that Māori made up about 15 per cent of the urban population, Mr Town said that provision was not based on proportion; a lot of groups, not just Māori, would have a right based on proportion.²³¹ Moreover, despite the electoral review scheduled for before the 2010 elections, there was no guarantee for tangata whenua that Māori wards would be created. It also emerged during cross-examination that the various Māori bodies on council had no binding powers, a point that Mr Town acknowledged. However, he did not agree that tangata whenua only had the same input as the general public, noting that they are funded in ways that members of the wider public have objected to as ‘special treatment’.²³²

The Tribunal questioned Mr Town as to whether the different levels of representation adopted by Environment Bay of Plenty and Tauranga City Council meant that the two authorities had a different level of obligation to Māori. Mr Town responded that the question was better directed at the elected members of the Tauranga City Council. He said that when the representation is next reviewed, he was sure that members would be asking for specific information from Environment Bay of Plenty about the introduction of Māori wards. He expected that conversation to be ‘serious and lengthy’.²³³

6.5.4 The tangata whenua view

This section sets out the evidence we heard from tangata whenua about representation and participation in local authorities’ processes. Many of these witnesses are participants in the various forums and groups described above by the three chief executive officers, and they offer a valuable insight into the workings of these processes on the ground.

In cross-examination, Antoine Coffin (whose evidence covered environmental planning and management in Tauranga since 1991) stated:

Tauranga City Council, Western Bay of Plenty District Council and Bay of Plenty Regional Council have formal structures for Tangata whenua input into decision making processes. Tauranga City Council has structures and processes that can be considered best practice in New Zealand. Bay of Plenty Regional Council is the ‘only Council’ in New Zealand with Maori constituencies and duly elected Maori members. Western Bay of Plenty District Council currently has an undeveloped and unsophisticated advisory structure. All Councils have consultation policies with Tauranga City Council and Bay of Plenty Regional Council possessing dedicated Maori units.²³⁴

He said that, for tangata whenua, critical participation and engagement issues included:

231. Transcript 4.7, p 3–4

232. Ibid, pp 6–7

233. Stephen Town, under questioning by Judge Milroy, stage 2, fourth hearing, 29 November 2006 (transcript 4.7, p 11)

234. Antoine Nelson Coffin, brief of evidence, 26 October 2006 (doc T23), para 21. This brief covers issues that Mr Coffin raised in his technical report on environmental planning (doc s7).

- (i) Maintenance of engagement processes
- (ii) Improvements in capability and capacity of Tangata whenua resource management practitioners
- (iii) Multi level participation in plan and policy development²³⁵

As we saw in the previous section, Tauranga City Council has a multi-level engagement process and structures, including a tangata whenua collective and tangata whenua representation on the standing committee. Western Bay of Plenty District Council, on the other hand, has what Mr Coffin described as ‘a straight-forward consultation policy’ and a Māori advisory forum, but no ‘dedicated staff or unit dealing with Māori matters’. His view was that they were ‘a work in progress’. He nevertheless acknowledged the progress made by both councils and said that Tauranga City Council, in particular, had ‘best practice’ compared with other councils around the country. There still remained, however, the problem of stretched resources within the tangata whenua community. He said that it was sometimes difficult to find ‘enough people to actually go on all those different boards and committees’, which could impact on the effectiveness with which tangata whenua were able to engage. Mr Coffin also commented that the structures and processes of bodies such as community boards were not great.²³⁶

The improved practice shown by Western Bay of Plenty District Council and Tauranga City Council at the organisational level is not matched by tangata whenua representation at their council tables. Environment Bay of Plenty, in contrast, has both. As well as having Māori wards, Māori electoral rolls, and Māori members on the council, Environment Bay of Plenty has a Māori representation committee made up of iwi representatives, employs specialist staff in a Māori advisory unit, and engages with tangata whenua on a project-by-project basis.²³⁷ Cross-examined by Paul Cooney, Mr Coffin said he thought Environment Bay of Plenty were ‘doing OK’.²³⁸

We have seen no evidence of bias or prejudice on the part of the current Tauranga City and Western Bay of Plenty District Councils, but their capacity to respond to Māori concerns appears uneven. Māori have endeavoured to engage on a wide spread of issues ranging from papakāinga housing to effluent discharges. Where council and Māori views converge, progress is made. Where they diverge, and there are no Māori councillors to interpret the problems and lead the search for mutually beneficial solutions, opportunities are lost and Māori suffer. Frustrations are evident, as we shall see in the next section.

235. Document T23, para 25(a)

236. Antoine Coffin, under cross-examination by claimant counsel Spencer Webster, stage 2, fourth hearing, 30 October 2006 (recording 4.3.24, 28.03–32.10 mins); Antoine Coffin, under cross-examination by Paul Cooney on behalf of the local authorities, stage 2, fourth hearing, 30 October 2006 (recording 4.3.24, 52.30 mins)

237. Antoine Coffin, under cross-examination by claimant counsel Spencer Webster, stage 2, fourth hearing, 30 October 2006 (recording 4.3.24, 28.03–29.20 mins)

238. Antoine Coffin, under cross-examination by Paul Cooney on behalf of the local authorities, stage 2, fourth hearing, 30 October 2006 (recording 4.3.24, 52.18 mins)

Hemi Rolleston, who is likewise involved in some of the representative bodies for tangata whenua in the Tauranga Moana inquiry district, gave evidence about the Tauranga City Council's Tangata Whenua Collective. His view was not only that it was insufficiently remunerated but that payments were 'attendance focussed' rather than 'performance focussed'. He thought other alternatives should be considered, to allow tangata whenua representatives to 'create initiatives' as well as participate in tabled discussion:

A better way would be for Tangata Whenua to be given a budget, and given outcomes or Key Performance Indicators which need to be fulfilled within that budget. A minimum meeting attendance could form a part of that if this is a key concern for Council.²³⁹

A further constraint, said Mr Rolleston, was that the council's focus was 'only on Council priorities', which did not necessarily 'accommodate the concerns, issues and priorities for Tangata Whenua'.²⁴⁰

Commenting on the Tangata Whenua Standing Committee, Mr Rolleston acknowledged that, while it gave tangata whenua the opportunity to sit with their council partners, there were also shortcomings. In particular, its powers are only recommendatory; a number of issues are not brought before the committee (for example the decision on Māori wards, and the adoption of the new rating policy); and meetings are only bi-monthly.²⁴¹

Overall, the tangata whenua evidence about representation at the local government level highlighted that, while significant recent advances have been made, tangata whenua participation in the various representative bodies is underfunded and under-resourced. Most importantly, it often does not take place at the level where governance decisions are made. What is desired is effective involvement at key formative stages of policy planning and formulation; that is, at the times when agendas are set, proposals devised, and decisions made.

6.5.5 A mixed bag? The Combined Tangata Whenua Forum and SmartGrowth

SmartGrowth is an innovative programme organised by the three councils to address the problems and opportunities that growth and development in the western Bay of Plenty will pose over the next 50 years.²⁴² It is carried out in a consultative manner, and in partnership with Māori and community groups. Mr Rolleston explained to us that the SmartGrowth Implementation Committee is made up of representatives from each of four partner groups: Environment Bay of Plenty, Tauranga City Council, Western Bay of Plenty District Council, and the tangata whenua. The tangata whenua representatives are drawn from Tauranga

239. James Francis (Hemi) Rolleston, brief of evidence, 26 June 2006 (doc R10), p 5

240. Ibid, p 6

241. Ibid, p 7

242. Further information is available at <http://www.smartgrowthbop.org.nz/>

City Council's Tangata Whenua Collective and the Western Bay of Plenty District Council's Māori Forum, which also meet collectively as the Combined Tangata Whenua Forum.²⁴³

Te Pio Kawe also gave evidence about tangata whenua participation in the SmartGrowth project. As tū pakari advisor, a position he has held since 2003, he is jointly funded by the councils for six hours' work a week to support the Combined Tangata Whenua Forum and give input to the implementation management group.²⁴⁴ He commented that the 'general view' of tangata whenua who were consulted at the outset was that 'the concept of long term planning for regional growth was a good idea.' He noted, however, that 'tangata whenua were still concerned about the content and outcomes of SmartGrowth.'²⁴⁵

Mr Kawe pointed out that although tangata whenua had been 'afforded an important governance role', it is important to remember that the SmartGrowth Implementation Committee on which their representatives sit 'does not have any particular authority', but instead 'merely monitors the performance of the local authorities as against the visions and action plans within the SmartGrowth strategy.'²⁴⁶ Like Mr Coffin and Mr Rolleston, he commented on the forum's deficiencies in terms of resourcing, processes for engagement with tangata whenua, and the lack of expertise provided to assist tangata whenua.²⁴⁷ He noted that hapū responses to SmartGrowth were 'mixed' and they varied according to settlement patterns and proposed developments.²⁴⁸ Among possible solutions to these issues, Mr Kawe suggested that councils could:

- ▶ provide greater priority for dealing with tangata whenua issues;
- ▶ address funding issues and develop a tangata whenua funding strategy;
- ▶ fund a specialist unit to support tangata whenua in participating in planning processes;
- ▶ take steps to implement the action plans set out in SmartGrowth;
- ▶ develop hapū and iwi management plans (there are some currently, but they vary);
- ▶ commit funding for the development of these plans;
- ▶ take action to protect taonga and other resources; and
- ▶ engage with tangata whenua to develop a policy framework to provide for papakāinga.²⁴⁹

An important aspect of SmartGrowth is its potential for bringing Māori values and insights into the region's 50-year vision. This is a place where Māori aspirations for marae community zones and papakāinga housing, for example, can be integrated with the complexities of zoning, rating, and the provision of services. We are aware, however, of Māori disquiet about participation in SmartGrowth. It has soaked up Māori time, expertise, and

243. Document R10, p 3; doc R65, p 5

244. Document R10, pp 4–5; doc R65, pp 4, 9. The name 'tū pakari' comes from the saying 'kia tū pakari ai tātou', meaning, 'let us all stand strong.'

245. Document R65, p 6

246. Ibid, pp 8, 10

247. Ibid, pp 20–21

248. Ibid, p 17

249. Ibid, pp 23–25

resources, yet follow-through is sometimes lacking: the Māori perspectives and the urgent Māori needs set out in SmartGrowth are not always linked into the action plans and the annual decision-making processes of the Tauranga City Council and Western Bay of Plenty District Council. Also, councils do not provide sufficient funds for the Combined Tangata Whenua Forum to effectively build Māori capacity, and to support iwi and hapū research. Lastly, although the councils' SmartGrowth initiative is timely and well conceptualised, the level of Māori contribution to it is not reflected at the level of Māori participation in two of the three elected councils.

6.6 THE SUBMISSIONS OF THE PARTIES

Closing submissions were received from the claimants, the Crown, and the local authorities on rating policy and practice, the valuation of Māori land, and the representation of Māori at the local government level.

6.6.1 Claimant submissions

Many of the submissions summarised in the previous chapter have ongoing relevance in the post-1988 period, and so are not repeated here. They include submissions relating to community contributions by tangata whenua, and to service provision. However, other submissions that deal with rating, land valuation and the representation of Māori on councils do explicitly focus on the period between 1988 and 2006. In brief, these are:

- ▶ The 1998 Rating Act did not define land in a way that fitted appropriately with the Māori concept that land is not for sale. Counsel for Ngāi Tūkairangi submitted that schedule 1 to the Local Government (Rating) Act 2002 should be amended to include marae community zones and papakāinga housing as non-rateable land.²⁵⁰
- ▶ The Crown should revise its legislation to ensure that councils are rating in a Treaty-compliant manner.²⁵¹ The Tauranga City Council's rejection of recommendations in the 2004 Rolleston and Patuawa report, including the recommendation to remove the uniform annual general charge, indicates that legislative intervention is needed.²⁵² There is a need for the legislation to be more directive.²⁵³

250. Counsel for Ngāi Tūkairangi, closing submissions, 24 November 2006 (doc U12), p 127

251. Document U10, p 25

252. Ibid, p 24

253. Paper 2.653, pp 5, 15

- ▶ There is no effective Treaty clause in the Local Government Act 2002 to require local authorities to give effect to – or at least not act in a manner inconsistent with – the principles of the Treaty.²⁵⁴
- ▶ The valuation of Māori land for rating purposes ‘cannot be examined as if there is a “willing buyer / willing seller” in the context of the open market.’²⁵⁵ The constraints of Te Ture Whenua Māori Act 1993 create a limited, rather than an open, market and affect the valuation of land for both alienation and rating purposes.²⁵⁶
- ▶ The failure of the Crown to implement the findings of the Court of Appeal in the *Mangatū* decision was a major omission.²⁵⁷ Further, the Valuer-General’s guidelines, issued as a result of the *Mangatū* decision, are not appropriate as a standard for all Māori land: that decision was issued specifically in respect of two particular pieces of land.²⁵⁸
- ▶ The impact of residential growth continues to place high valuations on Māori land and adds to the pressure for alienation.²⁵⁹ There is pressure, too, from increased commercialisation, urbanisation, and industrialisation.²⁶⁰
- ▶ Changes in zoning, past and present, have had a major impact on rates levied. Councils have failed to recognise the use requirement of Māori landowners. Zonings often do not reflect the reality of those landowners’ uses.²⁶¹
- ▶ Planning legislation and council schemes have considerably inhibited the development of housing and associated papakāinga developments on multiply owned Māori land in the area. This is due to restrictions on the number of houses allowed in rural zones, and resource consent and development impact fees.²⁶²
- ▶ Changes from a land value rating policy to a capital value rating policy have been damaging for those living on papakāinga and other housing blocks.²⁶³
- ▶ The application of a uniform annual general charge to cover the cost of services and amenities, applying to every dwelling in the council area, has caused considerable hardship to the trusts administering current papakāinga housing.²⁶⁴

254. Paper 2.655, p 23

255. Document U10, p 20

256. Ibid, pp 20–21

257. *Valuer-General v Mangatū Incorporation and Others*, 16 September 1977, involved the rating valuation of about 73,000 hectares under the Valuation of Land Act 1951; see section 6.4.1 of this chapter for a discussion of this important case.

258. Paper 2.653, p 12

259. Document U10, p 26

260. Paper 2.653, p 13

261. Document U10, p 26

262. Ibid, p 23

263. Ibid

264. Ibid, p 24

6.6.2

- ▶ The current composition of local bodies does not adequately reflect or represent Māori interests. The Crown needs to intervene to ensure that Māori are represented on councils.²⁶⁵

6.6.2 Crown submissions

The Crown's submissions on issues such as service provision, already summarised in the previous chapter, continue to be relevant in the period to 2006. On other issues arising specifically in the period after 1988, Crown counsel submitted that:

- ▶ Recent (post-1998) legislation takes into account the unique nature of Māori land. The Local Government (Rating) Act 2002, for example, recognises the cultural significance of Māori land by providing that certain lands such as burial grounds and marae are non-rateable.²⁶⁶
- ▶ Local government legislation does not list past contribution by Māori as one of the matters that must be considered by a local body when assessing rates relief. Past community contributions are to be considered, rather, in relation to the manner in which land in the district was acquired from Māori, through confiscation or otherwise. Any Treaty breaches around the circumstances of those alienations should be addressed through Treaty settlement negotiations.²⁶⁷ The fact that marae contribute a benefit to the community is already recognised by their status as non-rateable property under schedule 1 to the Local Government (Rating) Act 2002.²⁶⁸
- ▶ Local government legislation does, however, require local authorities to take into account 'the importance of the retention, use and development of Māori freehold land when considering their Māori land rates remission and postponement policies.'²⁶⁹ The legislation 'leaves it to the local authority to decide whether the Māori land rates or remission policy should provide any level of reduction of rates on Māori land', thus reflecting the view that local authorities are in the best position to understand the circumstances applicable to Māori land in their district.²⁷⁰
- ▶ The Local Government Act 2002 provides that councils must have policies on the remission and postponement of rates on Māori freehold land. By contrast, such policies in relation to general land are optional.²⁷¹

265. Document U10, p 58

266. Crown counsel, closing submissions on issue 3, 8 December 2006 (doc U27), p 4

267. Ibid, p 11

268. Ibid, p 12

269. Ibid, p 8

270. Ibid, p 5

271. Ibid

- ▶ Under the Local Government (Rating) Act (2002), Māori land, unlike general land, cannot be sold for non-payment of rates. This has been the case since the Rating Powers Act 1988 was enacted.²⁷²
- ▶ The Local Government Act 2002 provides that councils must have policies on the remission and postponement of rates on Māori freehold land. The legislation leaves it to the local authority to decide whether these policies should provide any level of reduction or rates on Māori land. This reflects the view that local authorities are in the best position to understand the circumstances applicable to Māori land in their district.²⁷³
- ▶ There is a distinction between pre- and post-Te Ture Whenua Māori Act 1993 periods for valuation purposes, especially in light of the Court of Appeal's decision in *Valuer-General v Mangatū Incorporation* (1997). The Valuer-General has since issued guidelines for valuers to follow. The guidelines recommend adjustments for multiple ownership, but also state that each case must be considered individually. If there are special circumstances, and a 15 per cent adjustment is insufficient, it is open to the valuer to assign a greater degree of adjustment.²⁷⁴
- ▶ Town planning decisions, including on zoning, reflect the community's views on the appropriate development for their area. The legislation provides the framework in which such decisions are made.²⁷⁵
- ▶ The evidence concerning housing and land development issues was limited.²⁷⁶ No claimant submissions have been advanced on the post-1988 provisions for building houses on multiply owned Māori land in areas with a rural zoning.
- ▶ The Crown has recognised the importance of Māori participation in local government by making incremental changes in legislation to require consultation with Māori.²⁷⁷ In relation to the Local Government Act 2002, for example, parts 2 and 6 (particularly) reflect the importance of Māori participation in local authority processes.²⁷⁸ Local authorities must comply with these ways of enabling Māori to participate in decision-making.
- ▶ A government review after the 2007 local body elections was to look at the working of the Local Government Act 2002 and Local Electoral Act 2001. An area of particular interest to this review would be the level of Māori participation.²⁷⁹

272. Ibid

273. Ibid

274. Ibid, pp 38–39

275. Ibid, p 29

276. Crown counsel, closing submissions: introduction and issues 1–2, 8 December 2006 (doc U26), p 65

277. Crown counsel, closing submissions on issue 5, 8 December 2006 (doc U29), p 5

278. Ibid, p 17

279. Ibid, p 19. A copy of both the summary and the main report of the Local Government Commission Review of the Local Government Act 2002 and the Local Electoral Act 2001 of July 2008 can be viewed on http://www.lgc.govt.nz/lgcwebsite.nsf/wpg_URL/Legislative_Review.

6.6.3

- ▶ On the evidence submitted in this inquiry, the three local bodies in the Tauranga Moana inquiry district have representative mechanisms in place, and are listening to Māori concerns and acting on them.²⁸⁰

6.6.3 Local authority submissions

Counsel for the three local authorities presented submissions on contemporary rates, planning, and representation issues. Of particular relevance to the matters covered in this chapter are the following:

- ▶ Local authorities are ‘creatures of statute’. If the Crown does not provide for proper devolution of its Treaty responsibilities along with the devolution of powers, then ‘criticism for this failure belongs to the Crown as architects of that legislation, not to the local authorities who are the products of it.’²⁸¹
- ▶ Local authorities are required to adopt a policy towards the remission and postponement of rates on Māori freehold land, and all three councils in Tauranga Moana are doing this.²⁸²
- ▶ In relation to uniform annual general charges on papakāinga dwellings, the contextual evidence of council witnesses is that, even though there had been a percentage increase in rating charges, this was still less than half the average charge levied on a city dwelling.²⁸³

6.7 TRIBUNAL DISCUSSION, ANALYSIS, AND FINDINGS

We return now to the questions identified at the beginning of this chapter and consider them in light of the evidence heard.

6.7.1 Has the Crown, in delegating functions to local government, ensured that its Treaty responsibilities to Māori are being maintained?

(1) Discussion of the facts

Between 1988 and 2006, the Crown delegated responsibilities to local councils through the Resource Management Act 1991 and the local government Acts passed in 2001 and 2002. We have noted in section 6.2.2 that the approaches taken by the Crown in these two legislative contexts were not identical. The Resource Management Act requires local councils to

280. Document U29, p 22

281. Counsel for local authorities, closing submissions, 12 December 2006 (doc U39), pp 3, 5

282. Ibid pp 26–37

283. Ibid, p 37

recognise and provide for the relationship of Māori with their ancestral lands, waters, wāhi tapu, and other taonga; to have particular regard to kaitiakitanga; and to take into account the principles of the Treaty of Waitangi.²⁸⁴ The Local Government Act 2002, on the other hand, recognises that the Crown is the Treaty partner and asks local government to assist the partnership by providing opportunities for Māori to contribute to decision-making, and by building up Māori capacity to do so.²⁸⁵ The Local Government Act requires local authorities to be transparent in their policies by publishing these in their district plans and long-term council community plans. It also requires central government to audit the performance of local government. Overall, however, the local government legislation appears to place much less emphasis on rangatiratanga and kaitiakitanga; rather the focus is on local authority processes and how tangata whenua can feed into them.

The evidence presented to us by claimants, local government officers, commissioned researchers, and independent consultants all tends to show that good relationships are being built up between Māori and local government professionals in Tauranga Moana. Despite this goodwill, however, it would seem that Māori continue to be disadvantaged, and Māori land continues to be sold under the pressure of zoning changes, valuation increases, and rate increases. We are particularly concerned about areas affected by the rapid expansion of the greater Tauranga urban area. We also note that the proportion of Māori able to build their own houses on their own land lags far behind the proportion for the Tauranga population at large.

In terms of the Crown's role in the matter, we consider that its legislation does, broadly speaking, provide active protection of Māori rights under the Treaty. The general provisions of the Resource Management Act 1991 are Treaty-compliant. The sting is in the detail: kaitiakitanga, for example, can be narrowed to those resources where the two cultures have a common mind; relationships to wāhi tapu can be weighed up against other matters and set aside; the principles of the Treaty can be taken into account and then outweighed by other criteria. As the central North Island Tribunal commented:

The evidence before us was that delegation to regional and local authorities has been inadequate in terms of how iwi and hapū resource management issues are dealt with. Their concerns are merely being listed or selectively integrated into RMA [Resource Management Act] planning documents with fleeting references to tikanga, kaitiakitanga and the identification of taonga for protection.²⁸⁶

284. Resource Management Act 1991, ss 6(e), 7(a), 8

285. Local Government Act 2002, ss 4, 14(1)(d), 81

286. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 4, p 1591

6.7.1(1)

In short, the Resource Management Act's effectiveness in providing protection for Māori depends on the depth of insight and the level of goodwill of those who make decisions at the local government level.

Te Ture Whenua Māori Act 1993 provides a strong conceptualisation of Māori land, and the importance of land to Māori identity and Māori community life. But the Act has two important limitations. First, its strength lies in the way it addresses remote and rural lands. The problems which arise in urban and peri-urban situations were of lower priority when the legislation was conceived and the first Bill drafted. It is now necessary for the concepts of the 1993 Act to be directed to the type of challenges which have emerged in Tauranga Moana. Secondly, insights on the nature of Māori land, as contained in Te Ture Whenua Māori Act 1993, have not been taken up and incorporated into the local government Acts of 2002. Resource management professionals working in local government have a detailed awareness of the Resource Management Act and the Local Government Act, but a much lower level of awareness of Te Ture Whenua Māori.

The local government legislation passed in 2001 and 2002 identifies Māori as Treaty partners of the Crown and encourages local government to support this relationship in three ways:

- ▶ It requires local authorities to set up consultation processes which enable Māori to contribute to decision-making;
- ▶ It encourages councils to provide information and to contribute to capacity-building, so as to foster Māori participation in local government processes; and
- ▶ It sets up systems for transparent reporting by local government and audit by national government.

But how well have these legislative provisions worked 'on the ground'? For environmental matters and resource management, we need to look at the activities of Environment Bay of Plenty. On the other hand, when considering rating, planning, and zoning, the lime-light falls on the two district authorities, Tauranga City Council and Western Bay of Plenty District Council, each of which faces different challenges. Tauranga City is more compact in area, but with a large population and rating base. The challenges of rapid urbanisation fall largely on this council. By contrast, Western Bay of Plenty covers a much larger area, but has less than half the population and rating base of Tauranga City. That said, we note that in 2006 the Western Bay of Plenty District Council was ranked as the fourteenth fastest-growing of the 73 territorial authorities in New Zealand, only six places behind Tauranga City.²⁸⁷

It is against this backdrop that we must assess how well the various authorities are providing for consultation, capacity-building, and transparent reporting. We also look at how well the Crown is auditing performance.

²⁸⁷ 'The Top Fastest Growing Territorial Authorities Between 2006 & 2006', <http://www.westernbay.govt.nz/Your-district/Population-and-Statistics/> (accessed 1 October 2009). The figure of 73 territorial authorities is sourced from <http://www.lgnz.co.nz/lg-sector/> (accessed 3 November 2009)

(a) *Consultation processes*: Using zoning as an example, we have seen both good and bad consultation processes in Tauranga Moana. Zoning is a contentious issue and we would stress that Māori inputs are needed at each level – that is, where information is collected, where strategies are devised, and where decisions are made. In the area of resource consent applications, our impression is that once councils came to terms with the Resource Management Act's requirements for consultation, they invested considerable effort in developing better practices and improving their relationships with Tauranga Māori. Staff of the various local authorities appear to have good working relationships with iwi and hapū, and have instigated clear guidelines as to how, when, and with whom to consult. In some instances, the consent applicants are encouraged to consult, face to face, with the appropriate iwi or hapū. In other instances, council officers refer applications to the iwi or hapū for consideration and advice. Where agreement is not reached, the Environment Court is available to hear appeals (although, as we shall see in chapter 8, where we discuss cultural heritage, tangata whenua experience with this forum has not always been positive).

Looking at particular authorities, Tauranga City Council has recently taken several initiatives to foster Māori involvement in the decision-making processes, in accordance with the Local Government Act 2002. These include the Tangata Whenua Collective, the Kaumātua Forum, and the council's own Takawaenga Unit. At the time of our hearings in 2006, there were 11 protocols between council and iwi and hapū, with more in preparation, and various memoranda of understanding had been signed on specific issues important to Māori. Antoine Coffin, in commissioned evidence, commented positively on the current structures for engagement with tangata whenua: 'Tauranga City Council has established and maintains a complex and well resourced multi-engagement model that can be considered best practice in New Zealand.'²⁸⁸

That assessment supported the evidence given by executives, managers, and professional planners from the council itself. Consultation processes are generally working well and are building up a high level of confidence between iwi managers and council staff. However, with the exception of the Kaumātua Forum – where kuia and koroua meet face to face with the mayor, executive officer, and staff – the links are all between iwi or hapū (or both), and the operational side of the organisation, not the governance side.

The same appears to be the case with the Western Bay of Plenty District Council. Its Māori Forum relates to the policy committee, and the Māori Rates Working Party relates to the operational committee, but there is no provision for specifically Māori involvement around the council table. We shall return to this point when we look at the question of representation. Environment Bay of Plenty stands as the only local body, nationwide, to have made provision for consultation and Māori involvement at all levels, including having seats round its decision-making table.

288. Document T23, para 34

6.7.1(1)(b)

(b) *Capacity-building*: There are two different kinds of capacity at issue here. On the one hand, there is the capacity of council staff to engage with iwi and hapū; on the other, there is the capacity of Tauranga Māori to engage with local authorities.

Listening to the evidence presented by Mr Town, chief executive of Tauranga City Council, and Mr Ralph, the council's manager for environmental policy, it would appear that a good level of capacity has been built up within that authority. Executive staff and members of the Takawaenga Unit are able to engage well with Māori and to assist their council staff to understand Māori values and perspectives. This task is seen as an integral part of council work and is funded through the normal budget process. Environment Bay of Plenty, too, employs full-time staff equipped to deal with Māori issues, and has a Māori policy section within its strategic planning group. Furthermore, it has produced resources such as the 'Treaty of Waitangi toolbox', available for use by council staff, councillors, and the wider community. By contrast, the Western Bay of Plenty District Council is typical of a number of councils which have a limited population and rating base, and whose ability to appoint specialist staff is accordingly constrained.

In terms of fostering Māori capacity to engage, the 2002 Local Government Act requires each local authority to 'consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority.'²⁸⁹ As we write, we are heartened to see that there may be a slight strengthening of this provision: amending legislation currently before the House will, if passed, require the local authority, having undertaken that consideration, to then set out in its long-term plan whatever capacity-building measures it intends to put in place.²⁹⁰

Again, the Western Bay of Plenty District Council has been limited in what it can do in terms of capacity-building for Māori. Environment Bay of Plenty is better placed, and allocates funds both for iwi liaison and to assist iwi and hapū to prepare their own resource management plans. The Tauranga City Council, in some situations, pays attendance fees for meetings and makes grants-in-aid for particular tasks or projects, but none of the iwi or hapū in Tauranga City have salaried resource managers or full-time research officers: iwi and hapū resource managers do their work on a voluntary basis, alongside the employment that earns them a livelihood.

Antoine Coffin, in answer to a question about the Tauranga City processes, contrasted the best practice structures devised by the council with the limited capacity of tangata whenua to engage in these processes.²⁹¹ He said iwi and hapū struggle to keep up with resource consents and are unable to complete iwi management plans and engage with officials at the

289. Local Government Act 2002, s 81(1)(b)

290. Local Government Act 2002 Amendment Bill, Schedule 10, Part 1, s 8, <http://www.parliament.nz/en-NZ/PB/Legislation/Bills/Default.htm?p=3> (accessed 28 June 2010)

291. Antoine Coffin, under cross-examination by claimant counsel Spencer Webster, stage 2, fourth hearing, 30 October 2006 (recording 4.3.24, 30.33 mins)

plan preparation stage. They must rely upon a handful of volunteers who are stretched thin by their endeavours to engage with the different councils, community boards, and committees.²⁹² Robyn Cooper described, for example, how the Ngā Pōtiki Resource Management Unit generally faced between 200 and 230 resource consent applications every year, each of which could be 120 pages long and might also contain scientific or geotechnical engineering reports. On top of that, there was the need to engage with, and comment on, ‘the constant barrage of district, regional and national policy changes and plans and subsequent hearings, if any.’²⁹³ Often the work felt thankless: ‘our recommendations aren’t listened to anyway, it drains our energy and makes it a real hoha.’²⁹⁴ Gerard Gardiner, of Ngāti Hangarau, also contrasted their own financial resources with those available to some of the consent applicants: ‘we cannot pay for ecological or environmental reports like they can’, he said.²⁹⁵ Te Karehana Wicks, of Ngāi Tauwhao ki Ōtāwhiwhi, summed up the situation:

We just do not have enough people, let alone experienced people, to respond to all the matters coming before the hapu from WBPDC [Western Bay of Plenty District Council]. . . . We are all volunteers and most of us have jobs as well so the time we have to devote to this work is very limited. Whereas the Council employs professionals or consultants to carry out their responsibilities.²⁹⁶

We see a direct link between this lack of Māori capacity and the less-than-ideal results at the district planning level. Developments at Bethlehem over a period of 16 years illustrate some of the problems. There, Ngāti Kāhu have repeatedly engaged with and challenged Tauranga City Council over the area’s urbanisation, using their own scarce resources (see next chapter, sec 7.6.2). Ngāti Hangarau have also entered into the fray. Since the close of our hearings, the efforts of both hapū have finally resulted in a Ngāti Kāhu papakāinga zone and a Ngāti Hangarau marae community zone established as part of plan change 15 in January 2007.²⁹⁷ The Ngāti Kāhu papakāinga zone has sub-zones for marae community, commercial (waewae), recreation, and conservation (see map 6.7 over). There is provision not only for marae and marae-based facilities (such as health, education, and kaumātua housing) but also for housing subdivisions, home-based businesses, a fitness centre, lock-up storage facilities, farming, and plant nurseries. There is protection for urupā, heritage,

292. Ibid, 30.55 mins

293. Robyn Hinenui Cooper, brief of evidence, 26 June 2006 (doc R28), pp 5, 11–12

294. Ibid, p13

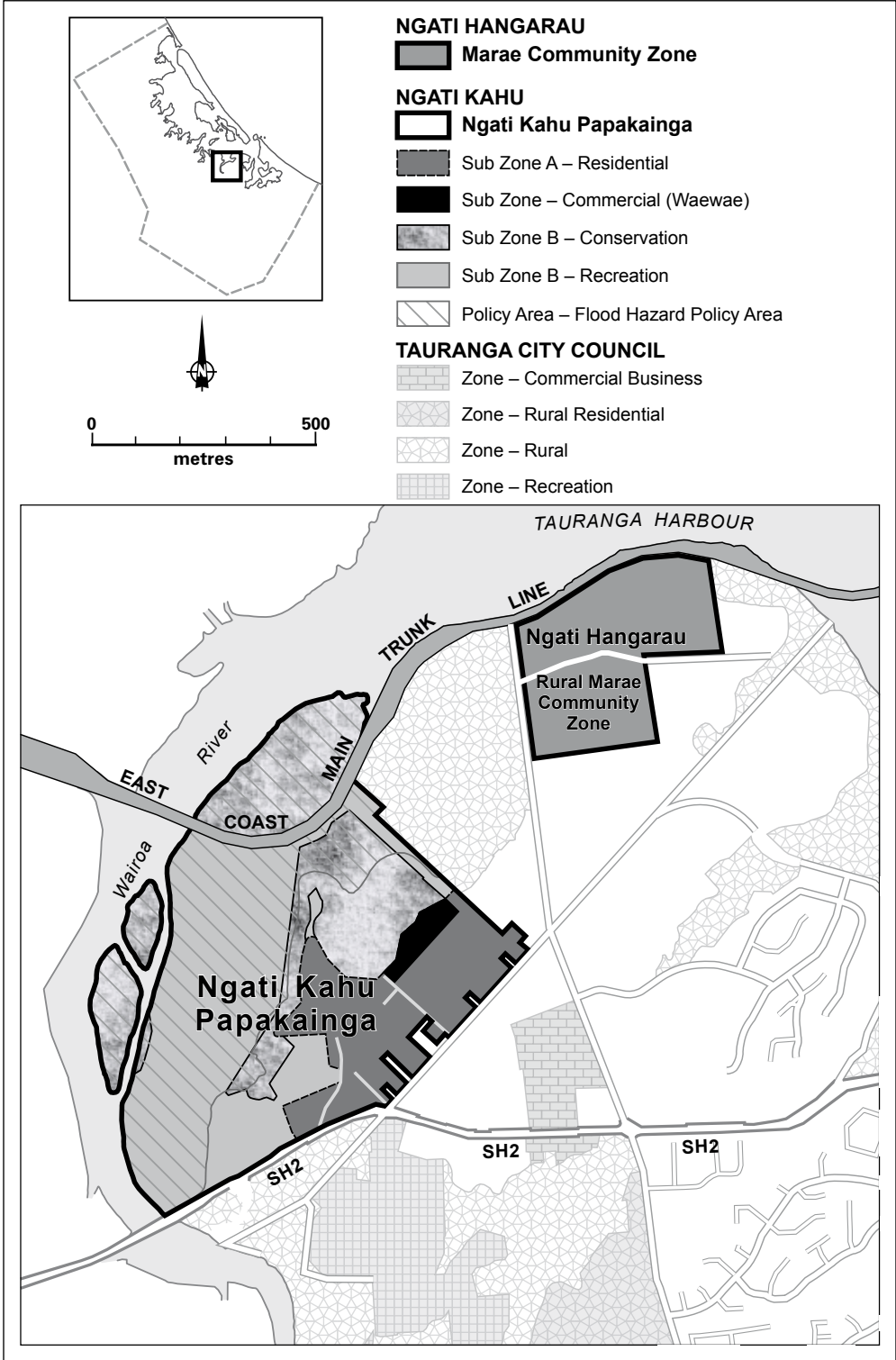
295. Gerard Gardiner, brief of evidence, 30 June 2006 (doc R50), p 6

296. Document R25, p 6

297. Tauranga City Council, ‘Proposed Plan Change 15 West Bethlehem Rezoning, Annotated by Council Decisions’, <http://content.tauranga.govt.nz/districtplan/PC15/AnnotatedPC15.pdf> (accessed 10 June 2009). See also Tauranga City Council, ‘Tauranga District Plan’ (amended as at 20 January 2007), part B – management rules, s19.8, Ngāti Kāhu papakāinga zone, <http://content.tauranga.govt.nz/districtplan/CD/files/Chapter19.pdf> (accessed 10 June 2009)

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6.7.1(1)(b)



Map 6.7: Ngāti Kāhu papakāinga and Ngāti Hangarau rural marae community zone

and visual amenity, and for the natural character of the Wairoa River. The Ngāti Hangarau rural marae community zone provides an area for papakāinga/residential dwellings in the interim while the council and Ngāti Hangarau work together on a longer-term plan. These are excellent outcomes and we are heartened by the progress, but we suspect that had the communities been better resourced to engage, the results might have been achieved more quickly and with less drain on the hapū concerned.

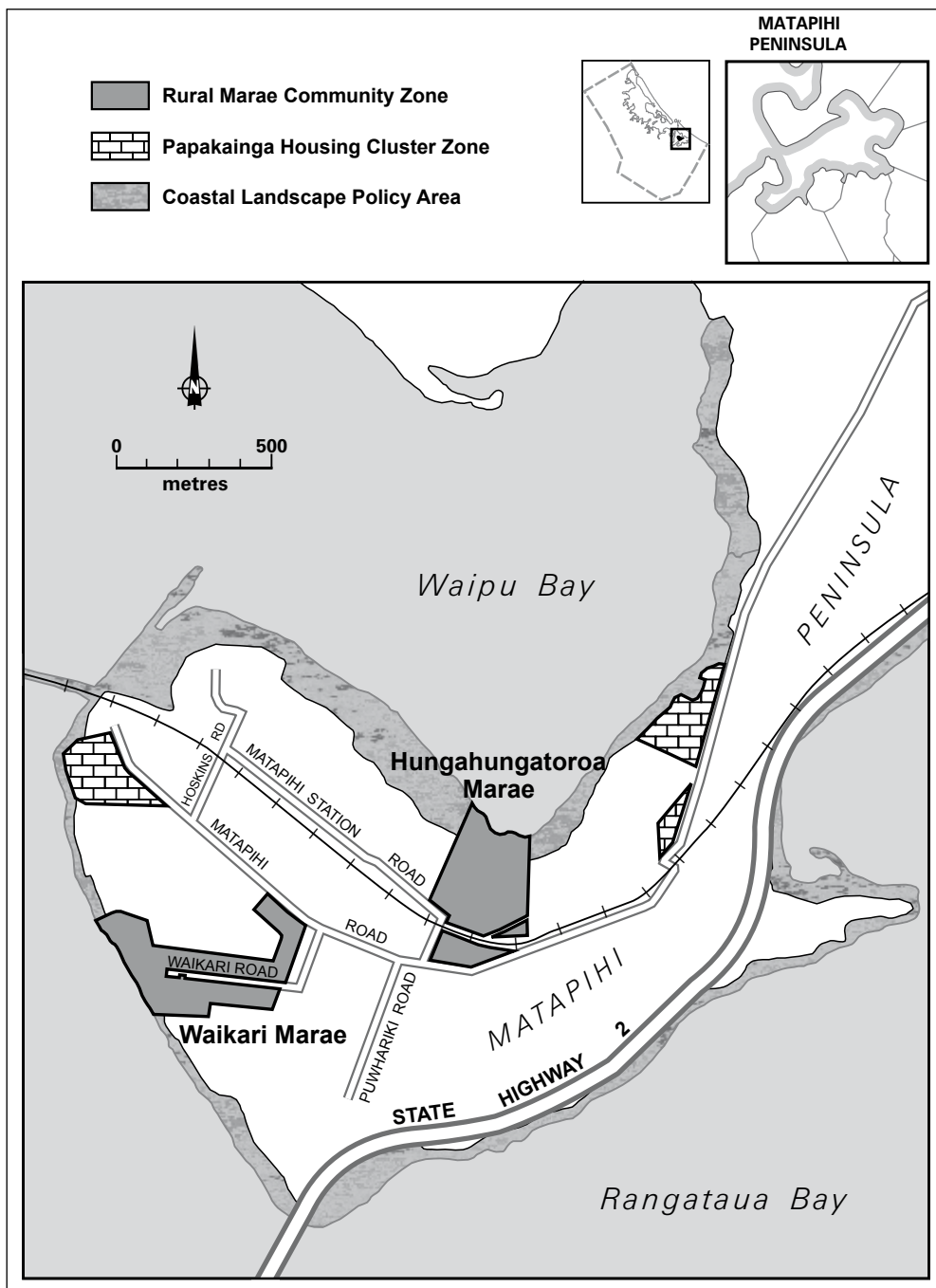
We have recently become aware of another important initiative on the Matapihi Peninsula and although this has taken shape since our hearings ended, we again feel it is worthy of mention. Tauranga City Council staff have worked with Ngāi Tūkairangi, Ngāti Tapu, Ngāti Hē, the wider Matapihi community, Environment Bay of Plenty, and other agencies to prepare a land use plan for Matapihi (see map 6.8 over). Community engagement workshops were held in 2007, an options plan prepared, and public responses heard in 2008. The resulting plan, adopted by Tauranga City Council in September 2008, takes into account hapū management plans currently being prepared by Ngāi Tūkairangi and Ngāti Tapu.²⁹⁸ The plan has provision for 50 new dwellings to be built in the rural marae community zone at Hungahungatoroa and a similar number in the rural marae community zone at Waikari.²⁹⁹ Three ‘cluster zones’ will be designated for additional papakāinga housing. The intent is to combine Māori community development, supported by additional papakāinga housing, with the protection of the rural environment of the peninsula. Common ground has been found around sustainable management principles. Landscapes will be preserved and ‘view-shafts’ from Matapihi Marae to Mauao protected. In short, the plan at last seems to offer Matapihi Māori the opportunity to progress the ideas they first began to formulate in the middle of the last century – when, in response to council moves to rezone the peninsula area from rural to residential, they proposed their own subdivision (see ch5). It looks as if the process may finally deliver a good outcome in terms of planning but, again, it has cost the tangata whenua significant time and effort to get there. We note that we have no information on the rating regime that is to be applied.

(c) Reporting and Crown monitoring: At section 6.2.2, we described the reporting mechanisms put in place under the Local Government Act 2002. Those mechanisms should have enabled the Crown actively to monitor how well local authorities were providing for Māori aspirations and interests. We were not given much evidence on how well that monitoring was carried out in Tauranga Moana, but we do note that central government has not *required* local councils to provide the necessary resources for Māori to participate fully, nor has it entered into partnerships with local authorities to *support* them towards that outcome.

²⁹⁸. Tauranga City Council, ‘Matapihi Land Use Plan 2008’, <http://www.tauranga.govt.nz/documents/plans/> (accessed 12 June 2009)

²⁹⁹. Ibid, pp 33, 35

6.7.1(1)(c)



Map 6.8: Land use and landscape plan for the Matapihi Peninsula

Local authority monetary assistance, such as the payment of meeting fees, is an important first step, but that alone is far from sufficient to build Māori capacity to the level envisaged by the Act. The onus is on the Crown to ensure that the resources needed for capacity-building are made available to iwi and hapū. Active protection is there in the intent of the legislation, but not in the delivery.

The onus is on the Crown to ensure that the resources needed for capacity-building are made available to iwi and hapū. There is a need for central government funding to complement local government funding. The need is greatest and the priority is highest in districts such as western Bay of Plenty which have a lower capital value, a large proportion of conservation land, and a large area of land to service.

(2) Treaty analysis and findings

It is perfectly acceptable for the Crown, in exercising its kawanatanga responsibilities, to set up a system of local government and to delegate certain functions to councils at district and regional level. Tauranga City Council, Western Bay of Plenty District Council and Environment Bay of Plenty are part of the current local government system. It is, however, important to clarify where Treaty responsibility lies. Does it lie with the Crown or with local government? The question is critical because local government activity impinges on people's everyday lives in a very direct way. As counsel for Ngāti Hinerangi commented, 'the actions, inactions and omissions of the local authorities have, to some extent, far greater consequences than that of central government'.³⁰⁰

The Tribunal's Wellington district report, *Te Whanganui-a-Tara me ona Takiwa*, released in 2003, applied 'function tests' and 'control tests' to determine the status of local government.³⁰¹ Its findings are consistent with the evidence submitted to us in Tauranga Moana. It is clear that local councils, in exercising their functions, are responsible to local communities within parameters set by central government. They are not agents of the Crown. When the 'control test' is applied, it is evident that local authorities exercise a higher degree of independence than the Minister exercises control. Again, this supports the contention that they are not agents of the Crown. The Crown, not local government, is the Treaty partner.

We agree with counsel for the local authorities who reminded us that councils are 'creatures of statute'. We also agree with claimant counsel that the Crown cannot seek to avoid its Treaty obligations by any delegation of its duties under the Treaty. Responsibility must lie somewhere. If no other body is legislatively tasked with exercising that responsibility, by default it rests with the Crown. As the Ōrākei Tribunal found, albeit in a slightly different

300. Paper 2.663, p 22

301. Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District* (Wellington: Legislation Direct, 2003), pp 351–359

context, ‘it is not any act or omission of the Native Land Court that is justiciable, but any omission of the Crown to provide a proper assurance of its Treaty promises when vesting any responsibility in the Court.’³⁰² We believe the same is true in the context of the Crown’s delegations to local authorities.

In terms of the Treaty duty of active protection, therefore, the Crown must make sure that the *rights* of local authorities to govern are matched by the *responsibilities* of those same authorities to recognise Māori rights and values, and to give effect to the duties of the Crown. The Crown thus has a responsibility to monitor the activities of local government, and to audit local government performance in the context of the Treaty relationship between Crown and Māori. This it does through the Auditor-General, who is required to monitor performance as well as expenditure. But the measure used is the letter of the law, not the Treaty. As the Auditor-General’s website says: ‘It is not the Auditor-General’s role to question the policies of the Government or local authorities.’³⁰³ Because local authorities are not Treaty partners, their only formal obligation is to obey the law. Under the Local Government Act 2002, as we saw, the Crown requires the local authority to monitor ‘community outcomes’, and the Auditor-General then checks that such monitoring has taken place. The Crown does not, however, require the local authority to measure community outcomes against the standards of the Treaty. It is the Crown that has an obligation to adhere to the Treaty. But we have received no evidence to show that the Crown has put in place any mechanism for monitoring local outcomes against Treaty standards. If indeed there is no check on whether community outcomes are Treaty-compliant, we find the Crown to be in breach of its duty of active protection.

6.7.2 Can the Crown meet its Treaty obligation to Māori, and the specific requirements of the Resource Management Act 1991 and its amending Acts, if Māori are not, as of right, represented on district and regional councils?

(1) Discussion of the facts

The local government Acts passed in 2001 and 2002, along with the Resource Management Act 1991, together provide the framework for the operation of local government in Tauranga Moana today (see secs 6.2.2, 6.2.4).³⁰⁴ Underpinning the legislation is the recognition that it is the Crown, not local government, which is the Treaty partner to iwi and hapū. As we have seen, the local government legislation does not require local authorities, or their agents, to act in accordance with the Treaty of Waitangi. Instead, the Crown uses the legislation, and

302. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 3rd ed (Wellington: GP Publications, 1996), p 192

303. Auditor-General, ‘Performance Audits’, <http://www.oag.govt.nz/about-us/frequently-asked-questions/type-of-work> (accessed 13 October 2009)

304. These are the Local Electoral Acts 2001 and 2002, the Local Government Act 2002, and the Local Government (Rating) Act 2002.

Crown agencies which interface with local government, to encourage local government to assist the Crown to meet its Treaty obligations. Councils do this by providing opportunities for Māori to contribute to decision-making, and by operating personnel policies which recognise Māori aspirations and employment needs.

There are strengths and weaknesses in this approach. If councils enter into the spirit of the legislation, the opportunities for Māori to participate are enhanced. If councils are reluctant or unable to meet their obligations, they cannot be held to account in the courts.

Even though Tauranga Moana is a small and compact inquiry district, the three local authorities together represent the full spectrum of local authority situations in New Zealand. Environment Bay of Plenty administers a region which embraces coastal, inland, rural, and urban areas, including the cities of Rotorua and Tauranga. The region has an above-average proportion of Māori from a large number of iwi and hapū, and a diversity of economic development opportunities and challenges. Meanwhile, Tauranga City is a rapidly growing urban area, built around fertile estuaries and expanding outwards into a rural periphery. Its Māori population includes both tangata whenua and those who have migrated from other areas, and its boundaries now encompass more than 30 marae. Western Bay of Plenty District extends over a large area from coast to mountains, including large areas of conservation estate, but it has a relatively small population and rating base.

Let us record at the outset that, in terms of providing for Māori needs and aspirations, we believe the performance of all three local authorities has improved since the Resource Management Act and local government Acts were passed. Māori are recognised as a very significant presence in all three local authority areas: Māori relationships with their lands, waters, and wāhi tapu are provided for in long-term planning and day-to-day operations; and council staff have a growing awareness of the importance of Māori tikanga. From council witnesses and the long-term council community plans, we have clear evidence of consultation, capacity-building within councils, and the involvement of iwi and hapū in forums and working groups.

In terms of budget and staff capacity, the Western Bay of Plenty District Council is the smallest of the three local authorities. It has already moved to increase Māori participation in decision-making by introducing its Māori Forum and Māori Rates Working Party. The council also has clear policies for the remission and postponement of rates on Māori land. These gains at the organisational level are not, however, matched by tangata whenua representation at the council table. There are no Māori members of council, and the council has opted to retain the current electoral system with five general wards. Tauranga City does not have Māori wards either, although Māori representation has been considered and will be so again. The absence of Māori at council tables leaves us, as a Tribunal, with a profound sense of disappointment. Claimant evidence indicated a high level of frustration about the lack of Māori involvement at the point where policies are set and resources are allocated. This is particularly evident in the case of SmartGrowth (see sec 6.5.5), an initiative that, in

6.7.2(2)

the claimants' view, has not lived up to its initial promise. From a claimant perspective, the long-term vision has not always been supported by the short-term decisions made. The intent of the Local Government Electoral (Amendment) Act 2002 was to remedy such a situation. The specific provisions have not been achieving this.

Environment Bay of Plenty is unique in New Zealand in that it has well-developed structures for Māori participation at the places where information is gathered and processed, and also for Māori representation at the decision-making table. The council's experience with Māori electoral representation is important, both within Tauranga Moana and beyond. Through the inclusion of Māori at governance level, the council has access to both Māori and Western world views, so that both can be taken into account when environmental decisions are made and resources are allocated. This in turn fosters good multi-directional flows of understanding between the council at governance level, its operational side, and the wider community of ratepayers that the council serves.

(2) Treaty analysis and findings

Using the powers delegated to them by the Crown under the Local Government Act 2002, local authorities exercise a role akin to kawanatanga over land, resources, and environment; they also collect money and provide services for the community at large, Māori and non-Māori. Under the Resource Management Act 1991, the Crown has also given district and regional authorities control over natural and physical resources including soils, waters, air, and ecosystems. Again, the authorities exercise a role akin to kawanatanga in these matters. The Resource Management Act is very specific about the recognition of the kaitiakitanga of iwi and hapū, and the relationship of Māori and their culture and traditions with their ancestral lands, waters, sites, wāhi tapu, and other taonga. The Local Government Act requires councils to provide opportunity for Māori to contribute to decision-making, and to foster Māori capacity to do so.

The Crown, in exercising kawanatanga in accord with article 1 of the Treaty of Waitangi, has the right to delegate these powers and responsibilities (see sec 6.7.1). It has a matching responsibility to ensure that this delegation is in accord with the article 2 and article 3 rights of Māori. The Crown has a duty of active protection. It must also uphold the principle of partnership. It must therefore ensure that local government acts in a manner which recognises and respects rangatiratanga, and ensures that the decisions made by local government are mutually beneficial to Māori and non-Māori alike. We elaborate briefly on partnership, rangatiratanga, and mutual benefit. Kaitiakitanga will be discussed in greater detail in the following chapter.

There is a reciprocity inherent in partnership and in balancing kawanatanga and rangatiratanga. The *Report on the Orakei Claim* looks at rangatiratanga and notes the close and continuing relationship between mana and rangatiratanga:

In Maori thinking ‘rangatiratanga’ and ‘mana’ are inseparable. One cannot have one without the other. The Maori text of the Treaty conveyed to the Maori people that, amongst other things, they were to be protected not only in the possession of their lands but in the mana to control them in accordance with their own customs and having regard to their own cultural preferences.³⁰⁵

In the *Te Whanau o Waipareira Report*, the Tribunal said that rangatiratanga is ‘basic to the Maori way of life’ and ‘permeates the essence of being Maori.’³⁰⁶ Nevertheless, rangatiratanga must accommodate the Crown’s need to carry out its legitimate role of kawanatanga. The Crown, on its side, has a responsibility to govern in the interests of both parties, but at the same time it has a responsibility to protect those things that are especially important to Māori.

Other reports have emphasised that the principle of mutual benefit is a cornerstone of the Treaty relationship and is equally applicable at the local government level. The *Report on the Mangonui Sewerage Claim*, addressing a very local problem, expressed it in these words:

The basic concept was that a place could be made for two people[s] of vastly different cultures, to their mutual advantage, and where the rights, values and needs of neither would necessarily be subsumed. . . . to achieve the objective, compromises on both sides are required and a balance of interests must be maintained.³⁰⁷

Each party contributes to the relationship, neither has a monopoly, and both benefit. They must, on a situation-by-situation basis, work out solutions that are fair and equitable.

We are also mindful that Māori, under article 3, must have equal rights with other citizens when they participate in democratic election processes. Guaranteed Māori representation at local government is a logical extension of guaranteed representation at central government level. Yet we have noted that Māori have been, and continue to be, consistently under-represented on the councils of local government. There is one exception to this, achieved when Parliament passed the Bay of Plenty Regional Council (Māori Constituency Empowering) Act in 2001. In our view, this Act accords well with the principles of the Treaty. It is consistent with the article 2 and article 3 rights of Māori and gives expression to the principles of partnership and mutual benefit. Māori have been enfranchised, non-Māori have not been disenfranchised. The empowering legislation also upholds the principle of options: just as in national elections, Māori can decide for themselves whether they wish

305. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 2nd ed (Wellington: Brooker and Friend Ltd, 1991), p 209

306. Waitangi Tribunal, *Te Whanau o Waipareira Report* (Wellington: GP Publications, 1998), p 26

307. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim* (Wellington: Waitangi Tribunal, 1988), p 4

to be represented as Māori or whether they wish to be incorporated into the general roll. Māori wards, premised on the arithmetic of ‘one person, one vote’, are not anti-democratic. Thanks to the constitutional insights of Judge Trapski, the careful drafting of the legislation, and careful arithmetic by the Government Statistician, those on the Māori roll and those on the general roll have an equality of opportunity at the polling booth.

We find, however, that the delegation of authority from the Crown to the Tauranga City Council and the Western Bay of Plenty District Council is not yet Treaty-compliant. Neither the principles of partnership and mutual benefit nor the article 3 rights of Māori are being met in these instances.

Further, and apart from any Treaty-based argument, we again point to the generally accepted principle that there should be no taxation without representation. Rates are a form of taxation. The law allows for Māori to be elected to local bodies, but it is clear that in the absence of dedicated Māori seats this is not happening to an equitable degree because it involves a scenario where, for Māori to be elected, majority voters have to vote for a minority candidate.

Looking across local authorities nationwide, it is apparent that the provisions for Māori wards contained in the Local Electoral Amendment Act 2002 are not working for Māori. The gains achieved through capacity-building at staff level and through new processes of consultation are not being matched at the governance level. Environment Bay of Plenty took the step of seeking special empowering legislation to create Māori wards, but we suspect that such action is unlikely to be widely adopted by other councils in New Zealand. Even if it were, strengthening the existing local government legislation would seem a more efficient and effective alternative to passing multiple pieces of special legislation on a council-by-council basis.

6.7.3 Is the mandate of the Valuer-General, as set out in the Rating Valuations Act 1998, consistent with the Crown’s obligations under the Treaty of Waitangi and the insights incorporated into Te Ture Whenua Māori Act 1993?

(1) Discussion of the facts

The costs of local government are, to a large extent, met by the communities that live within their boundaries. Central government, by and large, raises its income by taxes on the population; local government, traditionally, has raised its revenue by rates on property. Councils are currently empowered by the Local Government (Rating) Act 2002 to raise income by general rates, targeted rates for particular services, and a UAGC, all of which are collected from property owners. General rates and targeted rates are based on the assessed valuation of each property, making land valuation (now carried out at the local authority level) an important tool for revenue raising. Crown land and certain categories of Māori land are

currently exempt from rates, as are roads, schools, and hospitals. Exempted lands are not liable for general rates, targeted rates, or a UAGC.

The attachment of Tauranga Māori to their land and their desire to retain it have not diminished with the passage of time. The rating of Māori land has been a complex and contentious issue for more than 150 years and our previous chapter has already looked at many of the problems involved. Claimant evidence, and the views of experts about the implications of the *Mangatū* decision, have together highlighted the more recent conflicts and tensions associated with rating in Tauranga Moana. In particular, we have been alerted to problems arising from the rating of marae community zones, papakāinga housing, and – as always – lands under multiple ownership.

The local government rates inquiry attracted substantial submissions, some from Tauranga Moana Māori. It paid careful attention to Te Ture Whenua Māori, and commissioned additional research by Whaimutu Dewes and Tony Walzl.³⁰⁸ The inquiry panel's conclusions, based on a national pool of evidence, are consistent with what we have concluded from the Tauranga Moana evidence. The panel emphasises, first, that Māori land is different from general land 'historically, legally and culturally'.³⁰⁹ They expand: 'Māori regard themselves as custodians or kaitiaki of the land across generations and consider that the land is part of them. Land is not viewed as a commodity'.³¹⁰

They recognise, secondly, the diverse nature of Māori land, and the fact that Māori owners pay rates and contribute to the costs of local government:

A substantial amount of Māori land is productively used, well managed, and is providing owners with income and the ability to pay rates, which are paid on most Māori land. However, a lot of Māori land is unusable, landlocked, bush covered, isolated and not in production. Even when the land is potentially productive, constraints on borrowing, ownership issues, the burden of unpaid rates, and other matters create barriers to the use and development of the land.³¹¹

From the Tauranga Moana evidence provided by claimants, officials, and researchers, we consider that the rating legislation does not adequately recognise the differences between Māori land and general land in terms of the philosophy and relationship by which it is held. As noted in the previous chapter, land is seen by most Māori as a 'taonga tuku iho' and not primarily as a tradable commodity. This view has been clearly expressed to the Crown since at least 1885, when the Native Minister, John Ballance, met with Tauranga iwi and hapū at Whareroa, and it continues to be voiced today.

308. W Dewes, and T Walzl, *Issues Paper on the Impact of Rates on Māori Land*, report prepared for the local government rates inquiry, 2007

309. *Report of the Local Government Rates Inquiry*, p 211

310. *Ibid*

311. *Ibid*

6.7.3(2)

Further, under present law, valuation is carried out on the basis of ‘best usage’. This means that land may be valued on a usage that has never been adopted and that, for a variety of reasons including the nature of the tenure, may never be adopted in the foreseeable future. The best-use approach, when applied to Māori land, may be entirely hypothetical and the valuation may be out of line with what is practicable on the block in question.³¹²

Then there is the question of market value. The *Mangatū* decision on the valuation of the Mangatū Incorporation lands was an important one. It recognised that the hypothetical ‘willing buyer, willing seller’ scenario was inappropriate, given the context. Restrictions on the sale of Māori land, implemented by Te Ture Whenua Māori Act 1993, meant that the market for these blocks was very limited. This decision was appealed by the Valuer-General, but upheld by the Court of Appeal. In the aftermath of that decision, the Valuer-General sought to minimise the adjustment in valuation of the Mangatū lands, and prepared guidelines for district valuers (see table 6.1). While they do not have the force of law, these guidelines have been widely adopted by the valuation profession. We are at a loss to understand why the list of factors to be taken into account is so comprehensive, but the individual adjustments in many cases so meagre – and we agree with those witnesses who regard the maximum total allowable reduction of 15 per cent as insufficient. The guidelines are inappropriate, show a lack of understanding of the values surrounding Māori land, and bring the credibility of the office of Valuer-General and the valuation Acts under scrutiny.³¹³

(2) Treaty analysis and findings

In the words of Lord Cooke, the duty of the Crown ‘extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable’.³¹⁴ The Waitangi Tribunal has likewise stated that the Crown ‘is obliged to protect Maori property interests to the fullest extent reasonably practicable’.³¹⁵ Our firm view is that the Rating Valuation Act 1998 and the Local Government (Rating) Act 2002 have failed to recognise the special character of Māori land. The legislation is inadequate, and the Crown has not resourced the Valuer-General’s office to a level that enables it to take into account the relationship between Māori and their lands, waters, and wāhi tapu. There is a disjunction between Te Ture Whenua Māori Act 1993 and the rating and valuation legislation, be it the Rating Valuation Act 1998 or the Local Government (Rating) Act 2002. Te Ture Whenua Māori Act 1993 recognises the relationship of Māori with their lands, and charges the Māori Land

312. See, for example, the judgment of TR Ingram, L Green, and D Vane, *Taheke Paengaroa Trust against the Western Bay of Plenty District Council and Landmass Technology Ltd*, Tauranga hearing, New Zealand Land Valuation Tribunal, 26 February 2008, <http://www.nzlii.org/nz/cases> (accessed 18 March 2010), para 55

313. The initial valuation was made under the provisions of the Valuation of Land Act 1951 and the Court of Appeal judgment was published before the Rating Valuations Act 1998 was passed. Our comments apply to both Acts.

314. *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at 664, 667 per Cooke P

315. Waitangi Tribunal, *The Mohaka River Report 1992*, 2nd ed (Wellington: GP Publications, 1996), p 77

Court with promoting land retention in order to give it effect. Local government and rating legislation does not do so.

We acknowledge that, particularly with the 2002 rating and local government legislation, the Crown has tried to provide for the structural differences of Māori land. The Local Government Act 2002 specified that local authorities need to take account of the social, economic, and cultural well-being of people and communities, as well as the reasonably foreseeable needs of future generations. In order to do so fully, however, the legislation must more adequately address the fundamentally different approach to landholding. Some foundation work for this has already been done in the lead-up to Te Ture Whenua Māori Act 1993 and is available to the Crown. Further work, we understand, is currently being undertaken by Te Puni Kōkiri. What is needed now is for the rating and valuation legislation to be brought into line with the concepts and insights contained in that Act.

The evidence provided to this inquiry, and also to the local government rates inquiry, points to the limitations and deficiencies in the valuation systems applied to Māori land. At present, the Valuer-General has no clear direction from the Crown to act in a manner consistent with the Treaty of Waitangi, or to recognise the relationships between Māori and their lands, waters, and wāhi tapu. Nor is there a commitment by the Crown to ensure that the office of the Valuer-General has staff with an understanding of tikanga Māori, of Māori values relating to land, and of the complexities of Māori land under multiple ownership. For these reasons, we find that the Crown has not yet fulfilled its duty of active protection.

6.7.4 How have urbanisation, district planning, zoning, and rating affected Tauranga Māori since 1988, and to what extent can the Crown be held responsible for any negative impacts?

(1) Discussion of the facts

As the city of Tauranga continues to expand, the impacts are being felt keenly by Māori communities and the owners of Māori land, both within the urban boundary and on its periphery. It is clear to us that there are major problems to be addressed in Tauranga Moana, including:

- ▶ pressures to sell land in the wake of boundary changes and zoning changes, and resulting rates increases;
- ▶ disparities between the level of rates charged and the ability of households to pay;
- ▶ dissatisfaction with the level of services provided compared to rates charged – in some cases because rates were paid and services were not provided, in others because claimants provided services themselves but were then rated for the same services; and
- ▶ limited opportunity to build dwellings on Māori land in the urban periphery – for example, because of regulations limiting the number of dwellings on each rural landholding, and development levies and compliance costs adding to the expense of pre-construction work.

6.7.4(1)

In terms of protecting the remaining patrimony of Tauranga Māori, we applaud the fact that, since 1988, Māori land can no longer be sold for non-payment of rates. However, we have been disturbed to note that, on the evidence provided, the situation of many Māori in the area has continued to decline. We note, in particular, the ongoing sales of Māori-owned land and the very limited growth of Māori home ownership within the urban and peri-urban areas of Tauranga City. But even in the west of Tauranga Moana, Māori are beginning to feel the pressure of urbanisation with the growth of residential developments in areas like the Bowentown peninsula.³¹⁶

In this context, the apparent lack of engagement with the Rolleston and Patuawa submission to the Tauranga City Council in 2004 is disappointing. Māori were able to make submissions into a bureaucratic process, but the resulting decisions put into effect in the 2004–14 long-term council community plan did little to address their concerns. Despite the best intentions of the Local Government Act 2002, iwi and hapū insights and values, and their aspirations for a better future for Māori, have also been slow to find their way into district plans. The evidence tends to show, for example, that many Tauranga Māori want their remaining multiply owned land to be able to nurture community life into the future. Marae community zones, recognised by Tauranga County Council in their 1973 plan, were an important innovation. But Māori today see marae and papakāinga as much more than places of security for kaumātua and mokopuna: they also see them as places of productive activity, and bases from which young people and mature adults can go out to participate in the wider workplace. Many of those around the decision-making tables have not readily grasped this. Further, some seem to have had a limited understanding of the problems relating to multiple ownership. The district plans filed in evidence in this inquiry could have done much more to address the problems and opportunities for Tauranga Māori who own lands and want a better future. There are encouraging signs of more recent improvements including the papakāinga and rural marae community zones for Ngāti Kāhu and Ngāti Hangarau at Bethlehem, and for Ngāi Tūkairangi, Ngāti Hē, and Ngāti Tapu on the Matapihi Peninsula (see sec 6.7.1).

In terms of rate relief, the evidence has shown that while the provisions may be effective in more remote areas, they have been ineffective within and adjacent to the expanding urban area. The three local authorities, as required by the Local Government Act 2002 and the Local Government (Rating) Act 2002, have each adopted policies for the remission and postponement of rates on Māori land that is not used or occupied, does not provide financial benefit, is physically inaccessible, and contains wāhi tapu. However, those criteria do not seem well adapted to providing relief for those with land within the urban area or in the urban periphery.

316. Document R25, p 4

With respect to the UAGC, the Tauranga City Council's witness made the point that the shift from a single charge per property to a charge per dwelling was intended to remove the inequity between single householders on a property and those with multiple dwellings (such as high-rise apartments). He said that the council was exercising its discretion under the legislation to spread the incidence of rates as fairly as possible, especially in relation to high-rental apartments. We do not accept, however, that in removing one kind of inequity, it is appropriate to create another. Papakāinga designed to meet community needs are not the same as high-rise apartment buildings and other residential complexes built for profit. As the tangata whenua evidence made clear, papakāinga are a means of housing whānau and hapū members on ancestral land around the marae in order to maintain a collectively oriented way of life. A significant part of papakāinga development is to make low-cost housing available for kaumātua and kuia. This is an example of the kind of community facility that Tauranga iwi and hapū are providing for their own people, at little or no cost to the council or general ratepayer. Furthermore, council offers to phase in the new charges over time do not address the underlying inequity of the UAGC for such ratepayers.

(2) Treaty analysis and findings

The Crown, previous tribunals, and the courts have all agreed that Māori have a Treaty right to develop their properties and taonga.³¹⁷ In the central North Island Tribunal's view, that right includes 'the right of Maori to retain a sufficient land and resource base to develop in the post-1840 economy'. It also includes the right of their communities 'to decide how and when that base is to be developed', and a right to equal access to opportunities that will permit such development.³¹⁸

We agree, and we believe that the principals of partnership and mutual benefit confer on the Crown a responsibility to foster that development. Yet in Tauranga Moana (especially in and around Tauranga City), the cumulative effects of urbanisation, district planning, zoning, and rating have all too often worked against Māori development. Māori either have been separated from their land or have found it very difficult to use as they wish the little land they have left – and here we emphasise that usage, from a Māori viewpoint, may not necessarily involve the generation of profit but may, rather, be directed towards community enhancement. Across the inquiry district, the Crown has often failed to ensure that Māori land is well protected by local government practices. Nor has it ensured that iwi and hapū have been provided with the resources needed to build capacity, to employ resource management professionals, and to participate fully in the planning processes of local government. We thus find that in the context of increasing urbanisation, the Crown has failed to uphold the development right of Tauranga Māori and has not yet met its duty of active protection.

³¹⁷ Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 890

³¹⁸ Ibid

As we found earlier, the Crown must be held to have ultimate responsibility for the acts and omissions of the local authorities, both past and present, since the authorities are creatures of statute. From the evidence we heard about the experiences of many Māori communities living in the rural–urban periphery of Tauranga City, we can only conclude that ultimate responsibility rests with the Crown and that it has a duty to redress the prejudice suffered.

6.8 CHAPTER SUMMARY

The material in this chapter has shown how, since 1988, the interplay between urbanisation, planning, zoning, rating, and the delivery of services has put extreme pressure on many of the Māori communities, residents, and landowners in Tauranga Moana. Although, at a practical level, these matters fall largely within the province of local government, they are nevertheless governed by central government legislation.

We have looked closely at issues around the delegation of power to local authorities. We hold the firm view that, in delegating, the Crown cannot divest itself of its Treaty duty of active protection of Māori interests. It has a responsibility to see that local government and resource management legislation is Treaty-compliant. It also has a duty to monitor and audit the performance of local authorities in terms of Treaty outcomes. Part of that duty is to ensure that the activities of district and regional councils do not interfere with the ability of Māori to retain and enjoy the use of their lands.

In terms of specific pieces of legislation, the Local Government Act 2002 is designed to complement the Resource Management Act 1991. It requires local authorities to set up consultation processes enabling Māori to contribute to decision-making; it encourages authorities to provide information and contribute to capacity-building so that Māori can participate; and it sets up systems for transparent reporting by local government and audit by national government. The success of the Act depends on the level of monitoring and audit, and also on the Crown helping to build the capacity Māori communities and organisations need. The outcome, to date, has been inadequate. Māori in Tauranga Moana have the insights, willingness, and abilities to contribute, but still lack the capacity to do so, especially in terms of resourcing. Despite better recent engagement by councils, compared with the period discussed in the previous chapter, Māori continue to be marginalised within planning processes. Meanwhile, monitoring and audit systems have failed to identify and analyse the points of breakdown. The Local Government Act 2002 is not working for Tauranga Moana Māori, and Māori land continues to be sold in the face of rising land values. The Crown has not properly met its duty of active protection; it will continue to fall

short until Māori land is better protected by local government practice, and all iwi and hapū are provided with the resources needed to build capacity, employ resource management professionals, and participate fully in the planning processes of local government.

Nor are the provisions for Māori wards, as contained in the Local Electoral Amendment Act 2002, working for Māori. Under article 3 of the Treaty, Māori are entitled to equal rights when they participate in democratic election processes. We are aware that Māori have been, and continue to be, consistently under-represented at the local government level. No council, apart from Environment Bay of Plenty, has opted for Māori wards. The Crown needs to use its legislation and its departmental machinery to resource and encourage local authorities to assist it to meet its Treaty obligations. The Environment Bay of Plenty model has stood up under scrutiny – Māori have been enfranchised, while non-Māori have not been disenfranchised. And in addition to providing for equal rights, the model provides an opportunity for the partnership and mutual benefit that are cornerstones of the Treaty relationship.

Another major concern in this chapter has been the valuation legislation and the role of the Valuer-General. We have examined the decision made in 1997 by the Court of Appeal in *Valuer-General v Mangatū Incorporation and Others*, and we have looked at the relationship between Te Ture Whenua Māori Act 1993, which governs Māori land, and the Rating Valuation Act 1998. We have concluded that there is a disjunction between the two strands of law: at present there is little provision for valuations to take account of the constraints on alienation of Māori freehold land, or to recognise the relationships between Māori and their lands, waters, and wāhi tapu. Further, the Crown has not monitored the Valuer-General's office to ensure that it has appropriate staff resources or that it acts collaboratively with Te Puni Kōkiri, the Ministry for the Environment, the Local Government Commission, and the Department of Internal Affairs.

Land valuation, rating, urbanisation, planning, zoning, and delivery of services are all interconnected. Large increases in land valuations and rating bills in Tauranga Moana have made it difficult for owners to retain Māori lands, while rates relief provisions have not been based on criteria that can be readily applied to urban or peri-urban land. It has been costly and difficult to maintain marae communities and papakāinga housing, particularly in areas where once-rural lands are now urban, or about to become so. Urbanisation has had a huge impact in the Tauranga Moana inquiry district, and it seems to us that the weight of its negative effects has fallen disproportionately on the tangata whenua as they try to maintain a toe-hold on their ancestral lands. The situation reflects badly on the Crown. Despite, we believe, having had a heightened duty of active protection in light of its role in the earlier raupatu, the Crown has not monitored local authorities in such a way as to ensure the Treaty-compliance of their policies and practices.

6.9 MAIN CONCLUSIONS AND FINDINGS IN THIS CHAPTER

From the present chapter, we would draw attention to the following conclusions and findings:

- ▶ Local authorities are not agents of the Crown. However, the Crown retains an overall duty of active protection towards Māori interests which translates into a duty to monitor local government policies and practices to ensure that they are Treaty-compliant.
- ▶ Local government policies and practices have been improving since 1988, especially at the operational level, but often still fall short of meeting Treaty standards.
- ▶ Under article 3 of the Treaty, Māori must have equal rights with other citizens when they participate in democratic election processes. The Local Electoral Amendment Act 2002 is not working for Māori: at the present time, only Environment Bay of Plenty, with its Māori wards, can guarantee a Māori voice at the council table.
- ▶ The legislation governing the office and functions of the Valuer-General is deficient. In particular, the Valuer-General has no clear direction from the Crown to act in a manner which is consistent with the Treaty of Waitangi, or to recognise the relationships between Māori and their lands, waters, and wāhi tapu.
- ▶ The criteria for the remission or postponement of rates are not well adapted to providing relief for those living in urban or peri-urban areas.
- ▶ Charges such as the uniform annual general charge are not an equitable way of taxing those in low-cost housing such as the units provided in papakāinga developments.
- ▶ Tauranga Māori are in general under-resourced to participate in local government processes. Central government funding is needed to complement local government funding.
- ▶ In the context of increasing urbanisation, the Crown has failed to uphold the development right of Tauranga Māori and has not yet met its duty of active protection. That failure is all the more disappointing in light of the Crown's earlier role in the raupatu of Tauranga land.