

TE UREWERA

TE UREWERA

VOLUME IV

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ABBREVIATIONS

AC	<i>Appeal Cases</i> (England)
AJHR	<i>Appendix to the Journals of the House of Representatives</i>
app	appendix
art	article
ATL	Alexander Turnbull Library
BPP	<i>British Parliamentary Papers: Colonies New Zealand</i> , 17 vols (Shannon: Irish University Press, 1968–69)
CA	Court of Appeal
ch	chapter
comp	compiler
DNZB	<i>The Dictionary of New Zealand Biography</i> , 5 vols (Wellington: Department of Internal Affairs, 1990–2000)
doc	document
DOC	Department of Conservation
DOSLI	Department of Survey and Land Information
DSIR	Department of Scientific and Industrial Research
ECEF	East Coast Expeditionary Force
ECLTIA	East Coast Land Titles Investigation Act
ECNZ	Electricity Corporation of New Zealand
ed	edition, editor
encl	enclosure
fn	footnote
fol	folio
GPS	global positioning system
GV	Government valuation
ha	hectare
intro	introduction
LINZ	Land Information New Zealand
ltd	limited
MA	Department of Maori Affairs file, master of arts
no	number
NZED	New Zealand Electricity Department
NZFS	New Zealand Forest Service
NZ ConvC	<i>New Zealand Conveyancing Cases</i>
NZLR	<i>New Zealand Law Reports</i>
NZPD	<i>New Zealand Parliamentary Debates</i>
p, pp	page, pages

ABBREVIATIONS

para	paragraph
PC	Privy Council
PEP	Project Employment Programme
pt	part
RDB	<i>Raupatu Document Bank</i> , 139 vols (Wellington: Waitangi Tribunal, 1990)
ROI	record of inquiry
s, ss	section, sections (of an Act of Parliament)
sec	section (of this report, a book, etc)
sess	session
SGGSC	Sir George Grey Special Collections
TEP	Temporary Employment Programme
trans	translator
UCS	Urewera Consolidation Scheme
UDNR	Urewera District Native Reserve
UDNRA	Urewera District Native Reserve Act 1896
UNESCO	United Nations Educational, Scientific, and Cultural Organisation
v	and
vol	volume
Wai	Waitangi Tribunal claim

Unless otherwise stated, footnote references to briefs, claims, documents, memoranda, papers, submissions, and transcripts are to the Wai 894 (Te Urewera) record of inquiry, a select copy of which is reproduced in appendix II. A full copy is available on request from the Waitangi Tribunal.

CHAPTER 13

TE NGAKAU RUKAHU (THE CROWN'S PROMISE PROVES FALSE) – THE FATE OF THE UREWERA DISTRICT NATIVE RESERVE

13.1 INTRODUCTION

In the history of relations between the peoples of Te Urewera – particularly Tuhoe – and the Crown, the Urewera District Native Reserve Act 1896 (UDNR Act) was a watershed. It was a unique piece of legislation passed by the New Zealand Parliament to provide for Tuhoe self-government through a General Committee (te Komiti Nui o te Iwi) and local committees (nga Komiti Hapu) to protect and manage their lands within a formally constituted tribal district. The Native Land Court was to be excluded from the rohe, and titles would be determined instead by a commission comprising two Pakeha and five Tuhoe commissioners. The land defined as the Urewera District Native Reserve (the reserve) was to provide permanent protection for the peoples, their lands, forests, birds, their taonga, and their customs and way of life. The passing of the legislation followed negotiations over a considerable period between Te Urewera leaders, Premier Seddon, and Native Affairs Minister Timi (James) Carroll. It seemed to herald a new era in Te Urewera, in which a lasting relationship between iwi and the Crown would be founded on mutual recognition of their rights and responsibilities.

But the promise of the UDNR Act – and the hopes of the peoples of Te Urewera – were not fulfilled. The undermining of the reserve happened, at one level, with considerable speed – by 1900, four years after the Act had been passed, there was still no General Committee (key to iwi control of their affairs and their lands), and no immediate prospect of one. At another level, it played out painfully slowly over a generation: it was 1922 before the final act signalling the end of the reserve (the repeal of the special legislation) took place. What went so badly wrong? And to what extent was the demise of the Urewera District Native Reserve, and the loss of so much of the land it was designed to protect, the Crown's fault? Why was there such a long delay – a delay that would be fatal – before the General Committee was set up, and why (after it was established in 1909) did the General Committee struggle to establish itself as a strong political force?

Why, from 1915, did the Crown embark on large-scale purchase of lands that in 1896 had been considered unsuitable for farming development and, in any event, were protected as a Maori reserve? Were the prices it paid for land and timber fair? We address these questions in this chapter. The Crown assisted us by making major concessions (as follows).

13.2 THE CROWN'S CONCESSIONS

The Crown conceded before us that in implementing its agreement with Te Urewera Maori as reflected in the UDNR Act 1896, it:

- ▶ Failed to establish an effective system of local administration and local governance.
- ▶ Made unilateral changes to key parts of the legislation, without effective consultation with Urewera Maori.
- ▶ Purchased individuals' shares without the collective control of such actions by the General Committee. In purchasing, it did not follow the usual protective mechanisms applying to Crown purchases of Maori land between 1909 and 1921.

These actions undermined the Crown's relationship with Urewera Maori and were a breach of the Treaty and its principles. The Crown did not act reasonably and in good faith.

In its concession of Treaty breach, the Crown ultimately accepted responsibility for the 'parlous state of affairs that existed in the Urewera district' as a result of its own actions and omissions in failing to implement the local governance provisions and in purchasing undivided shares in the reserve. It added that: 'The key points of difference lie in the explanations offered by claimants and the Crown for this state of affairs.'¹

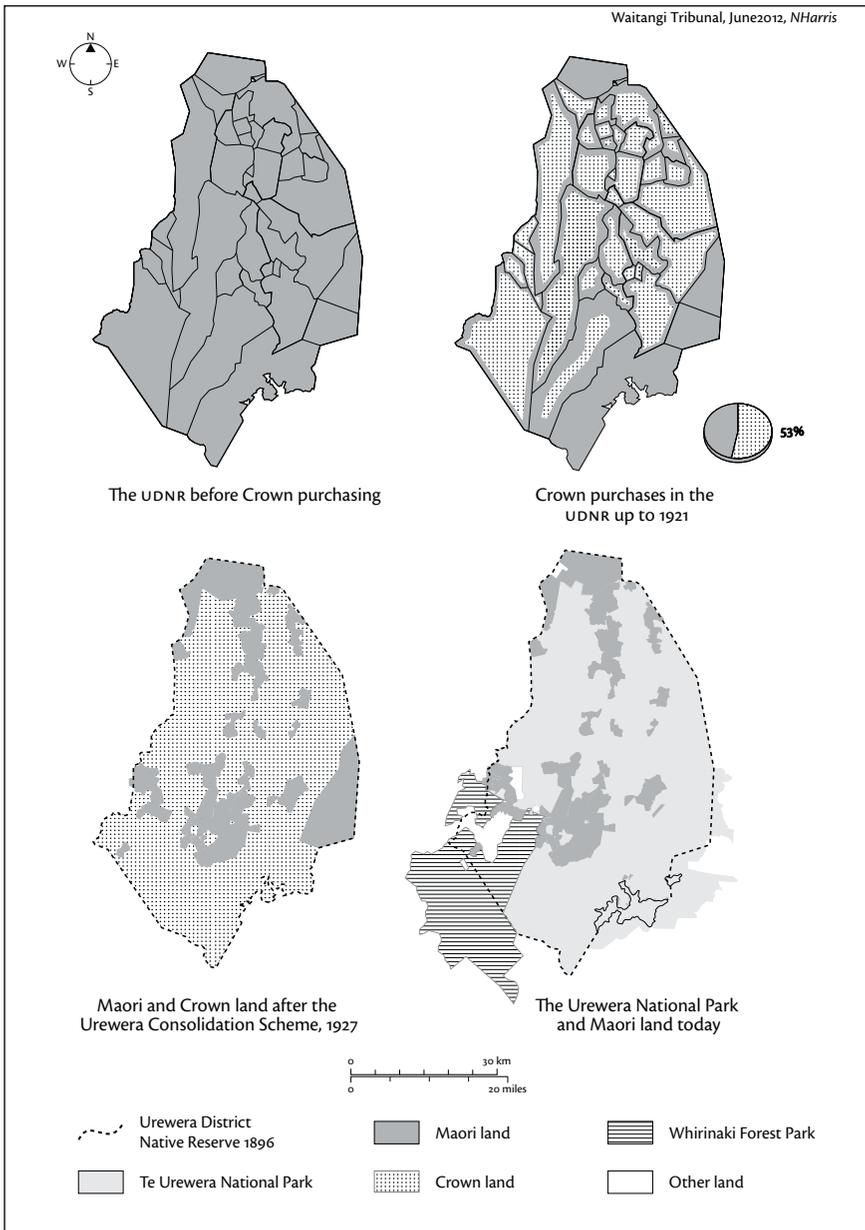
We return to these concessions – and these various explanations – in our discussion below. But the major points we take from the concessions are:

- ▶ The Crown failed to deliver on its promise of self-government in the Urewera District Native Reserve, despite passing special legislation to give effect to it.
- ▶ The entire purchase regime under which it subsequently conducted purchases in the reserve was defective: purchases were made from individuals illegally, rather than from the General Committee, and all purchases between 1910 and 1916 were made in defiance of the provisions of the UDNR Act.
- ▶ The Crown's acceptance of responsibility for the grim consequences of its acts and omissions in implementing the UDNR Act is of great significance for the claims before us. The Crown has accepted ultimate responsibility for the failure to ensure that the UDNR Act was implemented.

This failure meant the peoples of Te Urewera did not have the opportunity to exercise the self-government which had long been so important to them, which they had negotiated with the Crown, and which they had been promised.

These concessions vindicate the claimants' long-held view that the conduct of the Crown that destroyed the Urewera District Native Reserve constituted a direct attack on their mana motuhake. The concessions do not, however, acknowledge the breadth and seriousness of the claims, and therefore we must consider those claims in detail and decide whether they are well founded. It is particularly important to understand how and why the Crown failed so comprehensively.

1. Crown counsel, closing submissions, June 2005 (doc N20), topics 14–16, p 9



Map 13.2: From self-governing native reserve to national park. The Urewera District Native Reserve, created in 1896, remained in full Maori ownership until 1910. By July 1921, the Crown had acquired 53 per cent in undivided interests. At the end of the Urewera Consolidation Scheme, the Crown had acquired a total of 482,300 acres (73 per cent). The majority of this land, with the further acquisition of the Manuoha and Paharakeke blocks, became Te Urewera National Park. Maori remain owners of approximately 20 per cent of the original Urewera District Native Reserve land.

13.3 ISSUES FOR TRIBUNAL DETERMINATION

Our two key questions for this chapter are:

- ▶ Why were the self-government provisions of the UDNR Act defeated?
- ▶ Why and how did the Crown purchase extensively in reserve lands from 1910?

Our second question includes an analysis of valuations and prices paid for reserve lands and timber.

The chapter concludes with our findings of Treaty breach. We defer until chapter 15 – that is, until after our discussion of the Urewera Consolidation Scheme in chapter 14 – our consideration of the extent of the prejudice caused by these breaches to the peoples of Te Urewera. This is because the consolidation scheme (by which titles in the former reserve were completely reorganised as the Crown converted the thousands of interests it had purchased into a single massive block of land) was itself a product of the defeat of the reserve by Crown acts and omissions.

13.4 KEY FACTS

13.4.1 Establishment and work of the first Urewera commission

The UDNR Act 1896 (*Ture Rahui Maori o te Takiwa o Te Urewera 1896*) established a native reserve estimated at the time to comprise approximately 656,000 acres. The Act provided for the establishment of self-government in the reserve, through local committees (*nga Komiti Hapu*) and a General Committee (*te Komiti Nui o te Iwi*). The Native Land Court was excluded from the rohe (which was defined in a schedule to the Act). Instead, a special commission was empowered to divide the reserve into blocks; to investigate their ownership ‘with due regard to Native customs and usages’; and to make orders recording the names of owners of the blocks, and the relative share of each family and of each individual within that family. Blocks were to be defined, where possible, along existing ‘hapu boundaries’, and located on sketch maps prepared (and paid for) by the Crown.

The commissioners were to appoint a provisional local committee for each block that would hold office until permanent local committees were elected. Each permanent committee would then elect one of its members to a General Committee that would have the power to ‘deal with all questions affecting the reserve as a whole’, and to alienate land to the Crown. Other powers and functions of the local and General committees were to be specified in regulations.

Membership of the first Urewera commission was not finalised until February 1898. In accordance with the Act, seven members (two Pakeha, five Tuhoē) were appointed. The five Tuhoē leaders had been elected quickly by the people by December 1896: Numia Kereru (Ruatoki); Mehaka Tokopounamu (Te Houhi); Kutu (Ruatahuna), later replaced by Tutakangahau (Maungapohatu); Hurae Puketapu (Waikaremoana); and Te Whiu (Waimana), later replaced by Te Pou Papaka. The non-Tuhoē members initially gazetted were Native Land Court Judge William Butler and John Roberts, a stipendary magistrate from Tauranga, though S Percy Smith (the Surveyor-General) replaced Roberts by February 1898. In

December 1898, Elsdon Best, then employed by the Lands Department, was asked to act as secretary to the commission.

During this period a number of hui were held at which Tuhoe discussed the terms of the UDNR Act and considered their position on its provisions. Tuhoe leaders sent letters to Carroll and Wi Pere, the member of the House of Representatives for Eastern Maori, asking them to attend a meeting; and to Seddon to inform him of events in the district – including outbreaks of illness late in 1897, and the destruction of crops by unseasonal frosts across the entire district early in 1898 – which also badly affected Ngati Whare and Ngati Manawa. A slow Government response was finally galvanised by Seddon in April, and relief supplies (to be paid for by work on roads) and gifts of seed potatoes were sent.

In September 1898, a delegation of Tuhoe leaders met Seddon and other parliamentarians in Wellington. They reaffirmed their support for the UDNR Act, and urged that the commissioners begin work as soon as possible, and that the General Committee be brought into operation. The status of the Ruatoki block, where tensions had been rising, was discussed. Its title had already been determined by the Native Land Court in 1894, and appeals had then been heard by the Native Appellate Court, yet the boundaries of the reserve had been drawn so as to include the block. The delegation also raised the question of the flag bearing the words ‘Te Mana Motuhake o Tuhoe’ (the separate authority of Tuhoe), which they sought in the wake of an earlier petition from Ruatahuna and Maungapohatu, sent by Tutakangahau. Seddon replied at length to all the matters raised; in particular, he spoke about the work of the commission and processes for appointing the local committees and General Committee.

The Urewera commissioners first met between February and April 1899, and during this period sat in 10 locations in and around the district. Regulations were gazetted in December 1898: four commissioners (one Pakeha, three Maori) were to be a quorum; the chairperson would be a Pakeha; in his absence the other Pakeha would act as chairperson. By April 1899, when their initial sittings concluded, the commissioners had obtained lists of claimants in 57 blocks, and ‘learned approximately their boundaries.’² They had also decided that a full investigation of title for the whole reserve would be needed to determine boundaries suitable for division into districts. Internal surveys began in October 1899, with three survey teams working continuously in the reserve until 1902.

In 1900, the Urewera District Native Reserve Act (UDNR Act) Amendment Act was passed – the first of a number of amendments to the principal Act. The amending Act’s preamble highlighted the need to clarify matters relating to the Ruatoki block. It brought the block within the jurisdiction of the Urewera commission, and cancelled all previous land court orders affecting the ownership of the block. The scope of the amending Act was broader, however. The powers of the

2. The commissioners gave the figure of 57 blocks in their June 1899 report (‘Annual Report on Department of Lands and Survey’, AJHR, 1899, C-1, p xi); in their 1902 report they referred to claims for 58 blocks (AJHR, 1902, G-6).

commissioners were extended. Because of the delay in settling titles, the commissioners were empowered to take on 'all matters which the [General] Committee, if appointed, might deal with'; their decisions would be binding on all owners. Maori commissioners with an interest in any block were required to abstain from sitting or voting. In such cases, instead of deciding matters themselves, the European commissioners might, with the approval of the Native Minister, appoint two Maori 'not members of the Tuhoe tribe' to assist in title determination; they would, for the time being, be full members of the commission.

The Urewera commission sat for a further 176 days between February 1900 and October 1902, hearing claims on a block-by-block basis. Percy Smith retired at the end of the 1900 hearings and was replaced by Judge Scannell, who was elected chairman of the commission. Gilbert Mair replaced Judge Scannell for the Ruatoki block hearings, with Judge Butler as chairman. The commission delivered its final report on 6 August 1902, including a sketch plan of the district now divided into 34 blocks. Orders had been made for all blocks except the Ruatoki blocks (held over until later in the year). The awards were published in the *Kahiti* and *Gazette* on 5 June 1903; under the Act, Maori had 12 months within which to appeal to the Minister of Native Affairs. There were 172 appeals in respect of the main blocks, and 49 in the Ruatoki blocks.

In October 1902, the commission, in accordance with section 16 of the UDNR Act, recommended members for each of the provisional local committees, which in turn were based on lists of names submitted to them by the conductors of cases. In 1903, the commission's awards were gazetted (as was required by section 9 of the 1896 Act) but nothing further was done to appoint the committees.³

13.4.2 The hearing of appeals

It was late in 1906 before a second commission – variously referred to as the second Urewera commission, or the Barclay commission – was appointed to inquire into the appeals. It comprised Gilbert Mair, Paratene Ngata of Ngati Porou, and David Barclay (a clerk and interpreter for the Native Land Court and an interpreter in the House of Representatives). The commission sat between December 1906 and March 1907 at Wairoa, Whakatane, and Te Whaiti, while Ngata and Barclay heard the appeals relating to the Ruatoki blocks at Ruatoki in February and March 1907, reporting in May and June respectively.

Among the appeals were those in respect of Te Whaiti block by Ngati Manawa, Ngati Whare, and Tuhoe, and those of Ngati Kahungunu, who had had only limited representation before the first commission in respect of the Maungapohatu and Tauranga blocks, and none at the Waikaremoana hearings. The second commission's awards resulted in an increase in the number of named owners in the blocks overall, and the commission recommended boundary changes in 10 of the blocks. The awards were confirmed by the Minister of Native Affairs (Carroll),

3. Section 16 of the Act provided that the provisional committee members were to be appointed by the commissioners 'in the prescribed manner'. No regulations were made prescribing the manner of appointment.

and in 1908 the appointment of more than 30 provisional local committees, in accordance with the commission's recommendations, was validated. A number of changes had been made to membership of the various committees since the 1902 lists were recommended.

The UDNR Amendment Act 1910 was passed specifically to provide for a limited right of appeal from orders of the commissioners under the principal Act. Such appeals might be heard by the Native Appellate Court, though the chief judge could grant leave to appeal only with the prior consent of the Governor in Council.

In 1912, the chief judge of the Native Land Court reviewed 70 applications for appeal, refusing those that did not meet the threshold required for a hearing by the Native Appellate Court. (Section 50 of the Native Land Act 1909 provided that the chief judge could grant an appellant leave to appeal if he was satisfied there was a *prima facie* case of error of fact or of law in any final order of the court.) Forty-four applications obtained leave to proceed to the appellate court on a full or limited basis. Mostly the successful appeals resulted in the adjustment of owners or of relative shares. They were heard from November 1912 to February 1913 in Taneatua by Chief Judge Jackson Palmer and Judge WE Rawson.

A number of petitions appealing the decisions of the Urewera commission in respect of several blocks were later presented to Parliament, and went before the select committee, but these were ultimately unsuccessful.

13.4.3 The establishment of the General Committee, 1909

The election of provisional local committees was not validated until 1908, following the awards of the second commission. By this time, the Crown was concerned about prospecting and mining within the reserve. Seddon himself had been interested in these possibilities, and his memorandum of 25 September 1895 (appended as a schedule to the Act) confirmed that the Government intended sending a mining expert to teach Maori how to prospect for gold and other minerals, if they wished to do so; and that the hapu should share in any returns from gold-mining operations in Te Urewera.⁴ Though the Government had warned private prospectors against trying to enter the district from 1896, there were renewed applications from prospectors from 1905. Carroll went to meet Tuhoe at a major hui at Ruatahuna in March 1906, where the opening of Te Urewera for gold prospecting and the setting up of the General Committee were discussed. As there were still no local committees, a General Committee could not be elected under the provisions of the UDNR Act, but Tuhoe elected a large representative body, Te Komiti Nui o Tuhoe, with 94 members and Numia Kereru as chairperson. It seems that Carroll submitted proposals to the hui and that agreement was reached on framing regulations. A delegation of chiefs was selected to go to Wellington in June to work with the Government on the matter, but doubtless because of Seddon's death early that month, the meeting did not take place. It did, however, take place later. In November 1907, the Urewera district became subject to the Mining Act 1905.⁵

4. Urewera District Native Reserve Act 1896, sch 2

5. By section 7 of the Maori Land Claims Adjustment and Maori Land Laws Amendment Act 1907.

From the beginning of 1908, a number of hui were held between Te Urewera leaders and Government representatives. By this time, the second Urewera commission had completed its hearings of appeals and had issued its report; it had also made its recommendations for the membership of provisional local committees. In January 1908, Apirana Ngata, then a member of the Native Land commission, met with Te Urewera leaders at Ruatoki. This commission, comprising Chief Justice Sir Robert Stout and Ngata, had been appointed a year earlier to report on the best way of using ‘unoccupied or not profitably occupied’ Maori land throughout the North Island, and to categorise Maori land in one of several ways: required by its owners; available for their future settlement; or available for Pakeha settlement.⁶ Ngata put several matters to the leaders, including the need to move quickly to establish the General Committee and the amount of money owed to the Government for survey and Urewera commission hearing costs, which owners might assist with by ceding some land, since there was a great demand for it. A considerable measure of agreement was reached at the hui, and Stout and Ngata reported formally on the visit (as they did at the conclusion of their visit to every district). They advised that the local committees and the General Committee should be set up to exercise their powers (specifically powers of alienation) under the UDNR Act, and suggested that to avoid delay the provisional committees (rather than the permanent local committees) should now proceed to elect the General Committee. Ngata told the chiefs that his commission could report only in a general way on reserve lands, because they were outside its jurisdiction.

At the end of March 1908 a further hui was held to elect the General Committee. It was preceded by a visit by Premier Joseph Ward to Whakatane. Here he met the spiritual leader Rua Kenana, who had attracted a widespread following throughout Te Urewera and the Bay of Plenty, and founded his new community, the City of Zion, at Maungapohatu. On the face of it, this was a surprising meeting, given that the Government had earlier perceived Rua as a ‘disruptive authority figure’.⁷ A group led by Numia Kereru was also present, and the Premier addressed both Rua’s group and Kereru’s at the end of his private interview with Rua. Two days later, the provisional committees elected 32 members to the General Committee, with the agreement of all at the hui. Carroll, who had attended the first day of the hui, stressed the importance of such a committee for ‘opening up the vast area of Urewera country for settlement and prospecting for minerals’.⁸ Prospecting and mining rights were a major topic at the hui, and it was agreed that the reserve be opened for prospecting in accordance with regulations made by the General Committee. It was also agreed that some parts of the reserve be leased.

6. ‘Interim Report of the Commission Appointed to Inquire into the Question of Native Lands and Native-land Tenure’, 21 January 1907, AJHR, 1907, G-1, pp i-ii (Donald M Loveridge, *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900–52*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1996), p 51)

7. Cecilia Edwards, ‘The Urewera District Native Reserve Act 1896, pt 3: Local Government and Land Alienation Under the Act’ (commissioned research report, Wellington: Crown Law Office, 2004) (doc D7(b)), p 17

8. *Ibid*, p 57

In fact, the new General Committee was not immediately gazetted. It had not been elected by permanent local committees as the UDNR Act required – the committees were still provisional committees. An amendment to the Act later in 1908 deemed the provisional local committees to be permanent local committees. At the same time, the Native Minister substantially reduced the number of members of the General Committee (to just 20), and it was provided that the members be appointed, rather than elected. Numia Kereru, the chairperson of the informal General Committee, was invited to choose the 20 members to be appointed.

The General Committee was officially established in March 1909, more than 12 years after the UDNR Act was passed. None of Rua's followers were members of the local committees, and none therefore was eligible for the General Committee. Shortly after the General Committee was gazetted, the Governor, Lord Plunket, visited Ruatoki (Tauarau), evidently at Kereru's invitation. Rua and some 200 of his followers stayed at another marae in Lower Ruatoki, and the vice-regal party stopped at the marae on their way back to Whakatane. Ngata introduced Rua to the Governor. Later, Ngata met with Rua and Kereru separately. He then reported that, to bring the two parties together, he had expanded the General Committee to 34 – one member for each block – and asked Rua's people to nominate 14 to act with the 20 legally appointed members. The additional members were to be 'consultative' – that is, they would not have voting rights.⁹ Ngata said the district was at once to be opened to prospecting.

In November 1908, Rua was reported to have offered some 100,000 acres for sale to Carroll. In February 1910, he complained that he had not understood that the General Committee retained a power of consent over the sale of land to the Crown; he did not wish the mana to sell to lie with the committee and therefore indicated that he was withdrawing his proposals to sell. Soon afterwards, in May 1910, Ngata met with the General Committee. The Government had by this time made a further amendment to the UDNR Act (the UDNR Amendment Act 1909) empowering the Governor to remove any member of the General Committee and appoint any other owner of land within the reserve in his place. Ngata moved that five of Rua's people (including Rua himself) be appointed to replace five vacant seats; this was done, with the agreement of the chairperson. The meeting then approved the proposed sales, including those of land at Maungapohatu and Tauranga (both moved by Rua), as well as at Otara and Paraoanui North.

These developments triggered the dispatch to Te Urewera of a Government official, Andrew Wilson of the Lands and Survey Department, to value reserve blocks so that purchase prices could be set. The Crown then began buying in designated reserve blocks from individual owners. It did not buy from the General Committee, as the law required. Further offers of shares in Ruatoki 1, 2, and 3, and the Waipotiki, Karioi, and Waitiripapa blocks were made to Carroll by Rua and some of his followers during a visit to Wellington in August 1910. In September, the Native Land Purchase Board (which conducted purchases on behalf of the

9. Ngata telegram, 31 March 1909 (Edwards, 'The Urewera District Native Reserve Act 1896' (doc D7(b)), p 82)

Crown) decided to purchase the interests and advance payments to the owners, though the General Committee had not yet agreed to the purchase of land in the blocks, as required by the UDNR Act. Meantime, the General Committee had met at Waimana in August 1910, and agreed to sales in four other blocks – Waikarewhenua, Tauwharemanuka, Paraoanui South, and Omahuru. All the sales were moved by Mika Te Tawhao and three were seconded by Rua, and the offers were confirmed at a later meeting of the General Committee. Thus, by September 1908, the General Committee had approved the sale of eight blocks – or, more probably, of portions within them. Purchasing did not begin in every block offered; by 1912, when the first phase of Crown purchasing was over, it had extended into 13 blocks.¹⁰

Purchasing was halted initially because of lack of funds, and then because the Government was waiting for appeals from awards of the second Urewera commission to be heard in the appellate court, so that titles to all blocks would be finalised. Between 1910 and 1914 the General Committee did not meet, and it met only once in 1914 – its last meeting. From the beginning of 1915, the Reform Government stepped up Crown purchasing in the reserve. Officials were sent to Te Urewera again to value reserve blocks and standing timber. Their report envisaged a farming settlement scheme for much of the reserve, suggesting that some 370,000 acres would settle about 350 settler families, and assigning valuations to over 30 reserve blocks. They stated that the timber had no commercial value, except for that of the Te Whaiti blocks, which was clearly superior. The officials advised the Government to secure the Te Whaiti timber – though the price paid to owners should be discounted because the Crown would not need to mill it for some time to come.

The Crown proceeded with purchase in accordance with the provisions of the newly passed Native Land Amendment Act 1913 (which governed Crown purchase throughout the country but did not, in fact, apply to the reserve), and bought from individual owners – ignoring the specific provisions of the UDNR Act, which required it to deal with the General Committee. In 1914, the Native Land Purchase Board decided to acquire individual interests in reserve blocks already under purchase, and over the rest of the decade, purchasing was extended into nearly every block – a job entrusted to Crown agent W H Bowler. The Crown's earlier and future purchases were validated by a section in a washing-up Act, the Native Land Amendment and Native Land Claims Adjustment Act 1916. The Native Minister stated in the House that the clause was necessary because there was 'some doubt' as to whether Crown purchases were legal under the UDNR Act, and its purpose

10. Return, [circa 1913] (Edwards, 'The Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 126–127); see also the summary attached to Native Minister, prime ministerial briefing paper, March 1915. Blocks not included in these lists were Whaitiripapa (one of those approved for sale by the General Committee in September 1910) and Tauwhare-Manuka (approved in August 1910): see Herries to Prime Minister, 20 March 1915 (Cecilia Edwards, comp, supporting papers to 'The Urewera District Native Reserve Act 1896, pt 3: Local Government and Land Alienation Under the Act', 2 vols, various dates (doc D7(b)(i)), vol 1, pp 156–161); Edwards, 'The Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 120–122, 141.

was to validate earlier purchases and to ensure that future ones would be considered valid.

From 1910 to March 1921, the Crown purchased shares equivalent to some 330,000 acres in reserve blocks. Te Urewera owners retained the equivalent of some 322,000 acres. Blocks not subject to Crown purchase amounted to approximately 130,000 acres.

Growing Crown anxiety about applications by Maori owners for partition of blocks, which were perceived as increasing the risk that purchasing might be impeded or that the Crown might not ultimately be able to secure parts of blocks it wanted, led to the revoking in 1916 of the land court's jurisdiction to partition land in certain blocks. Maori owners secured the partition of only six blocks before 1921, including Te Whaiti and Ruatoki. Special provision was made for the land court to partition these two blocks by the Native Land Claims Adjustment Act 1911, which directed the court to do so on hapu and iwi lines. After 1915, Crown officials held back from seeking partition of Crown interests in the many blocks it was buying into, hoping to purchase a greater number of Maori shares and thus increase the amount of land it could secure. Eventually, it was obvious that it could not buy all the shares in any one block, and by the end of 1919, officials were considering a scheme to consolidate all the interests the Crown had purchased in the reserve.

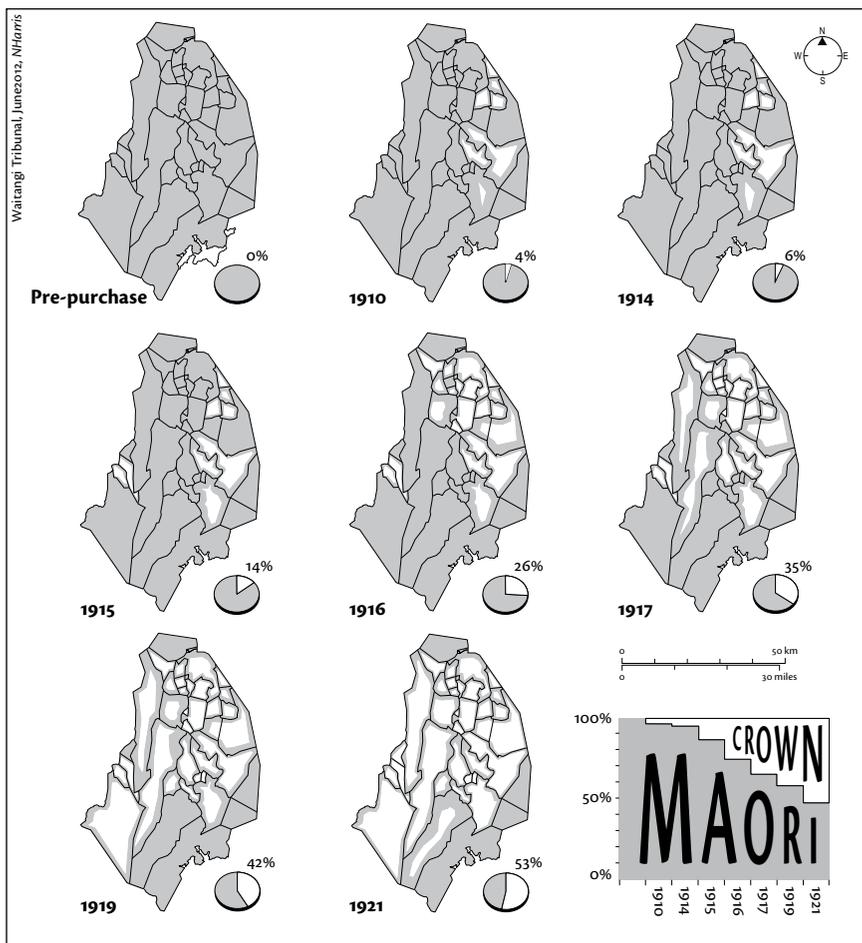
In 1922, the UDNR Act and all its amendments were repealed by the Urewera Lands Act 1921–22 (as recommended in a report on a proposed Urewera Lands Consolidation Scheme). The ordinary law was now to be applied to reserve lands.

13.5 THE ESSENCE OF THE DIFFERENCE BETWEEN THE PARTIES

13.5.1 Why were the self-government provisions of the UDNR Act defeated?

The claimants submitted that there were delays in key appointments both to title-determining and appeal bodies (the commissions) and to self-governing bodies (the committees). The establishment of the committees depended on title determination being completed. Counsel for Wai 36 Tuhoe claimants submitted that the Crown failed to provide interim committees during the lengthy period when title determination was being conducted, though this was requested by Tuhoe, and it would have been easy to provide for – the UDNR Act was, after all, amended without difficulty when the Crown wished to do so for its own purposes. The unanticipated delays in determining 'ownership' under the UDNR Act were 'allowed' by the Crown to become a direct cause of delays in establishing local committees and the General Committee. The Urewera commission's approach to its task contributed greatly to delays, since the commissions operated in a similar manner to the Native Land Court, determining 'best and exclusive interests' rather than simply providing for hapu interests within the overall reserve.¹¹

11. Counsel for Wai 36 Tuhoe, closing submissions, pt B, response to statement of issues, 31 May 2005 (doc N8(a)), pp 89–90



Map 13.4: Crown purchasing in the Urewera District Native Reserve, 1910–21. The Crown purchases and remaining Maori interests are visual representations only; they do not indicate which particular land within each block was acquired by the Crown or remained in Maori ownership. The Crown's purchases remained as undivided interests until the Urewera Consolidation Scheme.

the Urewera commission's approach was inconsistent with the Act and took far too long, yet the Crown did nothing to fix the situation. It failed to require the commission to review its procedures and objectives in light of its interim report to the Crown of 1899, and the results of that report, when the divisiveness and inadequacies of the commission had become clear.¹³ In fact, the claimants submitted, the Government withheld the establishment of the General Committee 'precisely because of Tuhoe's focus on the . . . committee as the mechanism to maintain unity

13. Counsel for Tuawhenua, closing submissions, 30 May 2005 (doc N9), pp 143–145

and protect their lands'.¹⁴ Only when the committee could serve the Government's own purposes of enabling the purchase of Tuhoe land was it finally established in 1909.¹⁵

Ngati Whare submitted that the relationship between the process of title investigation, the kind of title that would result, and the mechanisms of self-government was not well thought through, and not well articulated before the Act was passed. The commission hearings were drawn out and stressful. The Crown could have done something about the delays in setting up the first and second commissions that inhibited the development of local self-government entities. There was no good reason for the four-year delay before appeals were heard by the second commission.¹⁶ The Crown then meddled with the governance structure set out in the UDNR Act by various amendments to the Act – without consulting Ngati Whare at all. The Crown failed to ensure the timely creation of a local committee for Te Whaiti as well as of the General Committee.¹⁷

The Crown stated that the three obstacles in the way of fulfilling the local government principle were:

the length of time it took to settle the titles, the decision to derogate from the principle of defining hapu boundaries in favour of larger land blocks that included multiple hapu groupings, and government's decision to purchase undivided interests in the Reserve.¹⁸

In the Crown's view, the length of time it took to settle titles and the decision to opt for larger blocks was a 'reasonable response to the local circumstances as the Commission found them to be'. And the first commission made an informed choice on this. The Crown acknowledged, however, that an 'unduly long' time elapsed between the passage of the Act and the convening of the first commission, and again before the establishment of the appeals body (the second commission). These delays 'contributed to the failure to fulfil the local governance principles under the Act'.¹⁹ Counsel were prepared to concede that '[a]n opportunity was missed' in 1902, when provisional local committees were not appointed (as the owners had recommended). Even though appeals were being lodged, there did not appear to be any obstacle to appointments being made at that time.²⁰

The Crown identified the 'key failures' of the title-determination process adopted by the Urewera commission as the:

apparent failure to provide a process that included all claimant communities before the Urewera Commission's investigation, the delay in dealing with the appeals . . . and

14. Counsel for Tuawhenua, closing submissions, 30 May 2005 (doc N9), pp 131–132

15. *Ibid*, p 132

16. Counsel for Ngati Whare, closing submissions, no date (doc N16), pp 60, 64

17. *Ibid*, p 69

18. Crown counsel, closing submissions (doc N20), topics 14–16, p 49

19. *Ibid*, pp 49–50

20. *Ibid*, p 61

the work required to complete the titles (full survey and registration) in order that they [could] function as Maori freehold titles after the changes to the Act in 1909 (which was not undertaken).²¹

Counsel denied, however, that the commission was really like the land court; and, above all, they did not concede that there was anything wrong with the kind of title defined by sections 6 and 8 of the Act, or with the implementation of the title-determination provisions of the Act. They made no explicit concessions about the nature of the title-determination process, but argued that the process adopted by both commissions, and the provision of an appeals process through the appellate court, were appropriate.

The Crown conceded that the Government failed, at a critical point, to provide regulations that 'might have assisted the Local Committee and the General Committee to begin to work as effective corporate bodies, enjoying the confidence of both the community of owners and the government's representatives'. Such failure might indicate that it was never intended that the structures should work successfully, or might be the outcome of 'neglect, oversight and bad advice'. The Crown submitted that the evidence suggested that the latter reason was more likely.²² The failure of the General Committee as a mechanism, moreover, 'cannot be fully explained by an absence of regulations'. Counsel pointed instead to the strains within the General Committee, 'graphically illustrated by the divisions between the traditional leadership structure and Rua and his leadership of a very significant portion of Urewera Maori'.²³

The Crown rejected what it called 'allegations . . . of conspiracy' levelled against Ngata by the claimants: that he played off Numia Kereru and Rua Kenana against each other with the object of encouraging land sales and that he cut a deal with Rua (whom he despised) whereby Rua would not be prosecuted under the Tohunga Suppression Act 1907 provided he sold land to the Crown. Crown counsel denied there was any 'probative evidence' to support such allegations. In fact, they maintained, it would appear from the evidence that every encouragement was given to Numia Kereru and Rua to settle their differences.²⁴ Counsel for Wai 36 Tuhoe denied arguing a 'grand conspiracy' on Ngata's part; their case simply was that Ngata's primary motive was to acquire Maori land, 'and that he exploited the opportunity that Rua presented'.²⁵

Finally, in broad terms, the Crown, while accepting responsibility for the failure of the UDNR Act, denied that failure had been intended. The Crown did not set out to subvert the agreed principles embodied in the UDNR legislation. Failure was

21. *Ibid*, p 7

22. *Ibid*, p 72

23. *Ibid*, p 76

24. *Ibid*, pp 8, 71–75

25. Counsel for Wai 36 Tuhoe, closing submissions in reply, 9 July 2005 (doc N31), p 18. Counsel referred to his cross-examination of Crown witness Cecilia Edwards: see Edwards, under cross-examination by counsel for Wai 36 Tuhoe, Taneatua School, Taneatua, 4 March 2005 (transcript 4.14, pp 242–273).

the result of many factors, including delays, lack of institutional knowledge, changing local circumstances, lack of appropriate consultation, the failure of Ministers and officials to pay attention at key times, placing Crown interests in buying land ahead of the needs of owners, and a lack of unity within Te Urewera communities. Thus, among the factors working to undermine the success of the General Committee was the challenge of managing the ‘tensions, competing visions and disputes’ within it.²⁶

13.5.2 Why and how did the Crown purchase extensively in reserve lands from 1910?

The claimants submitted that the Crown undermined the protections against alienation contained in the UDNR Act: indirectly by refusing to appoint the General Committee until 1909, and directly by negotiating with Rua for the purchase of land and then by undertaking the purchase of ‘shares’ from individuals. The commissions’ title orders transformed land held in accordance with tikanga into land in which individuals held undivided but saleable ‘shares’; this undermined the corporate governance intended by the committee structure in the UDNR Act; and this in turn meant that as a collective, Tuhoe could not control alienations. They had no say in deciding which land (if any) was to be sold, prices to be paid, how benefits should be distributed, and how reinvestment in the tribal reserve should be managed.²⁷ The true impact of the shortcomings of the title system would not have been immediately apparent to Tuhoe, and would not be felt until purchasing began. By then the local committees and the General Committee were in complete disarray, and Tuhoe were demoralised by the Act and living in poverty. Bowler’s success in purchasing ‘shares’ was inevitable, given that the title and governance protections that had been contemplated were not in place. Initially, the Crown manipulated the membership of the General Committee – the only body empowered to deal with the alienation of land within the reserve – and pressured the Committee to approve alienations; subsequently it embarked on the purchase of individual shares, despite knowing this was illegal and would require validating legislation.²⁸

Counsel submitted also that the Crown’s revoking of the jurisdiction of the Native Land Court in 1916 to partition Urewera blocks (granted earlier by Orders in Council of 1910, 1911, and 1913) denied Urewera ‘non-sellers’ the right that existed under ordinary native land laws to seek to partition out their interests. This meant that the Crown was likely to acquire more interests than if partitioning had proceeded. It was also anxious that owners should not secure the best part of blocks in the court, and leave the Crown lower quality land when it intended to open the district to settlement.²⁹ The Crown accepted that revocation of the powers of the land court in 1916 prevented ‘non-sellers’ partitioning out their interests. It

26. Crown counsel, closing submissions (doc N20), topics 14–16, p 76

27. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 95–96

28. *Ibid*, p 98

29. *Ibid*, p 100

conceded also that the revocation, along with the absence of a functioning governance structure under the Act, the Crown's monopoly purchase powers, and its purchase of undivided shares, 'placed limitations on the exercise of property rights'.³⁰

The Tuawhenua claimants stated that the Crown breached the Treaty in refusing to relinquish its right of monopoly purchase when asked to do so; in failing to cease purchasing interests in Ruatahuna land when asked to do so in late 1918 and in 1920; in purchasing when the people of Ruatahuna were affected by a severe epidemic; and in purchasing at the land's unimproved valuation, when a significant proportion was developed.³¹ Counsel for Ngati Whare submitted that under the purchase regime instituted by Native Minister Herries, Ngati Whare fell victim to a calculated Crown strategy aimed at securing the valuable timber of the Te Whaiti block at the lowest possible cost. The purchases breached the provisions of the UDNR Act not just because they were illegal but also because the Crown set about maximising its advantage in the purchase 'in every conceivable way'.³² The Crown, exercising its monopoly over purchase in the UDNR, bought from individuals, and circumvented the protective mechanism of collective decision-making that ought to have applied. It purchased at a time of severe economic need, and imposed restrictions both on the use of timber in the Te Whaiti block and on leasing, throughout the period of purchase. Its suspension of the land court's powers to partition blocks while the Crown was purchasing prevented Ngati Whare from extracting their interests from those of the Crown.³³

Claimants and the Crown differed on the matter of valuations, and thus the fairness of prices the Crown paid for UDNR land. The claimants submitted that the Crown's valuations of Te Urewera land were flawed and unfair, and were strictly speaking not valuations but estimates of value compiled by department officers. There was no market in Te Urewera in which to measure value, owing to the Crown's monopoly and prohibition of private purchase.³⁴ But the Crown disputed the claimants' view of valuations. It stated that valuations, and hence purchase prices, were fair and in some cases even 'generous'. Counsel challenged historian Bruce Stirling's claim that Lands Department officials who made valuations were unqualified to do so. They stated that valuations used for Crown purchasing between 1910 and 1920 were based on unimproved value, but questioned whether it was relevant (as the claimants argued) that unimproved values nationally moved markedly during the period, given that the reserve remained 'comparatively undeveloped'. Nor is there enough evidence that land values were lower than they should have been, given the remoteness and quality of the land involved in sales between 1910 and 1921-22.³⁵

30. Crown counsel, closing submissions (doc N20), topics 14-16, p 87

31. Wharekiri Biddle of Ruatahuna on behalf of the Tuawhenua Block owners, amended statement of claim, 3 March 2003 (claim 1.2.12, SOC 12), p 75

32. Counsel for Ngati Whare, closing submissions (doc N16), p 72

33. *Ibid*, pp 72-74

34. Counsel for Wai 36 Tuhoe, closing submissions, pt A, overview, 31 May 2005 (doc N8), p 99

35. Crown counsel, closing submissions (doc N20), topics 14-16, pp 80-85

The Fate of the Urewera District Native Reserve: Kaumatua Accounts

Wharekiri Biddle passed away during the first week of the Tribunal hearing at Ruatahuna. His daughter Hinerangi spoke for him about the foundation and significance of his claim:

Kei te puku o tana kereme, ko te whakakahore i te mana motuhake, kare i rereke i etahi o nga kereme a Tuhoe. Kore rawa ia e whakaae kia riro ma te Karauna e tohu te huarahi mo nga whenua, me tana iwi.¹

At the heart of his claim lies the prejudice against te mana motuhake o Tuhoe. . . . He has never been able to accept that the Crown should be able to direct what has happened to the lands of his ancestors, and the fate of his people.²

Hinerangi identified the following matters as among those covered by the claim:

- ▶ Te ngakau rukahu o te Ture Rahui a-rohe o Te Urewera, me tona hapa ki te tawharau i te Rohe Potae o Tuhoe;
- ▶ Te whakatakoto tikanga mo te whenua, e pa ana ki te Tuawhenua, me te whakakahore i nga tikanga whakahaere rauemi i raro i te mana motuhake;
- ▶ Te whakakiki kia totarawahiria nga rangatira o Tuhoe, me te kore e aro mai ki nga wawata o Tuhoe ki te whakatu i tona ake kawanatanga. . . .
- ▶ Te hoko whanako i nga whenua o te Tuawhenua.³
- ▶ The deceit of the Urewera District Native Reserve Act and the failure to protect Te Rohe Potae o Tuhoe;
- ▶ The imposition of land tenure systems on the lands of the Tuawhenua with little regard for our own ways for managing resources under mana motuhake;
- ▶ The fuelling of the division in the leadership in Tuhoe, and the failure to acknowledge or support Tuhoe's wish for its own local government;
- ▶ The illegal and unfair purchase of interests in the Tuawhenua lands.⁴

Tamaroa Nikora, who gave evidence at several of the Tribunal hearings, delivered this indictment of the Crown's actions:

Since Tuhoe were ever known as a tribe they fought and died for their land. They were still prepared to do so up to 1895. The Tuhoe 'Chiefs' visited Wellington in

1. Hinerangi Biddle, kaikorero (Maori), no date (doc D31(a)), p2
 2. Hinerangi Biddle, kaikorero (English), no date (doc D31), p2
 3. Hinerangi Biddle, kaikorero (Maori), no date (doc D31(a)), pp2–3
 4. Hinerangi Biddle, kaikorero (English), no date (doc D31), pp2–3

that year and had discussions with Premier Seddon which led to the passage of the Urewera District Native Reserve Act 1896. That Act promised Tuhoe a Komitinui, to be responsible for Tuhoe lands and whose consent was required before Tuhoe land could be alienated to the Crown. These promises pacified Tuhoe.

When the Urewera commissioners first commenced their tasks in 1899, the Tuhoe commissioners asked for a flag inscribed with the words: 'Ko te Ture motuhake mo Tuhoe.' This indicated that Tuhoe expected the Act would be honoured and be particular and special for them.⁵

However, their trust in the law was misplaced. The Urewera commissioners created a series of 44 Urewera blocks and vested each in a list of individual owners, and not in hapu. In other words, the property right was devolved from the tribe and from hapu to long lists of individual owners without governance, which was to leave them in a vulnerable position. With that done, the Crown ignored the Komitinui and the UDNR Act 1896, and raided the individual shareholders in Te Urewera. The Crown's intent was to acquire Tuhoe land for the settlement of Pakeha. What the colonialists could not achieve by war was now being achieved by policy and legal trickery. The UDNR Act could be ignored because the colonialists had the majority in the House to validate their illegal actions.

5. Tamaroa Raymond Nikora, 'Te Urewera Lands and Title Improvement Schemes', August 2004 (doc G19), pp 4–5

In respect of timber valuations, Ngati Whare submitted that the Crown failed to ensure that a fair and equitable valuation of the timber on Te Whaiti block took place. Its valuation of the timber (made by Pollock) was 'manifestly incorrect', as the evidence of timber valuation expert Canning revealed. Pollock 'severely underestimated' the amount of merchantable timber available on the block. The result was that the amount paid to Ngati Whare and Ngati Manawa individuals for their shares was 'significantly lowered'.³⁶ The Crown responded that the Te Whaiti blocks were valued on the basis of 'current value, not prospective value', which was not unusual. Crown procedures were reasonable at the time; the Crown's valuers seem to have done their best using the methods of their day. Counsel acknowledged that the evidence 'supports a view that the timber estimates may have been underestimated', but suggested that Canning's own estimate appeared to be 'on the high side'.³⁷

The Crown, as we have seen, conceded that its unilateral changes to key parts of the UDNR Act without consultation with Urewera Maori, and its purchase of

36. Counsel for Ngati Whare, closing submissions (doc N16), pp 75–76

37. Crown counsel, closing submissions (doc N20), topic 31, pp 2, 27, 29

individual shares without the collective control of such actions by the General Committee, and without observing the usual protective mechanisms applying to purchases of Maori land during the period, were in breach of the Treaty. But it submitted that differences remained between claimants and the Crown as to how best to explain the 'parlous state of affairs' in Te Urewera which resulted from Crown actions and omissions.

13.6 WHY WERE THE SELF-GOVERNMENT PROVISIONS OF THE UDNR ACT DEFEATED ?

SUMMARY ANSWER: The establishment of local committees and the General Committee, both of which were essential to implementing self-government, was tied in the UDNR Act 1896 to the completion of the process of title determination. How the first Urewera commission approached its task, therefore, was crucial. In fact, though conscious that it was supposed to be facilitating the establishment of committees, it quickly adopted a course of action focused on determining lists of individual owners for each block, and their relative shares. This was standard practice in the Native Land Court, which cast a long shadow over the work of the Urewera commission. Though it was obvious by mid-1899 that the commission's work would be slow, the Crown failed to intervene to ensure that interim committees were appointed; it passed amending legislation in 1900 without addressing the problem. By 1900, it was four years since the UDNR Act had been passed; by 1902, when the commission made its final report, six years had passed. The Crown failed to act even in 1902 – and then allowed several years to go by before the appeals process got under way. Its wish to open Te Urewera to prospecting and mining (which required General Committee consent and thus the resolution of appeals, the issue of title orders, and the election by block owners of local committees which could in turn elect the members of the General Committee), rather than any sense of urgency about the appeals themselves, seems to have been the final prompt. By 1906, when appeals were heard, the time for successful implementation of the self-governing provisions of the UDNR Act was all but over. Tuhoe had expected this would be done soon after the Act was passed, but the Crown seemed to have lost interest in the implementation of provisions which were so important to the people.

By 1906, indeed, the whole political landscape had changed. Seddon died that year; Carroll, the Native Minister, was under siege in Parliament for policies designed to assist Maori retain their remaining land; and the Liberals faced great pressure to ensure that more Maori land was made available for settlement. In this context, the Government convinced itself that Pakeha settlement and farming in the reserve was a practical proposition, despite its assurances to Te Urewera leaders 10 years before that the reserve (then considered useless for close settlement) would be preserved to them.

By the time the appointments of the local committees and the General Committee were finally validated in 1908 and 1909 respectively, there were new

pressures within Tuhoe. Rua Kenana, the spiritual leader whose influence was widespread, wanted to sell land to achieve development – a policy which the new General Committee had hoped to keep at bay; and pervasive poverty meant that many owners were ready to sell interests. The Government played a questionable role in establishing the General Committee, intervening to change its composition. It passed a series of amendments to the UDNR Act in 1908–09 which provided (notably) for a reduction in size of the General Committee from 33 to 20, thus removing the representation of 13 local committees. The Governor's new power (1908) to appoint members from among the local committee members was extended in 1909 to allow him to remove members and appoint replacement members who did not need to be local committee members. This undermined the key principle of self-government by elected representatives. On the ground, Ngata, by then a member of the Executive Council, intervened in 1909, informally adding 14 members 'from Rua's section' to the General Committee as 'consultative' members; and then arranging instead in 1910 – after the law had been changed to provide for further Government intervention – for the formal appointment to the Committee of Rua and four of his people. The Government made no secret of its wish to buy Te Urewera land, and Rua, once appointed, was able to secure approval of the first land sales by the General Committee, which had hoped to lease, not sell, land. The General Committee faced all these challenges without having had the opportunity to establish itself as a fully functioning body – or to devise a plan for the development of any of the reserve lands. Ultimately it would be ignored by Government altogether when it resumed purchasing in 1915 – and by 1916 the Native Minister could state (unopposed) that it had never existed. There was no longer any interest in Wellington in making a self-governing reserve work. Indeed, it had been actively subverted.

The essential story, then, is one of inadequate legislation and a stalling of administrative action, followed by the Crown forgetting its promises and moving to engineer the failure of the self-governing reserve that Seddon had agreed with the peoples of Te Urewera.

Our analysis of this issue proceeds from our understanding that the real failure of the self-government provisions occurred in the early years of the history of the UDNR. We consider the reasons for this – and thus examine the connection between the work of the Urewera commissions in determining titles to UDNR lands and hearing appeals, and the delays in establishing the local committees (1908) and the General Committee (1909). We ask why, when the committees were finally set up, they were not able to function effectively.

Our analysis is based round the following sub-questions:

- ▶ Why were there delays in establishing the first Urewera commission?
- ▶ Why was the work of the Urewera commission slower than expected?
- ▶ What was the Crown's responsibility, once the extent of the delays became evident?
- ▶ In what circumstances was the General Committee finally established, and why did it struggle to establish itself as a strong political force?

13.6.1 Why were there delays in establishing the first Urewera commission?

More than two years went by between the passing of the UDNR Act in October 1896 and the start of title investigation in February 1899. The Government, in our view, was largely responsible for the delay. There was certainly dissension within Te Urewera about the meaning of the Act during 1897, as Professor Judith Binney suggested, but this emerged in the absence of Government engagement with tribal leaders at a crucial time.³⁸

Once the Act was passed, Tuhoe moved quickly to elect their commissioners. From as early as November and December 1896, community representatives were writing to Seddon informing him of the outcome of elections. Each commissioner was to represent one of five regions within Te Urewera: Ruatoki, Waimana, Ruatahuna, Galatea and Te Houhi, and Waikaremoana. Numia Kereru was chosen for Ruatoki; Te Pou Papaka for Waimana; Mehaka Tokopounamu for Galatea and Te Houhi; and Hurae Puketapu for Waikaremoana. The fifth elected commissioner was Kutu for Ruatahuna, who would be replaced in 1898 by Tutakangahau of Maungapohatu.³⁹ Te Hokotahi Te Puehu, and two others from Ruatoki, who reported the election result to the Premier, also conveyed their anxiety that the work of the commission should get under way: they wanted the names of the European commissioners notified, and a seal issued for the 'Committee'.⁴⁰

But the Government was slow to appoint Pakeha commissioners. It was February 1898 before the seven members of the commission were appointed by Order in Council.⁴¹ There were two changes from the original draft order dated 28 December 1897. In mid-January, Carroll sought to substitute the name of Te Pou Papaka for that of Te Whiu, and the Surveyor-General, S Percy Smith, for John Roberts, the stipendiary magistrate from Tauranga.⁴² Te Wharekotua had asked Smith to accept appointment as a commissioner (a request that Smith drew to the attention of the Under-Secretary for Justice); while Rakuraku and Tamaikoha informed Seddon that Te Pou had been elected for Waimana, Tawhana, and Ohiwa, and they were determined he should be appointed.⁴³ Smith had been involved both at the southern end of Te Urewera (supporting purchase in the

38. Judith Binney, 'Encircled Lands, Part 2: A History of the Urewera, 1878–1912' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A15), pp 222–223

39. Binney cited Te Makarini Tamarau, Te Whenuanui, and others to Seddon, 22 November 1896, and Te Hokotahi Te Puehu to Seddon, 11 December 1896 (Binney, 'Encircled Lands, Part 2' (doc A15), p 222.

40. Te Hokotahi Te Puehu et al to Seddon, 11 December 1896 (Cecilia Edwards, 'The Urewera District Native Reserve Act 1896, Part 2: Title Determination under the Act, 1896–1913' (commissioned research report, Wellington: Crown Law Office, 2004) (doc D7), p14)

41. Draft Order in Council, 28 December 1897 (Cecilia Edwards, comp, supporting papers to 'Urewera District Native Reserve Act 1896, Part 2', 3 vols, various dates (doc D7(i)), vol 1, pp 700–702)

42. Amended draft Order in Council, 4 January 1898 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, Part 2' (doc D7(i)), p 699)

43. Te Wharekotua to Smith, 25 January 1898, and Rakuraku Rehua, Tamaikoha et al to Seddon, 13 January 1898 (Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), pp 15–16). Also see Smith's note (written on the letter from Te Wharekotua) to the Under-Secretary for Justice, suggesting a draft reply to Te Wharekotua.

Thomas Pringle (ATL, 1/1-007030-C)



Hurae Puketapu (left), with Te Whenuanui II, at the entrance to Te Tahu-o-te-rangi Pa, Mataatua, Ruatahuna, 1905. Puketapu was elected a member of the first Urewera commission in 1896, representing the Waikaremoana region.

Waipaoa block, and greatly interested in scenic reserves at Waikaremoana) and in the north (carrying out disputed surveys in Ruatoki).⁴⁴ The appointments were gazetted on 10 February, and the commissioners notified on 11 February 1898.⁴⁵ But there would still be a year's delay before the commission actually met.

44. Cathy Marr, 'The Urewera District Native Reserve Act 1896 and Amendments, 1896-1922' (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A21), p 126

45. Binney, 'Encircled Lands, Part 2' (doc A15), pp 230-231; Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), pp 15-16; 'Commissioners under the Urewera District Native Reserve Act, 1896, Appointed', 19 February 1898, *New Zealand Gazette*, 1898, no 9, p 241



Atama Te Kikiwa (Kutu) (*front left*) at Te Whai-a-te-Motu meeting house, Mataatua Marae, Ruatahuna, circa 1905. Kutu was elected to the first Urewera commission in 1896, before being replaced in 1898 by Tutakangahau.

The delay in making appointments reflected a general failure on the part of Ministers to proceed to implement the UDNR Act with any sense of urgency. Yet Tuhoe, who had waited two years for the Act to come to fruition, were anxious to understand how it would work. Two major groupings emerged among Tuhoe by mid-1897, each with differing views on how it should be interpreted, how self-government should be given effect to, and how extensive the powers of the new title-determination body were.

One grouping was centred on the leaders of Ruatahuna, including Mehaka Tokopounamu, Tamarau Te Makarini, Hurae, Kutu, Tutakangahau, Te Whenuanui II, Te Wharekotua, Te Ahikaiata, and others. These leaders called for the acceptance of a 'Kaunihera', an authoritative decision-making body for all the hapu which was appointed at the Ruatahuna hui held in July 1897. And they appointed a committee which studied the Act closely, sorting out 'the bad clauses from the good' ('kua wehea e ratau nga rarangi kino me nga rarangi pai'),⁴⁶ and wanted the UDNR Act returned to Parliament for revision. They compiled a list of the sections that they wanted removed – including those relating to the survey of blocks and the

46. Petition to Carroll, 31 July 1897 (Binney, 'Encircled Lands, Part 2' (doc A15), p 224)

creation of title, requiring the specifying of block owners and relative shares – though they accepted the appointment of the Urewera commissioners by the Governor, the division of the land into blocks, and the investigation of ownership by the commissioners, in accordance with hapu boundaries. They rejected the sections which related to the issue of certificates of title and the involvement of the land court in the registration of certificates of title (though they confirmed the section which gave the Government power to allow the land court to determine succession claims). Sections about the creation of local committees and the General Committee were accepted, though those that allowed the Government to make regulations about how members of committees should be elected, and other matters under the Act, were rejected. Nor did the Committee approve of sections that empowered the Government to take land for roads, tourist accommodation, and camping places. The final section they ‘struck out’ was section 25 relating to the Government paying expenses under the Act from moneys appropriated by Parliament.⁴⁷ As Binney noted, ‘Mehaka and Makarini . . . raised serious doubts about the Act, arguing that it did not fulfil the promises made that it would benefit the people.’ Above all, as Makarini warned Carroll, there were fears that the new Act might ultimately lead to Government taking of the land.⁴⁸

The second grouping was led by Tamaikoha and his son Hakeke, and included Numia Kereru, Te Whiu Maraki, Rakuraku Rehua, Harehare Aterea of Ngati Manawa, and Paora Kingi. Binney characterised this grouping as ‘a broad-based democratic movement,’⁴⁹ supported by ‘hapu from Te Houhi, Galatea, and Te Whaiti on the west; Ruatahuna, Maungapohatu, and Tawhana in the interior; and Ruatoki, Waimana, and Ohiwa to the north.’⁵⁰ This group rejected the proposed ‘Kaunihera’ to represent all hapu, and in the middle of the meeting sent an urgent petition to James Carroll, stating that ‘the people as a whole’ should exercise the mana (‘kia homai te mana ki te iwi katoa’).⁵¹

But these divergent views developed in the absence of any visit from Wellington. A hui had originally been called for February 1897, and it was expected that Carroll and Wi Pere would attend to explain the final provisions of the Act. Both had been invited. Doubtless, this was because their role in explaining appointments of a commissioner, and election of the committees under the Act, had been referred to in Seddon’s letter of 25 September 1895, reprinted as schedule 2 of the Act:

The regulations for the appointment of a Commissioner, and for the election of members of Local Committees and of the General Committee, will be communicated later on, after an Act has been passed giving effect to what is here set forth, which

47. See petition headed ‘Ruatahuna’ to Carroll, 31 July 1897; the list of sections is cited in Numia Kereru’s petition protesting against these decisions, 4 August 1897 (Binney, ‘Encircled Lands, Part 2’ (doc A15), pp 223–224).

48. Binney, ‘Encircled Lands, Part 2’ (doc A15), p 224

49. *Ibid*, p 230

50. *Ibid*, pp 226–227

51. Petition to Carroll, 31 July 1897 (Binney, ‘Encircled Lands, Part 2’ (doc A15), p 226)

will be explained by the Hon Mr Carroll and Wi Pere, member for the Eastern Maori Electoral District, to Tuhoe.⁵²

Ko nga ritenga whakahaere mo te mahi whakatu Komihana me te pootitanga i nga mema mo nga Komiti takiwa me te tino Komiti, ka whakaaturia ena a muri ake nei ina ka paahitia he ture hei whakamana i enei kupu whakaatu, ma te Hon Timi Kara raua ko Wi Pere te Mema Maori mo te Tai Rawhiti e whakaatu atu ki a Tuhoe.⁵³

The hui was postponed, however, at Pere's request – first until March, and then until July (the middle of winter). Quantities of prized foods had been prepared, but still the two leaders did not come. From the point of view of Tuhoe, February would have been the preferred date, for already there were two major causes of anxiety. First, the appeals against the judgment of the Native Land Court (about the Ruatoki blocks) were about to be heard by the appellate court (the case began on 5 April 1897). These were of importance to many hapu but it was not certain that the appellate court could hear the appeals since the Ruatoki blocks had been included within the reserve boundary.⁵⁴ Secondly, Tuhoe – as Binney has shown – came under pressure from private prospectors soon after the UDNR Act was passed. Under the Act, only the General Committee could make concessions for mining purposes. The Government had taken the position during the 1890s (before the UDNR Act was passed) that Te Urewera came under the Mining Act 1891 and therefore the Government must have evidence of the owners' consent before prospecting licences were issued.⁵⁵ Both Seddon and Carroll had assured Tuhoe at the time the UDNR legislation was passed that the Government would not permit prospecting until 'clear rules [had] been established'; Tuhoe had the right to turn private prospectors away, and the Government would support this. The arrival of Henry Vercoe, a surveyor, at Maungapohatu in November 1896, offering to teach the people how to prospect, and the payment by a mining syndicate to Numia Kereru and Hetaraka Te Wakaunua of £100 for the right to prospect at two places *outside* the borders of the Rohe Potae (one of which, however, was Ruatoki), highlighted the importance and the potential divisiveness of the issue, and the need to establish Tuhoe authorities to deal with it appropriately. Seddon was well aware of the kind of concerns leaders like Te Makarini had about private prospecting, and Wi Pere wrote to Te Makarini and Te Wharekotua urging them to stand strong on the issue.⁵⁶

What is clear from all of this is that after the Act was passed, Tuhoe needed the reassurance of Government engagement and guidance on how to prepare to get

52. Urewera District Native Reserve Act 1896, sch 2

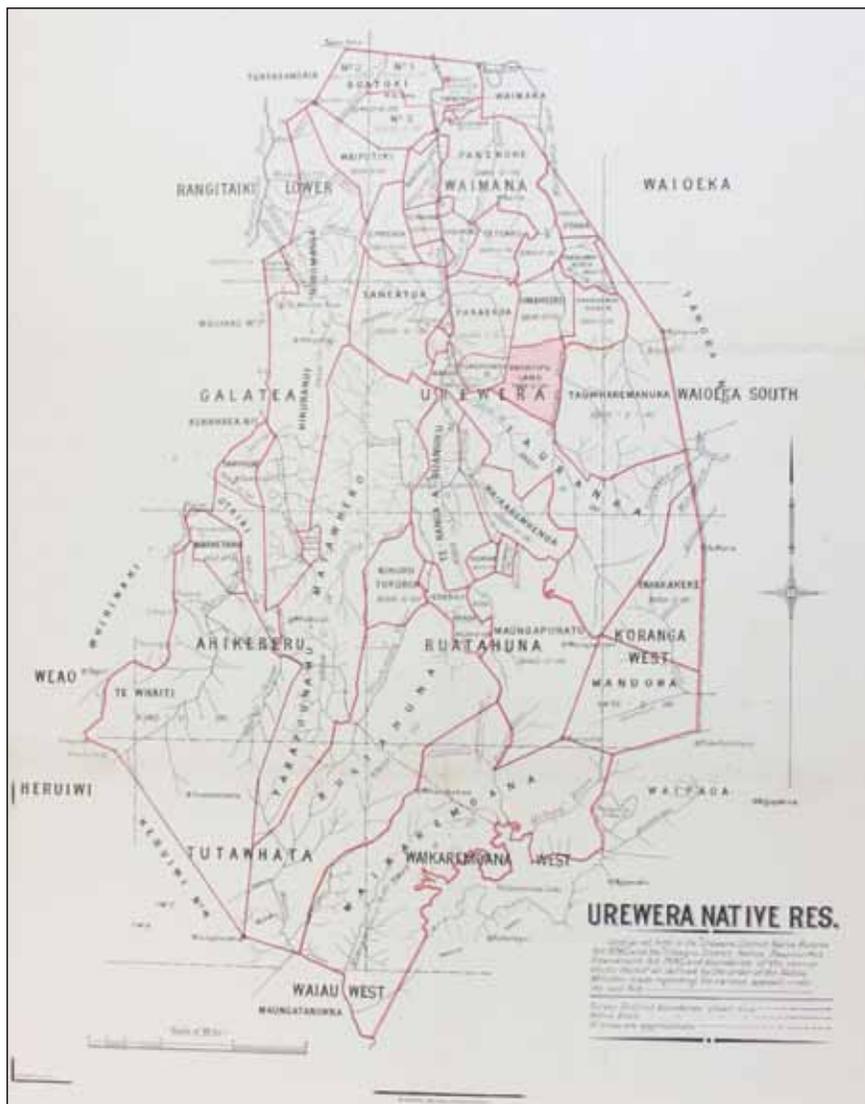
53. Ture Rahui Maori o te Takiwa o Te Urewera 1896, kupu apiti tuarua

54. Chief Judge Davy later decided that the appellate court decision could have no effect because the Ruatoki block had been removed from the jurisdiction of the land court by section 3 of the UDNR Act 1896: Steven Oliver, 'Ruatoki Block Report' (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A6), p 85.

55. Binney, 'Encircled Lands, Part 2' (doc A15), p 361

56. Ibid, pp 366–368)

an unknown process off the ground. In the absence of such engagement, people were nervous about protecting their rights, and about initiatives taken by others trying to do the same. Everyone was aware that the new process was subject to an Act of Parliament; they could not, or should not, simply go ahead on their own terms. So there was close study of the Act itself. But, above all, Tuhoe wanted Government representatives to come to talk to them. Numia's letter to Carroll and



Plan of boundaries of land blocks within the area set forth in the Urewera District Native Reserve Act 1896 and the 1900 amendment Act, circa 1907

Pere in August urged that they attend a hui at Ruatoki 'to explain the sections of the Act . . . Your presence is required to explain it to the people so that the small and the great may understand it.'⁵⁷ And when Tamarau Te Makarini and Te Ahikaiata Tamarau wrote to the Premier in October reminding him that Carroll and Pere must communicate with Tuhoe, their anxiety was evident: 'the people from outside, the knowing ones say that this land will suffer through you, the Hon Mr Carroll and Wi Pere.'⁵⁸

In the end, Tuhoe had to go to Wellington instead. In October 1897, both major groups sent their leaders – Numia Kereru on the one hand, and Mehaka Tokopounamu and Te Amo Kokouri on the other – to meet Carroll. Historian Cecilia Edwards suggested that Kereru returned home without seeing Carroll, and Binney noted that Tokopounamu and Kokouri remained after Kereru had left, in the hope of talking separately with the Minister.⁵⁹ It appears that the Tuhoe differences were not resolved in Wellington, but Carroll and Seddon finally moved to set up the Urewera commission at the end of 1897 partly to try to defuse the situation.⁶⁰

Why, then, did Carroll and Pere not go to Te Urewera – especially when they had been urged repeatedly to do so, and were aware of developing tensions as the delays went on? Carroll later explained, in a letter he wrote to the Te Whaiti people, that 1897 was the year of celebration of Queen Victoria's reign (her 60th Jubilee) and, as a result, 'a lot of Govt work had to stand still'. Establishment of the commission had therefore been delayed, but the Government would 'push the matter as soon as it can.'⁶¹ This explanation was echoed in a department letter to the Te Whaiti people.⁶² This seems unconvincing as a reason for Carroll's and Pere's failure to get to Ruatahuna. But it may be, as Marr suggested, that Carroll and Pere held back in the absence of Seddon who, as the Native Minister, was important to the implementation of the Act, and whose influence was of great importance to Carroll in Cabinet. Seddon was out of the country several times between 1896 and 1898 (in particular between April and September 1897, when he attended Queen Victoria's Diamond Jubilee and the Imperial Conference). As Premier, he had a great deal of political business (local and international) on his plate, and when he did begin to travel to Maori districts again in 1898, he was preoccupied with promoting legislative change to meet the concerns of the leaders of the Paremata Maori (the Maori parliament established by the Kotahitanga movement), whose

57. Numia Kereru to James Carroll and Pere, 4 August 1897 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7(i)), p 708)

58. Tamarau Te Makarini and Te Ahikaiata Tamarau to Premier, 11 October 1897 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7(i)), p 726)

59. Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), p 32; Binney, 'Encircled Lands, Part 2' (doc A15), p 230

60. Binney, 'Encircled Lands, Part 2' (doc A15), p 231

61. James Carroll to Under-Secretary for Justice, [June 1897] (Edwards, 'The Urewera District Native Reserve Act 1896, pt 2' (doc D7), p 26)

62. Edwards, 'The Urewera District Native Reserve Act 1896, pt 2' (doc D7), p 26

sustained push for institutional autonomy at both national and community levels had put the Government under considerable pressure.⁶³

In short, the Government took its eye off the ball during 1897. At what was a crucial time for Tuhoe, after the UDNR Act had been passed, they did not have the Government's attention. Ministers missed opportunities to debate points on which there was uncertainty – about the establishment of the Urewera commission, how it might work, when its work would start, what the purpose of land titles was, how to achieve titles without getting bogged down in Native Land Court-style processes, when the committees would be elected, how they would operate, and above all, how a Tuhoe committee would best represent hapu authority. This was a reprehensible failure. It seems to highlight a key difference between Tuhoe and Crown attitudes to the Act. The Crown had got the Act passed, and perhaps ticked the box and moved on to other matters. But for Tuhoe the passing of the Act marked a new beginning – and what was crucial was how it was implemented. They were bitterly disappointed that Carroll and Pere did not come to their hui. Te Wharekotua and others attributed the collapse of the Ruatahuna meeting to the 'deceptive action' ('mahi tinihanga') of Carroll and Pere in failing to keep their promises and come to fully explain and discuss the Act.⁶⁴ According to Binney: 'The two postponements, and the failure of either man to attend, despite the huge preparation of special food (taha of preserved pigeon, pigs, and fish) that had been arranged, added to the growing level of distrust as to the Government's intentions.'⁶⁵ She also suggested that 'in general, the Tuhoe leaders had expected the hui at Ruatahuna to be part of an ongoing consultation process with the Government.'⁶⁶ And despite the emerging divisions within Tuhoe over how best to proceed, both parties appeared to be fundamentally concerned to protect 'the general authority which was understood to reside collectively with *all* the Urewera hapu' (emphasis in original).⁶⁷

By March 1898, Tuhoe in fact reached a consensus to endorse the Act. The appointment of the commissioners (gazetted in February) seems to have been an important catalyst. Tutakangahau (nominated as a commissioner in December) called a hui at Maungapohatu in January 1898 to unite the hapu of Maungapohatu and Ruatahuna 'under the law of the Rohepotae (i runga i te ture mo te rohe potae)'.⁶⁸ The hui agreed to accept the Act as a whole, and that their decisions should be ratified at Waimana in March. A further hui of chiefs and representatives of all hapu at Waimana was described as the 'final meeting' to discuss the

63. Marr, 'Urewera District Reserve Act 1896 and Amendments' (doc A21), pp 124–125; Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, pp 374, 381

64. Te Wharekotua to James Carroll and Pere, 4 August 1897 (Binney, 'Encircled Lands, Part 2' (doc A15), p 223)

65. Binney, 'Encircled Lands, Part 2' (doc A15), p 223

66. *Ibid*, p 226

67. *Ibid*, p 229

68. Tutakangahau to Seddon, 17 January 1898 (Binney, 'Encircled Lands, Part 2' (doc A15), p 232)

Act.⁶⁹ Seddon, Pere, and Carroll did not attend; nor did Percy Smith (though he had been told he was expected). But the importance attached to the hui was evident from the fact that it was held despite widespread famine after summer frosts destroyed crops throughout Te Urewera.⁷⁰

In September 1898, Tuhoe sent yet another delegation to Wellington. They did meet Seddon, and also H Tomoana, a member of the Legislative Council, Wi Pere and Henare Kaihau, members of the House of Representatives. The agitation of their leaders is evident in their korero. Tutakangahau urged that the commissioners get on with their work so that, in Numia Kereru's words, 'the Tuhoe people may as speedily as possible enter into the exercise of mana assured to them under this Act'.⁷¹ We agree with Edwards that it seems clear Numia meant the system of 'local government' which was to be established under the Act once title had been determined.⁷² Te Wakaunua echoed this: 'the Great Committee of Tuhoe should be empowered by the Government to watch, with the assistance of the Government, the interests of the people in the event of any calamity befalling them'.⁷³ On this occasion, the setting up of the 'Great Committee' and the work of the commissioners was discussed. Seddon apologised for the delay in holding the meeting, and also for the delay in the commissioners' work; he explained that Judge Butler had been held up by another inquiry, but he would be free shortly to go to Te Urewera. Seddon promised that the commissioners would be able to start by the end of the year.⁷⁴

After this meeting, as Edwards noted, there were no more letters to the Government calling for the Act to be amended or threatening to withdraw from it. The people of Te Urewera, she stated, appear to have been focused on making their preparations for putting claims before the commission.⁷⁵

13.6.2 Why was the work of the Urewera commission slower than expected?

After this initial delay of two years, the commission began work in February 1899. It reported its completion of title determination in the reserve in 1902 – six years after the UDNR Act was passed. It appointed provisional local committees, but these appointments were not gazetted. Not even the first steps towards the election

69. Te Wharekotua to Carroll and Pere, 4 August 1897 (Binney, 'Encircled Lands, Part 2' (doc A15), p232)

70. Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), pp 33–35, 42

71. 'Meeting Between the Premier and Chiefs of the Tuhoe Tribe, at Parliament Buildings, Wellington, 26 September 1898' in *Notes of Meetings Concerning Native Land Legislation* (Wellington: Government Printer, 1899), p 61 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7(i)), p 18)

72. Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), p 48

73. 'Notes of Meetings', p 61 (Edwards, 'The Urewera District Native Reserve Act 1896, pt 2' (doc D7), p 48)

74. Ibid; Marr, 'Urewera District Native Reserve Act 1896 and Amendments' (doc A21), p 129; Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), p 48

75. Cecilia Edwards, summary of 'The Urewera District Native Reserve Act 1896, Part 2: Title Determination Under the Act, 1896–1913', 27 January 2005 (doc L3), p 8

of a General Committee were taken. Thus, Tuhoe were not empowered to manage their lands or affairs through committees either locally or tribally. This was a crucial failure.

In this section, we examine the work of the Urewera commission. We do not intend to undertake a detailed study of the commission's processes, block by block, because we do not think this is necessary to an understanding of the failure of the UDNR Act. We should understand the approach of the commission to its task – and why it was that it took until 1902 for it to complete its report, and to recommend title orders. More important, however, is the failure of the Crown to intervene once it became clear that the commission's work would delay the establishment of the committees. We address this matter in our next section.

No timetable was indicated at the outset for the commission to complete its work. But it is clear that there was a general expectation that it would be a speedy process. The first case heard in full by the commission, the Waipotiki block, produced an alarmed response from the chairman, Percy Smith, that the case was taking as long as it would have in the land court. At this rate, he said, they would take three years to hear the cases! (It was ironic that in fact it did take that long.) In particular, he stated that there should be no more questioning of witnesses by conductors of the various cases, and minor cases should be consolidated into one claim.⁷⁶ And we agree with Marr that Smith's reaction indicates the commissioners were under instructions to complete their work as quickly as possible.⁷⁷ Judge Butler would report in 1902 that title determination had been a more complex and lengthy process than he had anticipated.⁷⁸

How did the Urewera commission conduct its work, and was it slow because it followed land court procedure, as Smith charged? This raises a major point at issue between the claimants and the Crown: that the commission was in fact little more than the land court by another name.

13.6.2.1 *The commission's processes*

In broad terms, the first phase of the commission's work lasted from the beginning of February until the beginning of April 1899. During this time it sat for a total of 63 days at 10 locations chosen by the Tuhoe commissioners: Whakatane, Ruatoki, Tauaurau, Rewarewa, Te Waimana, Te Houhi, Te Whaiti, Ruatahuna (Mataatua), Maungapohatu (Toreatai), and Waikaremoana (Waimako).⁷⁹ Eventually, this was deemed the preliminary phase of its inquiry. It was followed by what were referred to as full investigations of title. These began in February 1900 and continued until 1902. In 1900, the commission sat for 71 days spread over four months; in 1901

76. Urewera commission, minute book 3A, 26 February 1900, fol 138 (Paula Berghan, comp, supporting papers to 'Block Research Narratives of the Urewera, 1870–1930', 18 vols, various dates (doc A86(a)), vol 1, pp 249, 252); Edwards, 'The Urewera District Native Reserve Act 1896, pt 2' (doc D7), pp 102–104

77. Marr, 'Urewera District Native Reserve Act 1896 and Amendments' (doc A21), p 140

78. Ibid, p 143

79. Edwards, 'The Urewera District Native Reserve Act 1896, pt 2' (doc D7), p 57



John Hutton

'Court house', Waikotikoti Marae. The building was constructed for the hearings of the first Urewera commission in about 1900.

for 42 days spread over three months; and in 1902 for 63 days spread over three months, with a few extra days in each of two other months.⁸⁰

The minutes of the first meetings of the commissioners themselves are brief, and shed little light on how their crucial decisions about process were taken. At their initial meeting on 1 February 1899, the commissioners 'proceeded to consider some of the clauses of the Act . . . and the best method of carrying out its provisions'. A list of 'the hapus of Te Urewera tribe was then drawn out', each of the five Tuhoe commissioners putting in a list of hapu, and specifying their districts (variously Ruatoki, Te Houhi, Ohaua, Ruatahuna, Te Waimana, Tawhana, Maungapohatu, Te Waiiti, Te Whaiti, Waikare, and Galatea). At a meeting on 7 February, the commissioners 'proceeded to consider the best means of carrying out the work before them'. The first decisions about the commission process that Percy Smith conveyed to Tuhoe claimants when the 1899 hearings began are telling. As early as the morning of 8 February, at the first hearing at Ruatoki, there is reference in the minute book to drawing up hapu boundaries and 'name lists' – that is, lists of owners ('nga rarangi ingoa o nga tangata e whai paanga ana ki aua whenua').⁸¹ Then, on the afternoon of 8 February, the chairman explained to those present the 'best method of making out the lists of names of land owners' ('nga tikanga mo te tuhituhi i nga rarangi ingoa'). Unfortunately, that is all the

80. Edwards, 'The Urewera District Native Reserve Act 1896, pt 2' (doc D7), pp 100–101

81. Urewera commission, minute book 1, 1 February 1899, 7 February 1899, 8 February 1899, fols 4, 6–7, 15–16 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(a)), pp 2–4, 11–12)

minutes tell us.⁸² On the afternoon of 9 February, after a meeting in the morning, the commission held an open session, dealing first with boundaries, ‘the majority of the natives leaving in order to complete the lists of names demanded by the Commissioners.’⁸³ In other words, there had been a rapid shift from a focus on the hapu names provided by the Tuhoe commissioners to drawing up lists of owners’ names.

As the commission moved throughout the district, hapu spokesmen submitted boundaries and lists of names, and the commission responded to requests for further clarification on the provisions of the Act. The chairman would read out publicly the lists of boundaries and the lists of names. (A map of the district subject to the UDNR Act had been sent to Smith for use by the commission.⁸⁴) It seems that this dual approach – the recording of the lists of names put in by individual groups against specific areas of land, as Edwards puts it⁸⁵ – created the conditions for many objections, which were duly recorded.

The outcome of these hearings was a decision that further hearings would have to be undertaken. By the beginning of April at least (perhaps earlier), it had been decided that the commission would investigate boundaries and the lists of names the following year.⁸⁶ The chairman, Smith, in his other capacity as Secretary for Crown Lands and Surveyor-General, reported on the commission’s progress in his Annual Report on the Department of Lands and Survey, 1899, which covered the 12 months to 31 March 1899. What the commission had achieved to date was that ‘[p]ractically, the owners of the Urewera country are now known by name’ though some names might have been omitted from the lists. The names, moreover, still had to be arranged alphabetically, and duplicate names eliminated. But, Smith said, defining hapu boundaries was going to be difficult:

It was soon found that practically there are no such things as defined hapu boundaries such as were acknowledged by the people as belonging to any given hapu to the exclusion of others. As a matter of fact, nearly the whole area is subject to overlapping claims, sometimes three or four claims one on top of the other with discordant boundaries; and the hapus are so mixed by intermarriage that it is difficult to say to what hapu any particular individual of the tribe belongs.⁸⁷

82. Urewera commission, minute book 1, 8 February 1899, fols 16–17 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(a)), pp 12–13)

83. Urewera commission, minute book 1, 9 February 1899, fol 18 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(a)), p 14)

84. Part of the eastern boundary had not yet been drawn in, as plans for Tahora 2, Waipaoa, and Waiau blocks (which bordered the UDNR) were still in Hawke’s Bay district office of the survey department: see Edwards, ‘The Urewera District Native Reserve Act 1896, Part 2’ (doc D7), p 43. We have been unable to locate the map in the file cited by Edwards.

85. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 2’ (doc D7), p 62

86. Urewera commission, minute book 1, 6 April 1899, fol 203 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(a)), p 91); ‘Annual Report on the Department of Lands and Survey’, AJHR, 1899, c-1, p xi

87. ‘Annual Report on the Department of Lands and Survey’, AJHR, 1899, c-1, pp x-xi

Thus, it had been decided to hold more detailed title investigations, which would take ‘considerable time’; sketch surveys of the ‘most intricate and disputed boundaries’ would have to take place. ‘As the work progressed it became apparent that the title to the whole area would require investigation before any boundaries could be determined suitable for a division into districts.’⁸⁸

The commission’s subsequent title hearings, as we have seen, took place over three successive years. Our discussion of the commission’s approach to its task during this period will be brief. As it moved from one location to the next, taking one block at a time as sketch plans became available, various groups put in their lists of names; objections were noted; new lists were read out; and further objections to names were noted. Evidence was then taken in support of objections, or in support of whanau whose names had been objected to. It might be quite detailed evidence relating to the rights of particular individuals, their whakapapa, and their occupation (the latter was especially important to the commission); some witnesses set their evidence in the broader context of Tuhoe history. If the commissioners decided objections had not been sustained, names remained on the lists. Lists to which there were no objections were also inserted among the permanent lists for the block.

When the lists were finally settled (though, even then, this did not mean a claimant might not seek to reopen a list on a later occasion), the interest of each person named was quantified. In the Waipotiki block, the chairperson invited the conductors of cases to define shares for each individual. This was done by marking each name ‘B’ (big share) or ‘S’ (small share); in Waipotiki there were 729 names, which were later increased to 794.⁸⁹ Sometimes, as in the Maungapohatu block, the commission intervened to arrange shares if the people themselves ‘did not seem able to manage’ it, or if there was a dispute between various case conductors.⁹⁰ Or it allowed the people to postpone arrangement of relative shares if this was sought (as in Waikaremoana).⁹¹ In Taneatua, we note some interesting advice by the commission, that the claimants should ‘arrange the hapu shares in the block themselves.’ Later, lists were read out, according to the minutes, ‘so as to arrange the shares of each owner, must be determined in this block [*sic*]. Each person’s shares were read out and were individualized in portions of the block to which the said person is entitled.’⁹² But of course they could not be assigned to portions of

88. ‘Annual Report on the Department of Lands and Survey’, AJHR, 1899, C-1, pp x-xi

89. Urewera commission, minute book 4, 2–3 April 1900, fols 171–173 (Paula Berghan, comp, supporting papers to ‘Block Research Narratives of the Urewera, 1870–1930’, 18 vols, various dates (doc A86(b)), vol 2, pp 474–476)

90. Urewera commission, minute book 5, 8 May 1901, fol 343 (Paula Berghan, comp, supporting papers to ‘Block Research Narratives of the Urewera, 1870–1930’, 18 vols, various dates (doc A86(c)), vol 3, p 1000)

91. Urewera commission, minute book 6, 20 May 1901, fol 5 (Paula Berghan, comp, supporting papers to ‘Block Research Narratives of the Urewera, 1870–1930’, 18 vols, various dates (doc A86(d)), vol 4, p 1082)

92. Urewera commission, minute book 4, 21 March 1900, fol 96 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(b)), p 394)

the blocks unless the block were partitioned. This was the case even in a block like Taneatua–Kanihi (17,200 acres), where the claimants applied to ‘arrange amongst themselves certain boundaries within the block defining the interests of certain groups of names in the lists, which practically are the boundaries of the various hapus concerned.’⁹³ Though the commission entered each individual’s interest in a particular named division on the map, such agreements were lost sight of in the long lists of block awards which were the end product of the commission’s work. This exercise of allocating shares might be followed by applications for more shares for persons on particular lists. Edwards’ study of the published lists of owners led her to conclude that the commission did not in fact define family group entitlements to shares before dividing the shares between the individual family members, as the Act required. Instead, the shares were awarded to individuals and then aggregated to family names.⁹⁴

Why, then, the preoccupation with lists of names – and, before long, with relative shares – when it is clear, as we noted in chapter 9, that the peoples of Te Urewera had wanted the award of titles at a hapu level, to facilitate hapu and tribal control of lands. Their overwhelming wish, as expressed during negotiations with the Crown in 1894 and 1895, had been against individualisation of title. And section 6 of the UDNR Act must have seemed reassuring at the time. It required the commissioners to divide the UDNR into blocks and,

with due regard to Native customs and usages, investigate the ownership of each block, adopting as far as possible hapu boundaries.

Me roherohe a poraka taua takiwa e aua Komihana, a i runga i nga tikanga me nga ritenga Maori me kimi e ratou nga tangata whaitake ki ia poraka ki ia poraka, a ki te taea me whakatau ia poraka i runga i nga rohe o ia hapu.

In our view, there were two factors which shaped the direction the commission took. Both had their origin in the mainstream native land legislation and the work of the land court over the previous decade.

The first factor was the requirements of section 8 of the UDNR Act, that the commissioners should make orders for each block within the district, declaring:

- (1) The names of the owners of the block, grouping families together, but specifying the name of each member of the family;
- (2) The relative share of the block to which each family is entitled;
- (3) The relative share to which each member of the family is entitled in such family’s share of the block.

⁹³ Urewera commission, minute book 4, 9 April 1900, fol 194 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(b)), p 497)

⁹⁴ Edwards, summary of ‘The Urewera District Native Reserve Act 1896, Part 2’ (doc L3), p 12

- (1) Nga ingoa o nga tangata no ratou te poraka, a ko aua tangata me whakanohonoho-a-whanau i roto i ia ota, a me tuhi marire te ingoa o ia tangata o ia whanau.
- (2) Nga hea o ia whanau i roto i ia poraka.
- (3) Te hea o ia tangata i roto i te hea o tona whanau.⁹⁵

The names of all owners in a block had been listed since the Native Land Act 1873 required that memorials of ownership should be drawn up. But beginning a title investigation process by drawing up lists of individual names was unusual. In the land court, a block hearing began with the identification of parties with claims, the hearing of evidence, and the cross-examination of witnesses. Only after the court delivered its judgment as to which parties were the owners of the land were lists of names prepared. We must assume that in the reserve the commissioners took their cue from section 8 of the UDNR Act. The Pakeha members would undoubtedly have played a leading role in discussions on interpretation of the Act – and both were steeped in land court procedure. Perhaps Smith hoped that, given the wording of the section, he might leapfrog straight to the lists, and avoid the prolonged hearing of historical evidence; his comment at the end of the Waipotiki hearing suggests this may have been the case.

Likewise, the emphasis on relative shares in section 8 reflected the entrenchment of such provisions in mainstream legislation, or in rules of the court, by this time (see sidebar). But as we said in chapter 9, there was no compelling reason why the UDNR Act should have made provision for the identification of individual owners' shares.

The second factor which influenced the operation of the commission was thus the work of the land court in Te Urewera in the 'rim' blocks in recent years – reflecting the provisions of the legislation and the court rules. This context is crucial to our understanding of the commission's work. The commission did not, and could not, begin proceedings with a blank slate. There was more to excluding the land court from operating in the reserve than denying it a formal role; in fact it cast a long shadow over the commission. The intricacies of the land court were well known to the commissioners and to Te Urewera people. Reference to two of many cases will be sufficient to demonstrate this point.

In the Tuararangaia case heard by the court (1890–91), for instance, the judgment was followed by parties putting in their lists of names, by objections to some names on the lists – and, in one case, by evidence given by those seeking inclusion, followed by a court decision. Finally, the court issued orders for relative shares to 715 owners listed for Tuararangaia 1, to 406 owners of Tuararangaia 2, and to 293 owners of Tuararangaia 3.⁹⁶

95. Ture Rahui Maori o te Takiwa o te Urewera, 1896

96. Whakatane Native Land Court, minute book 4, 22–29 January 1901, fols 157–164, 166–167, 177–200, 218–229, 268–276 (Paula Berghan, comp, supporting papers to 'Block Research Narratives of the Urewera, 1870–1930', 18 vols, various dates (doc A86(p)), vol 16, pp 5382–5436)

The Creation of Relative Shares under Native Land Legislation

In its report *He Maunga Rongo*, the Waitangi Tribunal wrote about the creation of relative shares:

The land court, in accordance with the Native land legislation or Rules of the Court, had in the past decade been engaged in a more determined process of individualisation through the creation of relative shares. The land legislation had increasingly refined provisions for ascertainment of relative interests since 1873. An Act amending the 1886 Native Land Court Act in 1888 required the court, when making orders, to decide relative interests, whether such procedure had been applied for, or not. This Act was repealed in 1894. Rules of the court under the Native Land Court Act 1894 stated that it was the duty of the court 'on every investigation of title or partition, and on determining any succession' to define relative interests of owners or successors. Such interests were to be expressed in shares or fractional parts of a share.¹

1. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, pp 725–726

The case of Ruatoki is of particular relevance, because so many hapu had claims there – and, as we have seen, the land had been highly disputed even before it went before the court. (It was the best remaining land of Tuhoe, and had become doubly valuable in the wake of the 1866 confiscation. The confiscation had also, as we have shown, put considerable pressure on displaced hapu and their neighbours.) After Judge Scannell gave his preliminary judgment in this case, in September 1894, lists of names were put in by those key claimants deemed to have established rights in partitions of the block (now designated as Ruatoki 1–4) and the court's decision was given on those lists. These were subject to objections over a number of days between 15 October and 1 December 1894, and a further judgment was given on those lists. The parties were then charged with considering 'relative interests' among themselves. This led to considerable difficulty and dispute as parties attempted to resolve allocations internally, and relative to one another.⁹⁷ In the end, the land court ordered that the block be divided into four par-

97. Some idea of these difficulties and the mental gymnastics involved in resolving them can be gained from the following interchange in Whakatane Native Land Court, minute book 4B, 4 December 1894, fols 124–125: 'Te Wakaunua says he will agree to three persons one for each hapu receiving 100 shares; all the rest of the owners to receive 50 shares each . . . or two shares and one share respectively. Shares to be 150 and 100 respectively.'

cels, and each awarded to those found to be owners ‘in the relative proportions already determined.’⁹⁸ The lists show the total number of shares for each block (for example, 363 and a half for Ruatoki 1, and the distribution of shares in that block: two and a half for one owner; two shares for each of 54 owners; one share for each of 251 owners; and one half-share for each of four owners).⁹⁹ The Ruatoki judgment was appealed (both by Ngati Rongo and by Mehaka Tokopounamu and Tamaikoha ‘for the Tuhoe hapus generally’, as the judge put it),¹⁰⁰ and the appeal was heard by the appellate court in April and May 1897. This led to the addition of names to the various lists of owners in Ruatoki 1–3 blocks already passed by the court, and awards by the court of specified shares to each of those admitted.¹⁰¹ This resulted in reductions of shares previously awarded to some owners.¹⁰² Many Tuhoe hapu had claimed interests in the Ruatoki block, and had attended the court hearings and the appeal. Most of the Tuhoe commissioners had been involved in the cases. They came into the commission with the experience of compiling lists of individual names, of having to defend their lists, and of considering ‘relative shares’ at the court’s instruction. The earlier court cases were very fresh in their minds. Many of those who gave evidence to the commission referred to evidence given earlier in the land court, and to the lists of names approved in the court; the commission itself stated that it had to look at the court minute books. And it is hard to avoid the conclusion that Tuhoe had been taken too far down the path of lists of names and shares to be able to retreat and make a fresh start. Later, when Judge Butler wrote in the 1902 commission’s report that title determination took much longer than expected, he put it down to the fact that Tuhoe ‘were new to the work’ and thus ‘fought out’ the ownership of each block to the ‘bitter end.’¹⁰³ We are inclined to the view that the opposite was the case. It was precisely because Tuhoe were *not* ‘new to the work’ – and by that we mean the work of title determination as presided over by the land court – that tensions sometimes ran high.

13.6.2.2 *The role of the Tuhoe commissioners*

It is also our view that the history of conflict over names and shares was compounded by the fact that the Tuhoe commissioners did not, after all, play a full role in the workings of the commission. This is not to agree that their role was always secondary to that of the Pakeha commissioners, for the minutes show that on occasion they engaged in vigorous discussion. But there were structural problems.

98. Regarding Ruatoki 4 (five acres), which a number of owners wished to be a school site, the court hesitated to make an immediate order, given that assent of a majority of owners was required: see Whakatane Native Land Court, minute book 4B, 4 December 1894, fols 126–127, 129.

99. Whakatane Native Land Court, minute book 4B, 5 December 1894, fols 131–141. The minute book notes that the names of 12 persons who had no personal claims were added, to share with some owners at the request of those owners: Whakatane Native Land Court, minute book 4B, 4 December 1894, 5 December 1894, fols 125, 141.

100. Whakatane Native Land Court, minute book 5, 4 May 1897, fol 185

101. *Ibid.*, 8 May 1897, fols 205–218

102. *Ibid.*, fols 207–209

103. ‘Report of the Chairman of Commissioners under The Urewera District Native Reserve Act, 1896’, 6 August 1902, AJHR, 1902, G-6, p 1

The first was the leading role accorded the Pakeha commissioners in the legislation and regulations. The Tuawhenua researchers highlighted this, agreeing with Professor Binney that the root of the first commission's problems, and of its Native Land Court-style investigation, lay with the undue influence of the European commissioners. The researchers argued:

Although Tuhoe had a majority on the First Urewera Commission, the Pakeha commissioners and their procedures quickly dominated its way of working. Smith became the chair of the first Commission. The regulation specified that the chair had to be one of the 'European' commissioners, and that if the chair was absent he was to be replaced by the other 'European' commissioner. As Binney comments, 'European leadership, procedures and participation drove it from the start.'¹⁰⁴

The second problem was that the balance of five Tuhoe to two Pakeha commissioners was undermined at the outset. During the commissioners' first week it was decided that Tuhoe commissioners should take no part in discussion or decisions affecting boundaries or relative interests in lands where they had interests. Numia Kereru put the motion and Mehaka Tokopounamu seconded it. We have only a summary (in both te reo and English) of these early commission minutes, not a complete transcript, so we are in the dark as to the discussions which preceded the decision, or who raised the matter. There was no such provision in the Act, or in the 1898 regulations – the latter simply specified that four commissioners, including one European, were to constitute a quorum.¹⁰⁵ What we do know is that the decision changed the nature of the Urewera commission. What had been envisaged was a Tuhoe-dominated body. In practice, this would no longer necessarily be the case. During the hearing of any given block, one, two, or more Tuhoe commissioners had to recuse themselves. In the case of the Ruatoki and Ruatahuna blocks, so important to many Tuhoe hapu, only one Tuhoe commissioner did not have interests, thus there was little Tuhoe participation in those hearings.¹⁰⁶ The recusal decision was formalised later: first in regulations approved on 15 January 1900 (Tuhoe commissioners must not vote if they had interests in a block, and the quorum requirements were set aside in such circumstances), and then in a section in the UDNR Act Amendment Act, passed in October 1900. The amending Act, in other words, offered an opportunity to fix a problem which the commission had evidently identified: how were those who appeared before it to have confidence in its decisions if some of the members had interests in the blocks being adjudi-

104. Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two: A History of the Mana of Ruatahuna from the Urewera District Native Reserve Act 1896 to the 1980s' (English) (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc D2), p 26

105. 'Regulations under the Urewera District Native Reserve Act 1896', 25 November 1898, *New Zealand Gazette*, 1898, no 87, p1944

106. Hurae Puketapu was the only commissioner not interested in the Ruatoki blocks, and Te Pou was the only commissioner who sat on the Ruatahuna block hearing: see Urewera commission, minute book 6, 15 April 1902, fol 329 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(d)), p1353); Urewera commission, minute book 6, 3 March 1902, fol 260.

cated on? Ultimately this dilemma was an outcome of the compromise reached between Te Urewera leaders and the Government on the process of deciding titles: the leadership had wanted the hapu to make the decisions, assisted by a single commissioner; Seddon had wanted the commissioner to adjudicate. In the end, Seddon, as we noted earlier, was prepared to accept that 'the owners of the land' would ascertain ownership themselves.¹⁰⁷ But we also accepted that the degree of Maori involvement and control in commission processes was not well articulated in the Act. And with the switch from an informal hapu-controlled process to commissioner adjudication, concern about commissioner conflict of interest had surfaced. It would still be evident the following year, as the spectre of yet another contest over the disputed Ruatoki lands loomed – this time in commission hearings. Binney rightly stated that the question of ownership at Ruatoki became 'explosive', and had a major impact on the internal 'row' over the structure of the commission. To some leaders, it even seemed that the solution was to replace the Tuhoe commissioners with those from other iwi.¹⁰⁸ This apparent abandonment of a principle which the hapu had been so anxious to see recognised in law must point to the grave limits of the commission model in practice.

In 1900, the Government, in our view, had to address these concerns. It might simply have increased the pool of Tuhoe commissioners so that the balance of membership within the commission was preserved, although this would not have addressed the problem that would soon surface of there being Ngati Kahungunu claims to determine in some blocks. Instead, section 4 of the amending Act provided that if all the Tuhoe commissioners were interested in land being investigated, ownership would be decided by European commissioners alone, and the quorum would not apply. But the European commissioners could, with the approval of the Native Minister, appoint any one or two Maori 'not members of the Tuhoe Tribe' to assist in such cases: they might sit on the commission and vote. The commission was the poorer for the Government's failure to ensure that a local majority was maintained. Instead of amending the Act to waive the quorum requirements, the Crown could and should have provided for a pool of alternate or substitute commissioners, in the event of a sitting commissioner disqualifying himself from hearing a particular case. Such a pool, elected in the same manner as the original commissioners, that is, by hapu with interests in reserve blocks, should also have provided for commissioners of all tribal affiliations, so that all were guaranteed involvement in the decision-making process.

The commission would have been a stronger body had it operated throughout with five Te Urewera commissioners, and the principle of majority tribal participation in the decisions had been assured. The alternative scenario, in which commissioners with interests in a block became conductors on behalf of their own claimant group, presenting their case, or were not involved at all, was more a recipe for suspicion and increased tension.

107. Seddon to Tuhoe delegation, 25 September 1896 (Judith Binney, comp, supporting papers to 'Encircled Lands, Part 2', various dates (doc A15(a)), pp 50–51)

108. Binney, 'Encircled Lands, Part 2' (doc A15), pp 237–238, 240

13.6.2.3 The commission and self-government in the reserve

By 1899, as we have seen, Smith's report flagged to the Government that the title-investigation process was going to take 'considerable time'. But what he did not do was draw attention explicitly to the fact that there would therefore also be 'considerable' delays in establishing the basis for the operation of 'the local government of the tribes'. This was despite the fact that he stressed the Urewera commission had a dual function: 'combin[ing] the two objects of ascertaining the ownership of the large block of land included within the boundaries described in the schedule to the Act (656,000 acres), and . . . dividing the country into areas which are to serve as the basis for the local government of the tribes.'¹⁰⁹ We add that Smith reiterated this publicly at a commission hearing (the Waipotiki block) the following year: 'We are not to investigate these lands so that they may be sold or leased but we are here to ascertain the electorate localities in this land.'¹¹⁰

But he did no more than draw attention to the problem; he did not suggest a better way of proceeding to achieve local government, given the new circumstances he flagged. He did not take advantage of the Government's willingness to listen to the commission's recommendations about how to implement the Act properly. Carroll had specifically said in the 1896 debates that because quite unforeseen matters might arise when commissioners were determining title, they had been left 'the power to suggest a set of regulations to meet every contingency', which the Governor in Council would give effect to.¹¹¹ As we have noted, section 16 of the Act stipulated how provisional committee members were to be selected (namely, from the owners of each block) so, until that section was repealed, a regulation to different effect would not be valid. And it would take the Crown until 1908 to amend the Act for the purpose of expediting local government of the reserve.

Smith indicated instead that the commission was poised on the brink of a substantial process of surveys and hearings throughout Te Urewera which would not even begin until February 1900. By then it would be three and a half years since the UDNR Act was passed. The Urewera commission was now set on a path which saw it prioritise the determination of individual ownership (according to its own interpretation of the UDNR Act), rather than facilitating the establishment of local committees and the General Committee, which Tuhoe were anxiously awaiting, by identifying hapu districts. The UDNR Act provided for two outcomes, as its short title underlines: 'An Act to make provision as to the ownership and local government of the native lands in the Urewera District.' ('He Ture hei whakatakoto Tikanga e mohiotia ai nga Tangata no ratou nga Whenua Maori o te Takiwa o Te Urewera, a hei whakatu Kawanatanga Takiwa mo taua iwi.') The establishment of local government could not simply be ignored while a title investigation process slowly unfolded.

109. 'Annual Report on the Department of Lands and Survey', AJHR, 1899, C-1, p xi

110. Urewera commission, minute book 3A, 26 February 1900, fol 137 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(a)), p 247)

111. Carroll, 24 September 1896, NZPD, vol 96, p 159

And the process did unfold slowly – though we do not think this reflects badly on the commission. Given the requirements of the UDNR Act, and given the pervasive influence of land court procedure in Te Urewera, it had a complex task. It was dealing with a great deal of land, estimated at 656,000 acres at the time,¹¹² and with many blocks (initially 57, reduced by 1902 to 34).¹¹³ (By contrast, there were 11 rim blocks in our inquiry district, encircling what became the reserve, amounting to 377,271 acres. These blocks were heard in two clusters (1878–82 and 1889–94) over a 16-year period.) Nor was the commission particularly slow in its individual block investigations. Even the Waipotiki case, about which Percy Smith protested, took just two and a half weeks. The commissioners seem to have been anxious to press on with their work – and Tuhoe commissioners agreed with the principle of a shorter process. Tutakangahau voiced what was probably a general concern that all the old people might pass away if the commission was too slow.¹¹⁴

The commission's work was drawn out because it sat for relatively brief periods each year, as we noted above, during the summer and autumn. It was under-resourced. It would not sit in the winter months (the lack of weatherproof venues in some places was a factor, as the chairman first pointed out in 1899).¹¹⁵ In his final report in 1902, Judge Butler wrote: 'The work of the Commission was also retarded by the want of a suitable building. Sittings were held in the open air, and there were many interruptions through wet weather, strong winds, and other causes.'¹¹⁶

These were also times of severe crop failures in Te Urewera. The first was in summer 1898, when two unseasonal frosts struck nearly all the major Urewera settlements, destroying crops and rendering potatoes useless as seed for the following season. The result was famine. (We discuss this further in a later chapter.) In May 1900, a flood in the Ruatoki district ruined crops and drowned cattle; tons of potatoes were lost. In January 1901, frost again destroyed potato and corn crops.¹¹⁷ Accordingly, the commission chairman may have been concerned about the burden on host communities of feeding manuhiri – as well as the burden on all those involved of sitting for more than 10 to 14 weeks at a stretch. People had to

112. Urewera District Native Reserve Act 1896, sch 1

113. Official sources give different figures for the number of blocks at different times. The 1899 figure given by the commission was for 57 blocks (AJHR, 1899, C-1, p xi). The commission reported in 1902 that it had reduced claims for 'fifty eight' blocks to 34 (though the names of the blocks were not given) (AJHR, 1902, G-6). But the 1903 report stated that there were now 35 blocks (AJHR, 1903, G-6). Binney stated that the 1902 report omitted Whaitiripapa and counted Ruatoki 1–3 as one block (which would explain the discrepancy between the 1902 and 1903 figures): Binney, 'Encircled Lands, Part 2' (doc A15), p 244.

114. Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), p 104

115. In May 1900, the chairman said that the commission would 'not return to sit in such a house as this': Urewera commission, minute book 4, 18 May 1900, fol 338 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(b)), p 643). In January 1902 the commission could not begin sittings until 'materials for tents' had arrived and its staff was accommodated: see Urewera commission, minute book 6, 15 January 1901, fol 7 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(d)), p 1084).

116. 'Report of Chairman of Commissioners under The Urewera District Native Reserve Act, 1896', 6 August 1902, AJHR, 1902, G-6, p 1

117. Binney, 'Encircled Lands, Part 2' (doc A15), pp 287–295

prepare for hearings, too. In one case (Waikarewhenua), Numia Kereru, who was on this occasion a conductor for claimants, spoke of disputed lists having already taken a month to be arranged.¹¹⁸ Inevitably, however, restricted sitting periods meant that the overall work of the commission would take longer.

All of this underlines how unreasonable it was to expect the peoples of Te Urewera to wait for their committees until the commission had finished. The Crown had to intervene when the problem became clear. It did not do so in 1900. And it did not do so even in 1902, when the commission finally named members of provisional local committees. We turn now to the final stage of the commission's work.

It has to be said that its work had a rather untidy end. Judge Butler wrote his final report to Parliament on 6 August 1902, reporting that claims to all hapu blocks had been heard, and orders made for 33 of the blocks; the interests of families and individuals had been defined in accordance with section 8 of the Act. But the commissioners had deferred their decision on the Ruatoki block. And, as all the commissioners' orders were deemed by the 1900 amending Act to be interlocutory (provisional) and might yet be revised by them, they wished to consider some applications for revision – and so had adjourned until October for that purpose. Thus, the commission had yet to hold its final hearing. It sat for five days between 3 and 14 October in Whakatane, during which time it ran through each block and heard any requests for reconsideration. In some cases, new names were added to lists and minor adjustments made to shares. In others, the commissioners determined that no alteration be made, and recorded that some claimants notified their intention to appeal the commission's decisions under the Act.¹¹⁹ The awards were confirmed and published in the *Kahiti* on 5 June 1903 – long lists of individuals, with family groupings alongside, showing the number of shares awarded each, arranged by block (see appendix v). By sections 9 and 10 of the 1896 Act, Maori had 12 months to appeal to the Minister of Native Affairs.

In 1902, finally, the commission addressed the question of the appointment of provisional local committees. It seems that at this point it may have considered the relationship between the certificates of ownership which would be issued once the final block orders were made, and the membership of local committees and the General Committee. In May, it decided to group the 30-plus blocks for which it had finalised title orders; it would make a separate order for each group of blocks. It identified and named 10 groups: Te Whaiti-nui-a-Toi, Ruatahuna-Waikaremoana, Maungapohatu, Ohau Te Rangi, Tauwharemanuka, Parekohe, Paraeroa, Ruatoki, Hikurangi Horomanga, and Tarapounamu-Matawhero. The last two did not comprise smaller groupings at all, whereas the others included up to six existing blocks. Each group was to form a 'division' under section 6 of the UDNR Act. Section 6 does not in fact refer to 'divisions'; it required the commissioners to 'divide the said district into blocks' and to investigate the ownership of

118. Edwards, 'The Urewera District Native Reserve Act 1896' (doc D7), p 135

119. Urewera commission, minute book 7, 3 to 7 October 1902, fols 42–58; Edwards, 'The Urewera District Native Reserve Act 1896' (doc D7), pp 101, 126–127

each, 'adopting as far as possible hapu boundaries'.¹²⁰ This was the basis on which the commission had initially identified 57 blocks, and then, over time, reduced the number to 34 for which it had identified lists of owners. Edwards stated that there is no evidence on file to suggest why the commissioners decided they should move in 1902 to a smaller number of what it called 'divisions'. Perhaps, she suggested, it was because the commission 'sought to minimise the number of General Committee members an individual hapu could have, and that they deemed the new groupings to be more efficient'.¹²¹ If so, the commission had finally returned to considering the electoral significance of its work, but was considering a change to the basis on which the General Committee was elected (which was beyond its powers).

In October, however, the commission changed its mind: 'There being some doubt as to the jurisdiction of Commissioners to group blocks together under one title . . . as was proposed at last sitting, it is decided to issue separate titles for each division and to appoint provisional local Committees for each'.¹²²

In other words, the commission would issue orders for each of its final blocks, rather than for larger groupings – and would appoint a provisional local committee for each block. The Act made it clear that each block was to have its own committee (sections 16, 17, and 18); under section 13, the names of members of the local committee for each block (and of the General Committee) were to be recorded on the certificate of title for the block. Because the local committees were tied under the Act to block certificates of ownership, the commissioners realised that they had no power to appoint committees for any grouping larger than a block (see appendix 111).

On 8 October 1902, when it had completed its review of blocks, the commission 'appointed' provisional local committees for each of 31 blocks, listing the names for each committee. Names were those submitted by conductors of cases before the commission.¹²³ Six days later, having finalised the awards for Ruatoki 1–3 and Waipotiki, the commissioners appointed committees for those four blocks too.¹²⁴ The members included many senior Tuhoe and Ngati Whare leaders in their various localities.¹²⁵ This was in fact the commission's last act. The minutes of 14 October recorded: 'Title to whole reserve complete'.¹²⁶

120. Urewera commission, minute book 7, 2 May 1902, fols 23–24 (Paula Berghan, comp, supporting papers to 'Block Research Narratives of the Urewera, 1870–1930', 18 vols, various dates (doc A86(h)), vol 8, pp 2770–2771)

121. Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), p 125

122. Urewera commission, minute book 7, 3 October 1902, fol 43 (Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), p 126)

123. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 7

124. Urewera commission, minute book 7, 8 October 1902, pp 59–66, 14 October 1902, fols 69–70. For the lists of members' names, see Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp 9–15.

125. Binney, 'Encircled Lands, Part 2' (doc A15), p 246

126. Urewera commission, minute book 7, 14 October 1902, fol 70

Then, remarkably, the lists of provisional committee members were not gazetted with the commission's awards.¹²⁷ We do not know why. Binney suggested that the many appeals lodged against those awards meant that 'the first provisional committees were simply shelved.'¹²⁸ If so, this seems inexplicable. We discuss this further in the next section.

By the end of 1902, then, the first Urewera commission had finished its work. The provisional committees – though their members had been named – remained in limbo. It was six years since the UDNR Act had been passed.

13.6.3 What was the Crown's responsibility, once the extent of delay was evident?

The first Urewera commission, as we have seen, was well aware that a key part of its job was to facilitate elections so that committees could begin their work. It also knew, and had reported by June 1899, that its processes of title determination were going to take 'considerable time.'¹²⁹ As far as we are aware, however, there were no suggestions about how this problem might be solved. We noted above that the UDNR Act would have needed amendment before provisional committee members could have been selected otherwise than from among the owners.

What, in these circumstances, was the Crown's responsibility? The Crown, as we have seen, acknowledged before us that the 'unduly long' time that elapsed after the passage of the UDNR Act contributed to the failure to fulfil the local governance principles under the Act.¹³⁰ In particular, it conceded that '[a]n opportunity was missed' in 1902. The provisional committees could have been appointed at that time (as the owners recommended); there did not seem to be any impediment to this.¹³¹ Given the sequence of sections in the UDNR Act, it seems to us that the provisional local committees (appointed by the commission) were provided for *so that* they could function while appeals (for which provision had been made) were heard. Why otherwise would there be provision for both provisional and permanent committees? The Act does not spell out why both kinds of committee were required. But it specifies (section 17) that 'provisional Local Committees shall hold office until the election of a permanent Local Committee by the owners of the block'. In other words, the permanent committees were to succeed the provisional committees.

In our view, the Crown should have revisited the question earlier. If the commission's initial proceedings had revealed a weakness in the Act such that there was a threat to the timely establishment of the local committees and therefore the General Committee, the onus was on the Crown to act. The Premier and Ministers had a good grasp of what Tuhoe wanted to achieve with the UDNR Act. They

127. Binney, 'Encircled Lands, Part 2' (doc A15), p 246

128. *Ibid*, pp 246–247

129. 'Annual Report on Department of Lands and Survey', 21 June 1899, AJHR, 1899, C-1, p xi

130. Crown counsel, closing submissions (doc N20), topics 14–16, pp 49–50

131. *Ibid*, p 61; Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 7

knew that Tuhoe wanted their General Committee quickly. Carroll told the House in 1896 that the commissioners appointed to investigate title and subdivide the reserve would ‘cease to exist’ as soon as they had done this, and had appointed provisional committees. At that point, the Act ‘w[ould] be self-working amongst the Natives, and in their interests.’¹³² Tuhoe anxiety that committees be established had been impressed on Seddon again after the Act was passed – both in late 1897, when a dispute erupted between Tuhoe and Ngati Whare over land at Te Whaiti, and in September 1898, when the leaders met him in Wellington.

In the course of the 1897 dispute, Makurata Hineore, a 50-year-old Tuhoe woman, struck Ngawati (Pika) Puru of Ngati Te Karaha (Ngati Whare) after ‘severe provocation’, and was sentenced to one month’s imprisonment with hard labour by two newly appointed justices of the peace.¹³³ Te Wharekotua (in his capacity as secretary for Tuhoe’s union, according to Binney) wrote to Seddon from ‘Tari mo nga tikanga maori’ (Mataatua Native Office (Ruatahuna)). He told Seddon that the trouble had arisen because of delays in appointing ‘an authoritative Committee to deal with the troubles in the Rohe Potae’ (‘te komiti whaimana hei whakahaere i nga raruraru e pa ana ki te Rohe Potae’); local committees must be formed in Te Urewera for such matters.¹³⁴ Seddon also received a letter from Himiona Tikitu, Paitini Wi Tapeka (Makurata’s husband), and others complaining that ‘incompetent’ Pakeha should not try cases within the Rohe Potae, and urging the appointment of the commissioners.¹³⁵ And in Wellington in 1898, Te Wakaunua spoke to Seddon of the principles adopted at the hui held to discuss the UDNR Act:

that the *mana* should be established from the top to the bottom; secondly, that the Commissioners should be sent to perform their duties; and, thirdly, that the great committee of Tuhoe should be empowered by the Government to watch, with the assistance of the Government, the interests of the people in the event of any calamity befalling them.¹³⁶

We think the Crown had a clear obligation, in light of its considerable interaction with Te Urewera leaders, and its promises as embodied in the UDNR Act, to ensure that the committees that were the key to self-government under the UDNR Act were appointed expeditiously.

Various courses of action were open to the Crown once delays in the commission processes were signalled. Given that the UDNR Act processes were experimental, and that Carroll had indicated that he expected them to evolve, the Crown ought to have monitored the commission’s progress. Smith’s first report of 1899 sounded a warning that progress towards establishment of the committees was

132. Carroll, 24 September 1896, NZPD, vol 96, p 159

133. Binney, ‘Encircled Lands, Part 2’ (doc A15), pp 256–257

134. Te Wharekotua to Seddon, 13 October 1897 (Binney, ‘Encircled Lands, Part 2’ (doc A15), pp 258–259)

135. Himiona Tikitu, Paitini Wi Tapeka, and others, 22 October 1897 (Binney, ‘Encircled Lands, Part 2’ (doc A15), p 259)

136. ‘Notes of Meetings’, p 61 (Binney, ‘Encircled Lands, Part 2’ (doc A15), p 241)

lagging. In fact, Carroll did take on board what Smith had said. He told the House in 1900, when he introduced the Bill amending the UDNR Act, that some considerable time was going to elapse before the commission made final title orders.¹³⁷ It is thus clear that legislative amendment was a practical option for fine-tuning the UDNR system. But Carroll completely missed the opportunity to put things back on track. Though he reconsidered what to do about the local committees, all he did was bestow on the commissioners the powers that should have been exercised by the committees. Section 9 of the amending Act read:

Until such time as the Committees contemplated by the principal Act are appointed, the Commissioners shall have power to deal with all matters which the Committee, if appointed, might deal with, and their decision in all such matters shall be binding on all the owners.

Carroll might have been alerted to the problem by opposition member William Herries's somewhat cynical remarks about the committees at the heart of self-government in the reserve:

This is one of the most important blocks of native land that is still held by the Natives. It has been the subject of special legislation since 1896, and I never myself could see exactly the object of this special legislation. . . . With regard to the Bill now in our hands, it seems to me it is directed to remedying several defects in the original Act. In the original Act there was a system of Committees to be set up. Up to the present time I do not think any Committees have been set up, and the original Act gave them very little power. It is evidently contemplated now by clause 9 that these Committees will be abandoned . . .

This is a wise decision, as I think the two pakeha gentlemen on the Commission will have the respect of both races, and I think the Government are to be congratulated on appointing these two gentlemen.¹³⁸

As far as we know, that provision was not used – but that is not the point. The Crown's response at a crucial point was to empower the commissioners (who were chaired by a Pakeha judge, and whose job was quite different from that of the General Committee), to appropriate the functions of a tribal decision-making body. Carroll seemed to have forgotten the importance of the UDNR Act to Tuhoe and Ngati Whare.

In 1900, when the amending legislation was prepared, the Crown might readily have amended the provisions for establishing local committees – and thus for the election of the General Committee – to ensure that Tuhoe had the opportunity to embark at once on management of their lands and their own affairs. (It certainly showed itself to be quite flexible in respect of the membership of the General Committee once it finally turned its attention to the matter in 1908.) Section 16 of

137. Carroll, 18 October 1900, NZPD, vol 115, pp 424–425

138. William Herries, 18 October 1900, NZPD, vol 115, p 425

the UDNR Act 1896 provided that the commissioners were to appoint provisional local committees from among the 'owners' of each block – that is, those found to be owners by the commission. We do not see why the commission might not, for instance, have been empowered instead to select provisional committees from leaders of hapu which were clearly associated with particular districts (in the te reo version of the Act, after all, the committees were 'Komiti Hapu'). This could have been done in consultation with those present. Seddon apparently thought temporary local committees were to be appointed by the commissioners right at the start – before they began identifying block boundaries and investigating title. That, at any rate, was what he told the Tuhoe delegation in Wellington in September 1898.¹³⁹ That might not have been what the Act provided, but Seddon still thought it would have worked. Tuhoe, we add, had had no trouble selecting their five commissioners – they had done so within two months of the Act being passed. And when the Tuhoe commissioners put in the names of 46 hapu at the start of the commission process, they identified the areas with which those hapu were associated, 11 in all: Ruatoki, Ruatahuna, Te Waimana, Maungapohatu, Te Houhi, Ohaua, Tawhana, Te Waiti, Te Whaiti, Galatea, and Waikaremoana.¹⁴⁰ Why could those areas not have been used as the basis for electoral districts? Or as the basis for committee selection by the commission, in conjunction with those present?

Alternatively, once it became apparent that section 16 of the UDNR Act was not going to produce provisional committees swiftly, the section could have been repealed, leaving the question of how to appoint provisional committees to be worked out by the Governor in Council and prescribed in regulations. The Act was characterised by the generality of its provisions for the reserve: very little detail was prescribed as to how the self-governing institutions would operate. Instead, section 24 empowered the Governor in Council to make regulations in the broadest of terms:

24. Governor in Council may make regulations—The Governor in Council may from time to time make such regulations as he thinks necessary for the following purposes:—

(1.) The mode of election of members of the Local Committees and the General Committee, and fixing their term of office:

(2.) Giving effect to anything which by this Act is expressed to be prescribed:

(3.) Any other purpose for which regulations are contemplated by this Act, or which he deems necessary in order to give full effect to this Act: and also

(4.) For giving effect to a certain memorandum from the Honourable Richard John Seddon, Premier of the Colony, addressed to the representatives of the Tuhoe people, bearing date the twenty-fifth day of September, one thousand eight hundred and ninety-five . . .

139. 'Notes of Meetings', p 64 (Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), p 50)

140. Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), pp 57–59

It would have been entirely consistent with the Act's skeletal structure for the manner of establishing the provisional committee to be left to be specified in regulations. The commissioners would have been the obvious source of advice on the matter. Had they turned their minds to elections, rather than *selection*, of committee members, they should have discussed with Tuhoe leaders a mechanism to ensure that people voted in only one district, or in no more than a certain number of districts in which they had the strongest connections.

Regulations were gazetted in 1898 and 1900, but they dealt only with the procedure of commission hearings. Clearly, they could have been used to give effect to the broader purpose of the legislation.

The importance of these Crown failures at the turn of the century cannot be over-estimated. The 1900 opportunity passed by, and two years later not even the publishing of the commission's report and the provision of lists of committee members' names could spur the Crown to action. It is hard to avoid the conclusion that ensuring self-government in the reserve no longer mattered to the Crown. The impetus of the mid-1890s had quickly ebbed away. Tuhoe, who had confidently and impatiently awaited the institutions through which they would govern themselves, were left in limbo. Four years was, in our view, too long to wait for committees to be established. Six years was at the outer edges. And by the time the General Committee was appointed (not elected), the entire political context had changed. We return to this point in the next section.

13.6.4 In what circumstances was the General Committee finally established in 1909?

Even after the Urewera commission completed its title investigation in 1902, it would be 1907 before provisional local committees were named, 1908 before they were validated, and 1909 before Te Komiti Nui o te Iwi, or the General Committee, was established. As the Crown has acknowledged, this delay in addressing appeals 'contributed to the failure to fulfil the local governance principles under the Act'.¹⁴¹

But we cannot focus simply on the appeals process: we have to look beyond this to explain why the General Committee was finally established so many years after the UDNR Act was passed – and why, by then, the circumstances were less than ideal for Te Urewera leaders to embark on implementing policies of self-government and tribal land management. We have to look, in other words, at the kinds of political change which took place in the first decade of the twentieth century, both within the iwi and within the nation.

13.6.4.1 Political change

Nationally, the winds of political change were gathering force in the period between 1900 and 1905. The Opposition applied increasing pressure to the Liberal Government in respect of its 'Native land' and settlement policies. The Central North Island Tribunal has pointed to settler reaction to policies which were themselves a Liberal attempt to reach some accommodation with the Kotahitanga

141. Crown counsel, closing submissions (doc N20), topics 14–16, pp 49–50

parliament – which sought Government recognition of Maori control of their own affairs and own lands – during the latter part of the 1890s. Kotahitanga leaders had been unsuccessful in securing that recognition through a series of Bills introduced into the New Zealand Parliament, but the meetings of their own parliament, and their determined pressure against the Native Land Court and the scale of land loss, continued. The establishment of Maori Land Councils in 1900 under the Maori Lands Administration Act was designed to assist Maori owners (whose titles the land court had individualised) to manage their lands and to stem the purchase of land, replacing it by leasing. But within only a few years the Liberals found themselves under heavy pressure from the Opposition, and from the press, both of which accused the Government of retarding settlement of the North Island and the progress of the country, encouraging Maori owners to keep the best land (with which they did nothing) and to be ‘idle’ landlords rather than active citizens.¹⁴² Native Minister Carroll came in for particular criticism for keeping Maori in a state of ‘tutelage’, compelling them to work through councils. Such criticism was unqualified by any recognition of the considerable compromise Maori leaders had made in 1900 when they gave up their parliament in the hope of achieving collective control of their affairs and lands through the new Maori Councils and Maori Land Councils.¹⁴³

By 1905, the Liberals were in retreat from the 1900 policies. The Land Councils (which had been the outcome of extensive negotiation with Maori leaders) were replaced by small Land Boards which did not have the strong regional Maori representation the Land Councils did, and Crown purchase was reintroduced. Early in 1907, a commission charged with a ‘stocktaking’ of Maori land was appointed. The underlying rationale for the commission was that there were ‘surplus’ Maori lands which could be identified and made available for Pakeha settlement. The Native Land Settlement Act 1907 was passed to enable such land to be vested in Maori Land Boards and thus made available for settlement. Once land had been so vested, the board would lease roughly half of it, and sell the other half. This provision amounted to compulsory sale. The two commissioners, Chief Justice Robert Stout and the member of Parliament for Eastern Maori, Apirana Ngata, were to engage in broad consultation with Maori throughout the North Island and, in conjunction with the owners, were to select which lands the owners needed to retain, and to farm, and which might be alienated. The results of the commission’s work were a disappointment to those who had hoped it would produce large tracts of land for settlement – for Stout and Ngata were anxious that Maori retain enough land to farm themselves. But, as we will see, this did not deter the advocates of ‘small farmers’, and by 1912 the Reform Government took power and tried to make up for lost time in its purchasing of Maori land.

Within Te Urewera, too, there was a change in the political landscape from about 1906, with the emergence of spiritual leader Rua Kenana. Professor Binney

142. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 677–678

143. *Ibid*, p 681

described him as a ‘voice of protest: protest against specific Government policies, and protest against an entrenched aristocratic leadership’ – notably Numia Kereru of Ruatoki. She outlined his emergence as a ‘prophet-leader’, his early visions, his claim to be Te Kooti’s son – that is, his chosen successor¹⁴⁴ – and his ‘messianic dreams for his people [which] incorporated other more pragmatic and comprehensible schemes.’¹⁴⁵ During 1907 he reconstructed Maungapohatu as his ‘City of God’: it would be the ‘active centre of Rua’s religious and prophetic teachings.’¹⁴⁶ Many Tuhoe – and many beyond Tuhoe – were attracted to his teachings, and by the summer of 1908 Maungapohatu was surrounded by ‘well-made clearings’, with clearings also ‘on the broad flood-plain’¹⁴⁷ of the eastern branch of the Whakatane River: fields of corn, orchards, potato crops, and sheep, cattle, and horses.¹⁴⁸ A large settlement, with streets and water supplied by the diversion of a stream, had sprung up beneath the maunga.

Rua’s following was not universal among Tuhoe. Key Ruatahuna leaders, for instance, would not support him, adhering instead to the Ringatu faith.¹⁴⁹ And, as we will see, his contest with Numia Kereru of Ruatoki was to be long-standing, and to have a marked impact on Tuhoe relations with the Crown. But Rua’s charismatic leadership had wide appeal at a time when natural disasters had taken a great toll on Tuhoe: famine in 1898 following frosts in mid-summer which destroyed crops; a major flood in Ruatoki in May 1900; unseasonal frosts again in January 1901; and, in 1904, floods which ruined the potato crops of Ruatoki, Waimana, and the Rangitaiki communities. In addition there was a measles epidemic, and an influenza epidemic, in 1897. The impact on the population of Te Urewera of famine and the resulting vulnerability to disease was severe; we estimate that between 1896 and 1901 approximately 16 per cent of the population, one person in six, lost their lives.¹⁵⁰

Against this broad background, our analysis will focus on the Crown’s progress towards the establishment of the General Committee in two phases:

- ▶ its moves to open Te Urewera to prospecting and mining, and
- ▶ its preparations for the alienation and settlement of Te Urewera land.

144. Binney, ‘Encircled Lands, Part 2’ (doc A15), p 352

145. Judith Binney, Gillian Chaplin, and Craig Wallace, *Mihaia: The Prophet Rua Kenana and his Community at Maungapohatu* (Auckland: Auckland University Press and Bridget Williams Books, 1990), p 15 (doc A112, p 10)

146. Binney, ‘Encircled Lands, Part 2’ (doc A15), p 378

147. JM Bell, *The Wilds of Maoriland* (London: Macmillan, 1914), p 125 (Binney, ‘Encircled Lands, Part 2’ (doc A15), p 379)

148. Binney, ‘Encircled Lands, Part 2’ (doc A15), p 379

149. Tuawhenua Research Team, ‘Te Manawa o te Ika, Part Two’ (doc D2), pp 108–111

150. Between 1896 and 1901, the census recorded a drop in population of some 23 per cent of the ‘Urewera’ tribe (from 1421 in 1896 to 1094 in 1901, but the 1901 return was highly likely to be an underestimate since it recorded (incorrectly) that no ‘Urewera’ lived in Wairoa county; the overall percentage of peoples of Te Urewera who lost their lives would therefore not have been as great: see population census 1986; population census 1901; Brian Murton, ‘The Crown and the Peoples of Te Urewera, 1860–2000: The Economic and Social Experience of a People’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc H12), p 1049.

This new Crown interest in the economic possibilities of the reserve generated a concern to see appeals finalised, and committees established.

13.6.4.2 Crown moves to open Te Urewera to prospecting and mining

Our first task is to explain the circumstances in which appeals from the decisions of the first Urewera commission were finally heard in 1906 and 1907, thus clearing the way for the second listing of members of the local committees. In broad terms, the election of local committees was necessary before the General Committee could be elected.

We have referred above to the delay before appeals from the commission's decisions were addressed. Section 9 of the UDNR Act provided for appeals to be made to the Minister of Native Affairs up to 12 months from the date of the awards being published. Under section 10, the Minister could direct 'such expert inquiry and report as he thinks fit' and, after considering 'such report', might confirm the original order or amend it as he saw fit. So, both the procedure for dealing with appeals and the ultimate decision were in his hands.

There was an initial delay between the commission's completion of its work in October 1902 and the publication of its awards in June 1903. This pushed the time for making appeals out to June 1904. Between 1901 and 1904, a large number of appeals were received. Native Minister Carroll notified 172 appeals for the main blocks, plus 49 in respect of Ruatoki 1–3 blocks.¹⁵¹

Despite the early indications that there would be a substantial number of appeals, Carroll was slow to initiate an inquiry process. We might have expected that inquiries would be under way before the end of 1904. But in fact Carroll did not consider appointing a panel of experts until 1906. We received no evidence on the reason for this hiatus, but what is more to the point, perhaps, is why in 1906 Carroll did belatedly take an interest in the appeals process.

The short answer seems to be that in 1906 Carroll had reason to concern himself with the establishment of the General Committee, because he was reminded of its unique functions under the UDNR Act. In particular, it had to be involved in decisions about mining inside the reserve, as was apparent from sections 18 and 21 of the Act and Seddon's own promises, recorded in the second schedule (see appendix III).

Gold prospecting in Te Urewera had been an issue since the end of the 1880s, and had resurfaced in the wake of the passing of the UDNR Act. Private mining syndicates were anxious to win prospecting rights, and at least one payment was made to two Te Urewera leaders for the right to prospect *outside* the boundaries of the reserve. But, on 7 January 1897, Seddon issued instructions to the police to stop all unlawful prospecting inside Te Urewera, and he informed seven leading chiefs that he had done so: no prospecting would be allowed without the consent of the owners and the Governor. Cadman, the Minister of Mines, stated, when responding to a particular application, that until the commission had ascertained ownership within the reserve he 'could not possibly obtain the required consent of

151. Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), pp 159–160

the “Tuhoe tribe”.¹⁵² In Government eyes, therefore, Te Urewera was closed to gold prospecting.

At the end of 1905, however, the prospecting issue resurfaced. Binney recounted the interest of George Spotswood (none other than Seddon’s Australian brother-in-law) and James Mackay, who had been civil commissioner for Hauraki and played a key role in having Maori land there opened up for goldmining; from 1896 he became a miners’ agent in Paeroa before retiring.¹⁵³ Spotswood and Oliver Creagh, a contract surveyor, formed the ‘Urewera District Gold Prospecting Syndicate’ and travelled to Urewera to try to get Tuhoe consent to prospecting. They had a successful meeting at Ruatahuna and obtained a handful of signatures at Te Whaiti, but they also found that ‘the Tuhoe Natives have a very great respect for . . . the Premier, and strictly adhere to an agreement made with him, that no mining, or consent to prospect for gold, should be given by them unless with his consent’.¹⁵⁴

Mackay’s approach to Seddon for a letter of authority to conduct further negotiations was not successful. But his visit provoked a letter of protest to Carroll from Tuhoe chiefs Te Whenuanui, Te Wharekotua, Mehaka Tokopounamu, and others. They were concerned that Mackay would bring trouble, and asked Carroll to ensure that ‘that pakeha’ stayed away from them.¹⁵⁵ And officials reminded the Minister that commission appeals had not been disposed of: until they were, the land ‘should not be dealt with in any way’.¹⁵⁶

As a result of these developments, Carroll decided to visit Te Urewera, and met with Tuhoe in March 1906 at Ruatahuna.¹⁵⁷ He had by now received a briefing paper that officials in the Mines Department had prepared for their Minister, emphasising that the ‘Native owners’ had to consent to their lands being opened to prospecting and mining: ‘the locality would have to be included in a Mining district upon such terms as the Native owners might agree to’.¹⁵⁸ But Carroll sought that Maori grant ‘an absolute right over any likely area to the extent of 10,000 acres for prospecting and mining purposes’, though (in line with the Mines Department recommendation) a royalty of sixpence per ounce of gold should be paid to the owners.¹⁵⁹

152. Cadman to JM Shera, 6 May 1897 (Binney, ‘Encircled Lands, Part 2’ (doc A15), p 369)

153. Harry C Evison, ‘James Mackay’, in 1769–1869, vol 1 of *The Dictionary of New Zealand Biography*, ed William H Oliver (Wellington: Allen & Unwin and the Department of Internal Affairs, 1990), pp 252–253

154. Mackay to Minister for Mines, 23 December 1905 (Binney, ‘Encircled Lands, Part 2’ (doc A15), p 370)

155. Te Whenuanui et al to Carroll, 14 December 1905 (Binney, ‘Encircled Lands, Part 2’ (doc A15), p 371)

156. Sheridan, file note, 17 February 1906 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 28)

157. The meeting took place on either 25 or 26 March; two sources gave different dates: Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 28.

158. Briefing paper to Minister of Mines, [December 1905] (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 28)

159. Carroll, file note on briefing paper to Minister of Mines, no date (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 28)

It is clear that Tuhoe regarded the hui as a crucial one: 1000 people were present. This was a huge turnout given the population of Te Urewera at the time. According to Numia Kereru's account, Tuhoe established a committee ('te Komiti o Tuhoe') – or, as Binney put it, a large council, consisting of 94 members. Numia was elected the chairman. According to his own account of decisions taken: 'The matters which were completed were the opening of the land of Te Urewera to permit of the Gold being searched for; and the setting up of the General Committee of the tribe.'¹⁶⁰ Carroll, he said, agreed to these decisions, and a delegation of five was chosen to discuss them further with the Minister in Wellington.¹⁶¹ Kereru was to lead the delegation, and the other members were to be Taua Rakuraku (Waimana), Hori Wharangi, Te Wharepouri Te Amo, and Mika Te Tawhao from Te Houhi.¹⁶² While the wording of Numia's letter about the setting up of the Committee is somewhat ambiguous, we agree with Binney that it was not set up under the UDNR Act.¹⁶³ But it is clear that Tuhoe – still, after 10 years without any committees, and doubtless tired of waiting for the Government – took matters into their own hands at this point, and set up a body similar to Te Whitu Tekau. It seems they hoped Carroll would either formalise their komiti or take steps to get a General Committee constituted, and that this was one of the things they hoped to achieve in Wellington. Nor had they agreed to the Government having 'absolute control' over prospecting, as Carroll seems to have requested; agreement was limited to the district being opened for prospecting, and the delegation was to progress matters further.¹⁶⁴

The meeting in Wellington was to have taken place in June, but it is not surprising, given Seddon's death on 10 June 1906, that it was postponed.¹⁶⁵ Numia Kereru wrote to Carroll in July, reminding him that although it was agreed at the Ruatahuna hui that Tuhoe lands should be opened for prospecting, 'a General Committee should first be appointed and five chiefs of Tuhoe [should] visit Wellington in August.' He added that land issues – presumably titles – should now be settled, 'so that peace may rest upon the people and the land.'¹⁶⁶ A newspaper report of the delegation's meeting in Wellington stated that they 'did not want any Pakeha plan for settlement allowed in the district until a committee of incorporation [as the paper understood it] for the land was established and the inquiry into

160. Numia Kereru to Waldegrave, 2 [April] 1906 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 435). Binney stated that though the letter is dated 2 March, internal evidence makes it clear that it should read 2 April.

161. Numia Kereru to Waldegrave, 2 [April] 1906 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 435); Binney, 'Encircled Lands, Part 2' (doc A15), p 372

162. Binney, 'Encircled Lands, Part 2' (doc A15), pp 372–373. Taua Rakuraku had adopted his father's name, Rakuraku Rehua, after the old man's death in February 1901.

163. Binney, 'Encircled Lands, Part 2' (doc A15), p 375

164. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 30

165. Ibid

166. Numia Kereru to Native Minister, 23 July 1906 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 436)

the grievances of the Rohe Potae was completed'.¹⁶⁷ Edwards stated that little is known of the details of this meeting but that what was at issue 'was not whether Tuhoe would approve of prospecting being carried out; it was a matter of the terms upon which it would be carried out'.¹⁶⁸

We do not hear of the Tuhoe Komiti again (though the iwi made a second attempt to constitute their own komiti in 1908, as we will see). What did happen was that Carroll finally initiated the titles appeals process. Why? It seems clear that the prospecting issue had brought home to him the consequences of there being no General Committee in Te Urewera – namely, that prospecting and mining could not take place.¹⁶⁹ He seems to have hoped initially that the issue could be sorted out with the chiefs who came to Wellington. As he was reported as saying after the March hui:

The stipulation made by the natives is that the Government shall be responsible with a certain number of their chiefs for the proper opening up of the country, they relying on the Government to conserve them due rights by framing regulations suitable to the circumstances . . . The natives . . . would appoint their own chiefs to work with the Government in the matter.¹⁷⁰

But that was not what Numia Kereru had insisted on: his July letter had stated that the General Committee would come first, and the opening of Te Urewera for prospecting second.¹⁷¹ And in October 1906, the Native Department gave its view of the legal position to the Mines Department: the reserve could not be declared open to prospecting or mining until title appeals had been completed. Only then could certificates of ownership be issued, so that the legal owners would be able to give their consent to prospecting.¹⁷² This raises the question whether the Department had properly considered section 21 of the UDNR Act, which provided that the General Committee 'shall have power to alienate any portion of the district to Her Majesty, either absolutely or for any lesser estate, or by way of cession for mining purposes'. But we conclude that Carroll, however he interpreted the legislation, had reached a decision that he must have a General Committee constituted under the UDNR Act if he wished to achieve the Government's objectives. We do not think this new interest in the Committee reflects well on the Crown. It underlines the lack of political will to see the titles process completed, and to ensure self-governing institutions were up and running in Te Urewera within a realistic timeframe. Only, it seems, when it suited the Crown – when prospecting and mining was at stake – did the Minister turn his mind to these matters. The

167. Ranginui Walker, *He Tipua: The Life and Times of Sir Apirana Ngata* (Auckland: Viking, 2000), p 116 (Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 30)

168. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 32

169. *Ibid*, pp 29–30

170. *New Zealand Herald*, 31 March 1906, p 5 (Binney, 'Encircled Lands, Part 2' (doc A15), p 372)

171. Binney, 'Encircled Lands, Part 2' (doc A15), p 374

172. *Ibid*; Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 31

contrast between the Crown's lack of interest in self-government in the reserve, left to languish for years, and its immediate response to mining interests, is striking.

13.6.4.3 *The titles appeals process, 1906–07 and 1912–13*

Our main concern in this chapter is not the fate of appeals that were lodged against decisions of the first Urewera commission, but rather the impact of delays in hearing appeals as a further factor in the very slow establishment of self-governing institutions in Te Urewera. Clearly there had to be provision for appeals, but the process was allowed to drift – so that the hearing of appeals in the wake of awards made by the second commission was not concluded until 1913, 10 years after the first commission's awards were gazetted. It is true that the further delays in hearing appeals after 1907 were not a factor in obstructing the final establishment of the local and General Committees, but they played their part in impeding the ability of the General Committee to establish its authority before the Reform Government introduced policies of aggressive purchase in the reserve. How the Crown could justify a 10-year delay in finalising appeals, but was willing to leap into action for its own political ends, is startling.

The way in which the first Urewera commission operated shaped the kind of appeals that were lodged against its decisions, and the kind of body constituted to deal with those appeals. The preoccupation of the commission with lists of names and relative shares was reflected in the appeals. The great majority of appeals sought additional names to be added to, or deleted from, ownership lists, or an increase in or reduction of shares. Edwards found that, on appeal, the number of both family groups and individuals admitted generally increased (an average increase of 16 family groups per block, and of 48 individuals per block, compared with an average decrease – where there was a decrease – of 18 family groups per block and of 30 individuals per block).¹⁷³ Less than one-fifth of the appeals were based on contested hapu or ancestral claims, or sought a boundary adjustment.¹⁷⁴ We add that the concern of claimants with names and shares was still evident in appeals against second Urewera commission awards: of 103 appeals received, 89 related to the inclusion or exclusion of names, or sought increased or reduced shares.¹⁷⁵ As a result of the appellate court hearings, no reductions were made to the number of individuals found to be entitled; in a number of blocks, notably blocks in the Ruatahuna district and Ruatoki South, the number of individuals entitled to awards increased.¹⁷⁶

Of those appeals which sought recognition of ancestral claims, two areas stand out: Te Whaiti-nui-a-Toi and the south-west.¹⁷⁷ At Te Whaiti, Ngati Whare appealed against an award which gave them one third of the shares, while just over two-thirds had been awarded to Tuhoe. Ngati Manawa, who had been excluded

173. Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), p 190

174. These figures are derived from Edwards' analysis of the appeals: Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), pp 160, 194.

175. Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), p 203

176. *Ibid*, pp 212–213

177. *Ibid*, app B, tbl 44, pp 247–254

altogether from the main section of the block (though not from the small piece later known as Tawhiuau), also appealed. And Tuhoe claimed the whole of the block. At issue were the rights of the descendants of the ancestors Wharepakau and his nephew Tangiharuru, and the nature of the Tuhoe rights. In the south-west, major Ngati Kahungunu claims were led by Wi Pere in respect of the Maungapohatu, Tauranga, and Waikaremoana blocks.¹⁷⁸ These claims also raised issues of process. Why, in particular, had Ngati Kahungunu appellants not put their case before the first commission? This question was put to them by the commissioners when hearings began at Wairoa, since Tuhoe challenged the right of Ngati Kahungunu to appeal when they had not appeared at the original hearings. Dr Grant Young and Associate Professor Michael Belgrave argued in their evidence that kin groups associated with Ngati Kahungunu (Ngati Hinaanga and Ngati Hika) had in fact been represented during the Maungapohatu hearing by Eria Tutara Kauika – and it could not be said that Ngati Kahungunu did not attend the first commission.¹⁷⁹ But no Ngati Kahungunu representative, they stated, appeared to assert claims to the Waikaremoana block. At the 1906 hearing, various explanations were given for Ngati Kahungunu's absence – and they all pointed to poor process. One speaker, Haenga Paretipua, stated that Hurae Puketapu was supposed to represent Ngati Kahungunu interests, though added that he 'belongs to both sides' and that Ngati Kahungunu in fact sent no one specifically charged with presenting their claims.¹⁸⁰ But Haenga said also that Ngati Kahungunu failed to appear because they were too 'lazy'.¹⁸¹ This may have reflected 'ambiguity in the translation', as Young and Belgrave suggested – perhaps an expression of the people's reaction to a very real obstacle to participation, namely the distance to Te Whaiti and Ruatoki, where the Waikaremoana hearing was held. And it was held in winter, which compounded the problems of distance.¹⁸²

Both of these explanations suggest lack of familiarity with the commission process – the importance of turning up to hearings to support one's case, and to ensure there were witnesses present that the conductor of a case could call on. But one further explanation was given. Rewi Tamihana told the commission that three hapu of Ngati Kahungunu had in fact sent representatives off to Ruatoki, but that at Gisborne they had met Carroll himself, and Wi Pere – who told them to go home but to 'ask for an appellate Ct to sit at Te Wairoa'.¹⁸³ This, they did. Wi Pere corroborated this account in his own evidence, stating that Carroll had agreed to arrange

178. Richard Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi: A History' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1999) (doc A27), pp 24, 107–114

179. Grant Young and Michael Belgrave, 'The Urewera Inquiry District and Ngati Kahungunu: Customary Rights and the Waikaremoana Lands' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003) (doc A129), pp 85, 92

180. Barclay minute book 1, 11 December 1906, fol 23 (Young and Belgrave, 'Customary Rights and the Waikaremoana Lands' (doc A129), p 99)

181. *Ibid*

182. Young and Belgrave, 'Customary Rights and the Waikaremoana Lands' (doc A129), pp 98–99

183. Barclay minute book 1, 12 December 1906, fol 30 (Young and Belgrave, 'Customary Rights and the Waikaremoana Lands' (doc A129), pp 107–108)

a sitting of the commission at Wairoa to hear southern claims 'but neglected to instruct the Commissioners so to act'. He and Carroll had indeed turned back Ngati Kahungunu representatives on their way to Whakatane for a hearing, telling them that it had been arranged that 'all our part of the Reserve will be heard in Wairoa'.¹⁸⁴ This was evidence which implicated the Native Minister in meddling in commission title-determination processes and giving Ngati Kahungunu poor advice. The result, of course, was that the commission did not have all the evidence before it when it proceeded to hear the Waikaremoana claims. A reopening of the case could hardly be avoided.

Decisions made about the composition of the first commission were also reflected in the composition of the appeals body. The selection of commissioners appears not to have been straightforward, and the initial choices of Native Minister Carroll were subject to several changes. The appointees (by notice gazetted on 15 November 1906) were Gilbert Mair; DFG Barclay (an interpreter for the House of Representatives, and a clerk and interpreter for the land court); and Native Land Court assessor Paratene Ngata. Barclay and Ngata alone would hear the Ruatoki block appeals (since Mair had already sat as a commissioner on those blocks).¹⁸⁵ Carroll, Binney argued, deliberately appointed no Tuhoe commissioners – in short, this was his response to the strains within the first commission which Carroll may have attributed simply to personal tensions, and may have blamed (at least in part) for delays in its work.¹⁸⁶ Our view, as we have explained, is that the tensions stemmed rather from the restricted composition of the commission, and from commission processes, notably its focus on resolving the claims of individuals and whanau, and specifying their relative shares. In any case, Carroll exercised the power to 'direct [an] expert inquiry' into appeals (UDNR Act, section 10) by appointing a three-man, non-Tuhoe body.

We think that was the wrong response. The fact that the UDNR Act allowed the Minister to design an appeals process that departed from the principle of majority local participation in decision-making was a weakness. Just as the Crown had not (in 1900) turned its mind to how to preserve that principle and yet avoid conflicts of interest on the part of Tuhoe commissioners, so it now failed to consider how to preserve that principle when appeals were considered. A useful role might have been played by the local committees approved by the first commission (which could still have been gazetted even at this late date), either in resolving appeals themselves or in assisting an appeals body on which Te Urewera representatives comprised a majority, drawn from a pool of sufficient size that conflicts of interest would not be a problem. The committees would have been well placed to assist, given that so many appeals were about names of owners and shares. As we will see, the distance between appellants and decision-making bodies would increase even further when the Crown determined how to deal with appeals against awards

184. Barclay minute book 1, 15 December 1906, fol 51 (Young and Belgrave, 'Customary Rights and the Waikaremoana Lands' (doc A129), p 113)

185. Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), p 170

186. Binney, 'Encircled Lands, Part 2' (doc A15), p 247; see also pp 237–238.

of the second commission: such appeals would finally be heard by the Native Appellate Court.

The Crown's handling of the appeals process – delays in getting it under way, and in ensuring its completion in a timely fashion – is of concern to us. Delays occurred both before the second commission was appointed and before final appeals were referred to the Native Appellate Court. It was November 1906 before Carroll appointed his panel to hear titles appeals against decisions of the first Urewera commission. The evidence before us offered no real explanation for this delay. There was certainly a legal constraint: the UDNR Act provided that Maori had 12 months from the time commission awards were gazetted to lodge appeals. (This in itself was a long time, and the delay between the end of the commission's work and the gazetting of its awards meant that the clock did not start ticking for another seven months.) We also note that more than 70 per cent of appeals had been received by the end of 1903 – which might indicate that all appellants could have met a shorter timeframe.¹⁸⁷ The first commission had in fact finished all its work (including its decisions on the Ruatoki blocks, which it deferred) by October 1902, but the awards were not gazetted until 5 June 1903. But even after the stipulated year was up, there was a further delay of over two years before Carroll moved to appoint an appeals body. Even if Carroll was uncertain about how to handle appeals, this would hardly account for such a hiatus. In the meantime, he had ample opportunity to consult Te Urewera leaders as to how the principles of the Act could best be reflected in the composition and processes of an appellate body.

We are left to conclude that Carroll simply attached no importance to expediting reserve appeals. When it did matter to the Government, there was an extraordinary urgency to get the second commission hearings under way and completed. The hearings were to begin at Wairoa on 5 December 1906, and the commissioners were to report by 31 March 1907. Mair, aware that the start date left little time for claimants to be notified and to prepare their cases, protested to Judge HF Edger, then the Under-Secretary for Native Affairs. He doubted whether 'proper warning can be given Ruatahuna & Maungapohatu Natives to ensure their attendance particularly as weather is very uncertain.'¹⁸⁸ But even the extra two weeks he suggested were not acceptable, and since Mair himself was not able to get to Wairoa in time, Barclay and Ngata were instructed to begin the first hearing without him. The tight timeframe, as Mair had anticipated, made no allowance either for adverse weather – severe floods occurred in January 1907, destroying crops inland so that a planned hearing at Te Whaiti had to be rescheduled – or for tangi. The passing of the great leader Te Whenuanui at the very beginning of the month led to a reluctant commission adjournment, and also to extra night sittings the following week to 'make up for lost time.'¹⁸⁹ The Te Whaiti hearing was finally held in March, when

187. Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), pp 152–155

188. Mair to Edger, 14 November 1906 (Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), p 171)

189. Barclay minute book 2, 25 January 1907, fol 28 (Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), p 178)

Providing for Appeals from Orders of the Second Urewera Commission: A Legislative Blunder

Originally, the 1896 UDNR Act provided that an order of the Urewera commission could be appealed to the Native Minister, who could direct an 'expert inquiry and report as he thinks fit' and make a final decision confirming or varying the original order 'as he deems equitable' (sections 8 to 10).

Then, in 1908, the Maori Land Laws Amendment Act provided (in section 20) that the appeal provisions of the Native Land Court Act 1894 (in section 39 of that Act) would apply to any order (of the Urewera commission) or decision (of the Native Minister) made under sections 8 to 10 of the 1896 UDNR Act.

The effect of this was to give the chief judge of the Native Land Court jurisdiction to review, and remedy errors in, commission orders and Native Minister decisions. Specifically, the chief judge could remedy any 'mistake, error or omission', and the effect of any error on a point of law in an order of the commission or a decision of the Minister that identified the owners of a block and their relative shares. The chief judge's decision was to be final unless he gave leave to appeal to the Native Appellate Court.

That provision was repealed in 1909 by the Native Land Act 1909 (section 431 and the schedule). In its place, the 1909 Act provided that the chief judge might grant leave to an applicant to appeal to the Native Appellate Court against any final order of the Native Land Court where the applicant showed a *prima facie* case of error of law or of fact (section 50).

all parties were subjected to hearing days of 11½ hours. Despite the commission's best efforts, its term had to be extended, and after its return to Wellington at the end of March it finally reported on the majority of block appeals by 28 May 1907. The Ruatoki block appeals report was completed by 10 June.¹⁹⁰ All up, the process had taken six months.

After this burst of activity, the finalising of appeals from awards of the second commission also took some years. This time the delays were caused primarily by the Crown's failure to ensure appropriate legislative provisions were in place. It had, in fact, made such provision in the Maori Land Laws Amendment Act 1908, then inadvertently removed it when that Act was repealed by the Native Land Act 1909. It then tried, but failed, to cure the defect with an amendment to the UDNR Act in 1909, and finally succeeded in the UDNR Amendment Act 1910.

The Attorney-General, Dr John Findlay, explained when introducing the 1910 amending legislation in the Legislative Council, that it was necessary because the power given to the chief judge in the 1908 amendment to correct errors and

190. Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), pp 181–182

No provision was made, however, for the chief judge to review, and remedy mistakes and errors in, orders of the Urewera commission or decisions of the Native Minister under the UDNR Act 1896, or to grant leave to appeal from the chief judge's review decision to the Native Appellate Court.

When that gap in the law was identified, section 3 of the UDNR Amendment Act 1909 was enacted to fix it. It provided that commission orders and Native Minister decisions made under the UDNR Act and its amendments 'shall have, and shall be deemed to have had' the same effect as a freehold order of the Native Land Court. However, as Dr John Findlay, the Attorney-General, later explained upon the introduction of the UDNR Amendment Act 1910, the Solicitor-General had later advised that the section did not empower the chief judge to review and remedy mistakes and errors in a commission order or the Minister's decision, and so it could not empower the chief judge to grant leave to appeal from his own remedying decision.¹

Therefore, a new provision for appeals was enacted, in section 2 of the 1910 UDNR Amendment Act. It extended the application of section 50 of the 1909 Native Land Act (see above), with some modification, to commission orders and Native Minister decisions under the UDNR Act. Its effect was that the chief judge of the Native Land Court could, with the consent of the Governor in Council, grant leave to appeal from those orders and decisions where the applicant established a prima facie case of error of law or fact.

1. Dr John Findlay, 22 November 1910, NZPD, vol 153, p 862

omissions (such as inadvertently excluding owners from lists) had been repealed by the Native Land Act 1909 and was not otherwise provided for. The Solicitor-General had advised that section 3 of the UDNR Amendment Act 1909 did not extend the provisions of section 50 of the Native Land Act 1909 to the commission's awards. That is, it did not provide for the Chief Judge to correct errors and amendments.¹⁹¹

Because of the time it took to empower the appellate court to hear appeals from orders made by the Urewera commissioners – the 1910 Act did not come into operation until 3 December 1910 – it was 1911 before Chief Judge Jackson Palmer was able to consider appeal applications, under section 2 of the UDNR Amendment Act 1910. Of 70 that came before him, he granted leave to appeal to the appellate court to 44; of these, 28 were to be heard in full. The hearings were held in Taneatua from November 1912 to February 1913 over 53 sitting days, presided over by Chief Judge Palmer sitting with Judge W E Rawson.¹⁹²

191. Findlay, 22 November 1910, NZPD, vol 153, p 862

192. Edwards, 'The Urewera District Native Reserve Act 1896, Part 2' (doc D7), pp 200, 205

Reserved judgments were delivered in Wellington some 10 years after the first commission's awards were published.

13.6.4.4 How did delays in hearing appeals impact on the establishment of committees?

The delay in hearing appeals, and the further delay in establishing local committees under the UDNR Act, had particular implications for the formation of the General Committee.

The second Urewera commission, like the first, recommended the appointment of *provisional* local committees, and appended the lists of members to the report which it sent to the Native Minister on 28 May 1907.¹⁹³ The lists of members' names (many of them the same as recommended by the first commission) had been submitted by the conductors of cases; they were read out, and few objections were received. The lists (minus those for four blocks, not yet decided on) were submitted to the Native Minister 'for him to take such action as may be necessary for their permanent appointment as Committees, either by election as provided by Section 17 of the Urewera District Native Reserve Act 1896 or by taking such other further steps as may be necessary.'¹⁹⁴ We agree with Edwards that this comment appears to indicate the commission's expectation that the committees might be deemed to be permanent local committees. This underlines the fact, in our view, that the progression from provisional to permanent committees provided for in the UDNR Act had been thrown out of kilter. As we have stated, provisional local committees should have been appointed – at the very latest – after the first commission finished its work in 1902. When they were finally gazetted in 1907, and the election of a General Committee was contemplated (which could only be done once permanent local committees were established), the second commission evidently contemplated telescoping the processes, so that provisional committees were in fact appointed permanent committees. But this was not what the Act had outlined. By section 16, the original commissioners were to appoint provisional local committees, and by section 17, those committees would hold office until the block owners elected permanent local committees.

The Minister signed the second commission's recommendations (under section 10 of the UDNR Act), on 30 August 1907 and confirmed that the committees named were to be the provisional local committees. The orders were also dated 30 August, but the provisional committee lists were not dated and their appointment was not validated until the following year.¹⁹⁵ If the Government now sought the election of a General Committee, section 17 required, as a first step, that permanent local committees be elected by block owners 'at such time and in such

193. This was its main report; the commission was yet to report on the Ruatoki block appeals: Marr, 'Urewera District Native Reserve Act 1896 and Amendments' (doc A21), p 157.

194. Barclay minute book 2, 8 March 1907, fols 372–373 (Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp 7, 8, 16)

195. The lists were validated by section 21 of the Maori Land Laws Amendment Act 1908.

manner as the Governor prescribes'. The Governor had thus to issue regulations so that elections could occur, for only elected permanent committees could elect the General Committee. We turn now to the immediate circumstances in which the General Committee would finally be set up.

13.6.4.5 *The establishment of the General Committee (1908–10): Crown preparations for the alienation, settlement, and possible mining of Te Urewera land*

By the beginning of 1908, there were new pressures in Te Urewera: renewed pressure to open Te Rohe Potae to mining; a new determination on the part of Government to open the land, especially round Ruatoki and Waimana, to Pakeha settlement; and internal pressures within Tuhoe as Rua Kenana emerged as a strong political force.

In January 1908, there were two separate developments, both of which were to have their impact on moves to set up the General Committee. First, Carroll became aware that a representative of a private mining company, the Waihi Gold Mining Company, was negotiating with Rua Kenana about prospecting for gold. This gave rise to disquiet among Tuhoe chiefs, which led Carroll to ask the Minister of Mines what had happened to planned regulations so that illegal prospectors such as these could be turned away. (Carroll referred here to the Crown's new powers under section 7 of the Maori Land Claims Adjustment and Laws Amendment Act 1907: subsection (1) made the Urewera district subject to the Mining Act 1905 and subsection (2) provided for the Governor to regulate in order to give effect to the intention of Seddon's memorandum of September 1895 so far as it related to gold prospecting and mining, appended as a schedule to the UDNR Act 1896.)

By February, Rua was reported to have met with two representatives of the company (Seaver and Macpherson), and Te Wharekotua (who Binney said often acted as spokesman for Tuhoe's 'collective entity')¹⁹⁶ urged swift Government action against Rua and his people, who were 'transgressing the law of the Rohe Potae . . . which has been passed by the Government as a permanent law for New Zealand ('e takahi ana ratou i te ture o te rohe potae kua oti nei i te Kawanatanga te pahi hei ture tuturu mo Nui Tireni').¹⁹⁷ We accept Binney's argument that Rua, 'the Maori Messiah for his times', was 're-asserting their [Tuhoe's] autonomous enclave as a separate "kingdom"'.¹⁹⁸ And he had staked his claim to control the exploitation of the supposed wealth of Te Urewera. Seddon's 1895 letter, we note, spoke of the benefits accruing from any gold discovery being shared with the 'hapus owning the land' – not the General Committee. If Rua had not been aware of Seddon's memorandum appended as a schedule to the UDNR Act, it is very possible that one of the would-be prospectors brought it to his attention. And section 7(1) of

196. Binney, 'Encircled Lands, Part 2' (doc A15), p 380

197. Te Wharekotua to Native Minister, 20 February 1908 (Binney, 'Encircled Lands, Part 2' (doc A15), p 380)

198. Binney, 'Encircled Lands, Part 2' (doc A15), p 384

the Native Land Claims Adjustment and Maori Land Laws Amendment Act 1907 referred to above deemed the UDNR a native reserve within the meaning of section 24 of the Mining Act 1905, providing for payment of royalties and other moneys received under the Act to native owners. In any case, Rua clearly saw the possibilities for establishing an economic base for his community, and for fulfilling his own vision for their destiny.

The second development at the beginning of 1908 was to have long-term significance for Tuhoe and their lands. In January, Apirana Ngata met with Tuhoe chiefs at Ruatoki. It seems clear, as Edwards stated, that he was there in his capacity as commissioner representing the Native Land commission (see our discussion of political change above). He was accompanied by the commission interpreter (Pitt); and the report subsequently sent to the Governor was part of the series of reports the commission submitted on its meetings and investigations in every district it visited, and was in the names of both Stout and Ngata.¹⁹⁹ The question of the commission's role in Te Urewera arises because the reserve was excluded from the operation of the Native Land Settlement Act 1907 – the Act was passed after the commission had started its work. This Act provided that land the commissioners reported was not 'required for occupation by the Maori owners' could be vested by the Governor in Maori Land Boards, which were required to sell roughly half any area of land so vested, and lease the rest.²⁰⁰ Edwards noted, however, that the commissioners referred in their general report of July 1907 to the extension of the scope of their inquiry into certain lands held under 'special Acts', and raised the question whether the administration of such lands 'can be brought into line with that of other lands.'²⁰¹ In fact, the native land commissioners did not consider themselves precluded from reporting on lands excluded from the Native Land Settlement Act 1907 by special legislation. This is evident in their meetings with Te Arawa in 1908, and the reports they submitted on Rotorua lands which fell under the Thermal-Springs Districts Act 1881 (also excluded from the 1907 Act).²⁰²

Ngata's meeting at Ruatoki with Tuhoe leaders in January 1908 was to prove a crucial factor triggering land alienation in the reserve. It appears from the minutes that Ngata took the initiative at the hui, putting five matters before the chiefs:

1. Since the powers of alienation were by the Special Act vested in a General Committee not yet elected would they agree to a proposal for expediting the setting up of this Committee? Viz:—Let the Provisional Block Committees set up at Whakatane and Te Whaiti in March 1907 meet at Ruatoki say in March 1908, and there elect the General Committee?

199. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp 37–43

200. Native Land Settlement Act 1907, ss 4, 11

201. Stout and Ngata, 11 July 1907, 'Report on Native Lands and Native Land Tenure', AJHR, 1907, G-1C, p 23 (Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 39)

202. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 708–709

2. Now that the titles to the Reserve lands were ascertained under the Act and it was contemplated to vest jurisdiction in the Native Land Court in regard to succession, partition and exchange, could any use be made of the Block Committees for the purpose of partitioning some of the blocks, subject to report to the Native Land Court.
3. There was a large sum of money owing the Government in connection with the survey of the Reserve Blocks, investigation of title and so on. The time was [ripe] owing to the great demand for land to arrange for the cession of some of the Urewera lands to compensate the state.
4. Section 6 of the Urewera District Native Reserve [Act] Amendment Act 1900 empowered the Native Minister to set apart areas for leasing for 21 years with perpetual right of renewal for further terms of 21 years.
The Tuhoes could consider the term there proposed, as in the case of all Native lands outside the 'Rohe Potae' the term was limited to 50 years.
5. As to prospecting gold in the district. The effect of last year's legislation was explained and seemed satisfactory to the Tuhoes. They said that Rua had given permission to a European to prospect for gold – & he was now going through the district. They wished the government to stop the prospector's illegal operations.²⁰³

Thus, the need for haste in setting up the General Committee was tied explicitly to the need to provide for land alienation – 'owing to the great demand for land', as it was put in the third point. Ngata suggested to the leaders that they might speed up the establishment of the General Committee by letting the provisional local committees elect the General Committee within a couple of months. The leaders, through Numia Kereru, agreed to this proposal. Then, out of the blue, Ngata suggested that the people owed the Crown 'a large sum of money' for survey costs – and for title-investigation costs (that is, for Urewera commission hearing costs). And because the Crown needed land, Te Urewera land should be ceded for this purpose. The people also agreed to this, according to the minutes, '[a]fter consideration', recognising 'their obligation'. They then offered to lease part of the blocks, as they did not wish to sell at present: the revenue from the leases, therefore, 'would go towards refunding the Government the money due.'²⁰⁴ According

203. Ngata, royal commission on native lands and native land tenure, minute book 2, fols 33–36 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), pp 694–696). Edwards stated under cross-examination that these matters were recorded in the minutes in English, probably by Pitt, and there was no version in Maori: Edwards, under cross-examination by counsel for Tuawhenua claimants, Taneatua School, Taneatua, 13 April 2005 (transcript 4.16(a), p 318).

204. Ngata, Royal Commission on Native Lands and Native Land Tenure, minute book 2, 23 March–23 October 1908, fols 33–36 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), pp 694–696)

to the minutes, Tuhoe leaders offered land to lease in 10 blocks, amounting to 28,000 acres.²⁰⁵

There does not seem to be any question that Ngata's proposal triggered the offer of land to lease, specifically to pay the costs he referred to. Edwards, the Crown's historian, pointed out that Stout and Ngata later reported that Tuhoe recognised their responsibility for 'survey and other charges, amounting to over £7,000',²⁰⁶ which was roughly the amount given in returns tabled in the House on 28 July 1908. From studying those returns, Edwards concluded that the costs Ngata referred to in Ruatoki were 'the costs of preparing the sketch plans . . . and title investigation by both commissions'.²⁰⁷ A substantial part of the sum was £4,243 13s 2d for survey costs. The Crown told us in its closing submissions, citing sections 7 and 25 of the UDNR Act 1896, that the owners of blocks within the reserve were not liable for survey or commission costs incurred for determining titles or for appeals. Section 7 of the UDNR Act Amendment Act 1900 (which Edwards suggested Ngata may have relied on) was 'confined to the payment of the expenses of administration and costs associated with leasing under either Act'.²⁰⁸ But counsel suggested that it was not clear why the chiefs would have considered themselves obliged to repay such costs. Nor had any evidence been found to show whether the Crown had taken steps to 'correct the misleading impression left by Ngata, other than the government did not in fact make any attempts to recoup the costs of title determination within the period in which the Act was in force'.²⁰⁹

In our view, there is not much doubt about what happened. The chiefs felt obligated because Ngata told them they were. That same day, when Mehaka Tokopounamu told Ngata at the hui which blocks they would lease, he specified which rents were to go toward survey costs.²¹⁰ Whether Ngata (a lawyer) had misunderstood the UDNR Act or the UDNR Act Amendment Act 1900, we do not know. But he was wrong. Carroll should have known he was wrong, given that the 'liability' of the Tuhoe tribe for costs, and their resulting willingness to offer land for settlement, had been flagged in the commissioners' report but this was totally at odds with the provisions of the UDNR Act 1896. The Act, which Carroll knew intimately, made it very clear that the costs were to be borne by the Crown.²¹¹

In this context, moves towards forming the General Committee gathered momentum. In Ngata's discussions at Ruatoki, and in the commissioners' joint report, the link was drawn between Tuhoe land being available for settlement and

205. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp 41–42, 50–51

206. Stout and Ngata, 13 March 1908, 'Native Lands and Native Land Tenure: Interim Report on Native Lands in the Urewera District', AJHR, 1908, G-1A, p 2 (Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 51)

207. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 45

208. The Crown cited sections 7 and 25 of the UDNR Act 1896: see Crown counsel, closing submissions (doc N20), topics 14–16, p 70.

209. Crown counsel, closing submissions (doc N20), topics 14–16, pp 70–71

210. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp 41–42

211. Stout and Ngata, 13 March 1908, 'Native Lands and Native Land Tenure: Interim Report on Native Lands in the Urewera District', AJHR, 1908, G-1A, p 2 (Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 51)

Unknown (ATL, ½-015708-F)



Rua Kenana meets Premier Joseph Ward on the beach at Whakatane, March 1908. The meeting was an acknowledgement of Rua's growing influence in Te Urewera. In 1910, after it had become clear that he was prepared to sell land at Maungapohatu (to raise money for land development there), he was named a member of the General Committee.

the establishment of the General Committee. Stout and Ngata advised the Governor that he should set aside the procedure for electing permanent local committees and the General Committee (the only body that could agree to alienation of land) to expedite the acquisition of land for settlement. There would otherwise be 'serious' delays if block elections had to be held for all blocks.²¹²

The third crucial context for the setting up of the General Committee is the tension between Rua Kenana and the established Tuhoe leadership – and the impact of that tension on Crown–Tuhoe relations. This was epitomised in the fact that just prior to the hui called to elect the General Committee, none other than the Premier, Joseph Ward, invited Rua to meet him at Whakatane. In a dramatic meeting on the beach front, Ward arrived to find Rua's people at one end of the beach, Numia Kereru's people 'a little distance away', and Rua himself seated on a wooden chair in the centre, close to the water's edge. Part of their interview was conducted privately, through an interpreter. It was on this occasion that Ward famously told Rua – and, according to Binney, convinced Rua – that there could be only one Government and one king: 'There can be no other Government or king . . .

212. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p50

there can't be two suns shining in the sky at one time.'²¹³ Rua later called this the 'Ceremony of Union' between himself and Ward, and emphasised that it was a promise that Maori and Pakeha would enjoy the same laws. Hence he would later fly the flag of Tutakangahau at Maungapohatu with its message 'Kotahi te Ture mo nga Iwi e Rua': 'One Law for Both Peoples.'²¹⁴ At the end of the interview, Ward addressed both parties separately, and thanked Kereru's people for their loyalty to the Government.

This was a remarkable meeting, the symbolism of which was clearly not lost on Rua. Only the year before, in 1907, when Parliament was debating the Tohunga Suppression Bill – a Bill aimed at combating the practices of dubious tohunga whose influence might be harmful to those on whom they 'preyed' – the 'notorious' Rua Kenana had been singled out.²¹⁵ Carroll and Ngata had both been highly critical of his influence.²¹⁶ That the Premier should come to meet him now spoke volumes about his new standing. It was a message to Tuhoe leaders about the importance of reaching an accommodation with Rua.

But why did the Government go to such lengths to be seen to establish a relationship with Rua at this point? This is best answered, in our view, after an analysis of the events that followed, but it heralded a period of constant interaction between Tuhoe leaders and the Government.

The first such meeting had already been arranged, at Carroll's request, to discuss the establishment of the General Committee; the Premier's meeting was timed to precede it.²¹⁷ On 25 March, Carroll attended the hui at Ruatoki, with officials. He later informed the Minister of Mines:

. . . I notified all the owners interested that I would meet them at the latter end of March last to discuss the whole question respecting their lands – as to opening up the same for prospecting and mining, and selecting an Administrative Committee as provided for under Section 18 of 'The Urewera District Native Reserve Act, 1896' [that is, the General Committee] such Committee to work in conjunction with the Government in framing and arriving at rules and regulations for the proper conduct and carrying out of mining in the said District.²¹⁸

213. Binney, 'Encircled Lands, Part 2' (doc A15), p 387. According to the *New Zealand Herald* account, Ward repeated his remarks to Rua's people when he spoke to them subsequently: see 'Premier and "Prophet"', *New Zealand Herald*, 24 March 1908 (Cecilia Edwards, comp, supporting papers to 'The Urewera Native Reserve Act 1896, Part 1', 3 vols, various dates (doc D7(a)(i)), vol 3, newspaper section, document 63).

214. Binney, 'Encircled Lands, Part 2' (doc A15), pp 387–388

215. Carroll, 19 July 1907, NZPD, vol 139, p 510 (Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 19)

216. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp 17–25

217. *Ibid*, pp 52–53

218. Native Minister to Minister of Mines, 23 May 1908, MD 1 6/4/6, Archives New Zealand, Wellington (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), vol 2, p 1203)



Flags flying at Maungapohatu, April 1908, outside Hiruharama Hou, Rua Kenana's new home. The top flag is Tutakangahau's flag Maungapohatu, which Judith Binney concluded Tutakangahau had commissioned earlier; it was flying at Maungapohatu in 1897. The words 'Kotahi Te Ture mo nga Iwi e Rua' stitched on to a Union Jack translate as 'One Law for Both Peoples'. Rua adopted it after his meeting with Premier Ward, which he later called the 'Ceremony of Union' between himself and Ward, emphasising that it was a promise that Maori and Pakeha would enjoy the same laws (see the image on page 2442.) Beneath Tutakangahau's flag is the New Zealand flag, then the red ensign, often flown on marae in the nineteenth century. The fourth flag carries the name of a great Tuhoe ancestor, the tohunga Te Tahi-o-te Rangi, which in 1906 had been given to the model pa opened at Ruatahuna.

Again, he spoke of the General Committee, the opening of Te Urewera, and prospecting and mining, in the same breath. We discuss the establishment of the General Committee shortly. But we turn first to the handling of the mining issue at Ruatoki. Carroll reported to the Minister of Mines that the hui had decided that regulations should be framed by the Government, though he enclosed a copy of ‘certain terms’ which Tuhoe had agreed on, indicating ‘the direction in which the Natives consider the regulations might be shaped’.²¹⁹ These were set out in a letter, signed by Numia Kereru and 13 other chiefs, which stated that the terms on which Te Urewera reserve was to be ‘thrown open for prospecting’ had been agreed by all the block (local) committees, and by the chiefs, hapu, and the people. Among them was the provision that the Native Minister forward all mining rights to Taneatua Post Office, and send a seal for the General Committee to the chairman’s office; a person taking mining rights (Maori or Pakeha) must have his right sealed by the chairman, and would be valid for just one year.²²⁰

Doubtless, the Committee expected to discuss the terms and regulations further. When Kereru’s delegation later visited Wellington in July, according to Edwards, Carroll explained that there had been some delay with the regulations. To accommodate the arrangements the chiefs had reached with Seddon, the Mining Act would have to be amended.²²¹ In fact, regulations bringing the reserve under the Mining Act 1908 were finally issued on 13 April 1909. They included some ‘special Regulations’ – some sought by Tuhoe, others not, but still protective of their rights. Miners’ rights were to be valid for a year and specific to the reserve; timber was protected, along with native and imported ‘game’ (including birds); and there was to be no mining on any land used for cultivations, residence, or burial grounds. Royalties of sixpence for every ounce of gold were to be paid to the ‘Native owners’ as provided in the Mining Act. What had gone was the right of the General Committee to some oversight of mining rights within the reserve.²²² It does not seem that the committee had sought to issue rights itself, but rather to affix its seal to such rights at Taneatua on behalf of the iwi. There was no provision in 1909 for that symbolic exercise of authority.

13.6.4.6 Tuhoe elect their General Committee, March 1908, and the UDNR Act is amended

We return now to the election of the General Committee at the hui of March 1908. Numia Kereru referred to it variously as ‘te Komiti nui Kawanatanga o Te Urewera’

219. Native Minister to Minister of Mines, 23 May 1908, MD 1 6/4/6, Archives New Zealand, Wellington (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)(i)), vol 2, p 1203)

220. Numia Kereru to Native Minister, 26 March 1908 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 59); Binney, supporting papers to ‘Encircled Lands, Part 2’ (doc A15(a)), pp 59–70

221. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), pp 63, 65

222. ‘Bringing the Urewera District Native Reserve under the operation of the Mining Act 1908 and making Special Regulations relating thereto’, 13 April 1909, *New Zealand Gazette*, 1909, no 31, p 1022

and ‘te komiti nui o Tuhoē.’²²³ Carroll, as we have seen, called it ‘the Administrative Committee’, but a translation of Numia’s full report to the Minister gave ‘the General Committee.’²²⁴ Numia Kereru, who had been elected chairman, reported that the committee of 32 members had been selected ‘from the Block committees constituted under Section 18 of the UDNR Act 1896’. But Rua’s people, members of local committees who had left ‘the Law of the Government and have taken to the practices of Te Rua, and set up a Governor for themselves’, were excluded.²²⁵ This followed Carroll’s strong lead, before he left the hui, that he did not recognise the independent leadership of Rua. He was said to have told the meeting that Rua’s permit for prospecting (he reportedly charged £11,400 for a permit) ‘would be useless’. And according to the same newspaper report, Carroll advised Rua’s followers to leave him and to ‘open your lands, and improve them.’²²⁶ But it was agreed that Rua’s people would send a delegation to Wellington to talk further with Carroll.

With this election, the short cut to the General Committee that Stout and Ngata had recommended had been taken. What they had also recommended was that Parliament then validate the election (that is, retrospectively). This, as it turned out, required a two-step process because the second Urewera commission had had no power to appoint committees (only the first committee had had that power). In fact, Carroll had informally instructed the second commission to appoint provisional local committees. His statements to the House in 1908 on the second reading of the Bill that would validate those appointments (the Maori Land Laws Amendment Bill) suggest that he had only recently been advised that they were not in accordance with the UDNR Act.²²⁷

The provisions of the UDNR Act relating to committee appointments and membership were amended by inserting a section in the Maori Land Laws Amendment Act 1908 (see sidebar over).

In section 21(2), as we might have expected – given the quick fix nature of these amendments – the provisional local committees were deemed to be permanent committees. Logically, the next step would have been to deem the General Committee elected at the March 1908 hui to be properly constituted – if perhaps as a temporary measure until the Governor made regulations for elections of permanent local committees under the UDNR Act. It seems that after the hui the Native Department Under-Secretary had in fact expected the members elected there to be gazetted as a General Committee.²²⁸ Edwards commented that the elections may not have been rigorously conducted, given the circumstances in which

223. Numia Kereru to Native Minister, 26 March 1908 (Binney, supporting papers to ‘Encircled Lands, Part 2’ (doc A15(a)), pp 66–69)

224. Numia Kereru to Native Minister [translation], 26 March 1908 (Binney, supporting papers to ‘Encircled Lands, Part 2’ (doc A15(a)), p 61)

225. Numia Kereru to Native Minister, 26 March 1908 [translation] (Binney, supporting papers to ‘Encircled Lands, Part 2’ (doc A15(a)), p 58)

226. *Poverty Bay Herald*, 28 March 1908, p 5 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 57)

227. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), pp 32, 67–68

228. See Fisher to Carroll, 27 July 1908 (Binney, ‘Encircled Lands, Part 2’ (doc A15), p 391).

**Provisions of the Maori Land Laws Amendment Act 1908
relating to Self-government Committees**

Section 21 was inserted in the Maori Land Laws Amendment Act 1908 to fast-track the establishment of the General Committee and also to provide for the appointment of members of the committee by the Governor, rather than their election.

- ▶ The orders of 30 August 1907 (that is, stemming from the report of the second Urewera commission) relating to the appointment of members of the provisional Local Committees were validated (section 21(1)).
- ▶ The provisional local committees were deemed to be permanent Local Committees, as if they had been elected under section 17 of the UDNR Act (section 21(2)).
- ▶ The Governor was empowered to appoint from these committees 20 members to constitute a General Committee for the purposes of the UDNR Act, as if they had been elected under the UDNR Act (section 21(3)).

they took place.²²⁹ How could they have been, when there were no regulations? But the members were not gazetted, and section 21(3) did not validate their election. Instead, the sub-section provided for the Governor to *appoint* a smaller number of the elected local committee members to constitute a General Committee. It did not require that he appoint from among the General Committee members already elected by the local committees, the hapu, and the people. This was a major change to the UDNR Act, and the only explanation we have is Carroll's – that he thought 33 members 'too many for workable purposes.'²³⁰ Thus, the elections Tuhoe had held were set aside (to the extent that 13 members of their komiti were simply removed). Whether Carroll thought the number of members would make for an unwieldy body is, in our view, hardly the point. (And perhaps he had forgotten the broad composition of Te Whitu Tekau.) The UDNR Act 1896 provided that '[e]ach Local Committee shall . . . elect one of its members to be a member of the General Committee'. It is hard to avoid the conclusion that the Government took advantage of the opportunity to amend the UDNR Act, and made a first move to undermine the representative nature of the General Committee.

More unilateral changes to the UDNR Act were to follow. The Governor's powers would be extended the following year. Section 12 of the UDNR Amendment Act 1909 provided:

The Governor may at any time, for any reason which he thinks fit, remove any member of the said General Committee, and may appoint in his place, or in the place

229. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 75

230. Carroll, 9 October 1908, NZPD, vol 145, p 1116

of any other member who has in any manner vacated his office, such other person, being the owner of land subject to the principal Act, as he thinks fit.

Every such appointment shall be published in the *Kahiti*, and shall take effect as from the date of that publication thereof.

These new powers of the Governor not, we note, the Governor in Council – allowing him to appoint a new member of the General Committee whenever a vacancy occurred, were incompatible with the UDNR Act provisions. There was no requirement that an appointee even be a member of the local committee; the person had only to be a landowner within the reserve. And by the 1909 provision, a member's term of office could be arbitrarily ended and a replacement member appointed. These changes followed Ngata's appointment of Rua's people as consultative members – when he flagged that Parliament would 'deal with the matter'.²³¹ It is clear, from the amendments of 1908 and 1909 together, that the basis of the relationship between the local committees and the General Committee had been stood on its head. The foundation of local self-government in Te Urewera – hapu corporate management of their own lands through hapu committees – had been entirely undermined.

The General Committee itself was finally gazetted on 18 March 1909.²³² In December 1908, Carroll had annotated the list of members he had been sent earlier to indicate who he thought should be appointed. When he knew Numia Kereru was visiting Wellington, on 13 February 1909 (Carroll himself was away), he instructed T W Fisher, the Under-Secretary for Native Affairs, to ask Numia to 'go through the names for main committee Urewera reserve & select twenty of the best for appointment'.²³³ It appears that Tuhoe had been having their own discussions about appointments, as Numia seems to have brought Fisher a list of names that 'had been decided upon as a general committee'.²³⁴ One nominee wished to retire, and one hapu wanted a different representative. Numia Kereru did not agree with the proposed changes; he stated that he left the decision to the Minister to settle, but his advice was accepted.²³⁵ These were already arbitrary decisions – though confined by the requirements in section 21(3). Nineteen of the 20 were elected members; one was a new member.²³⁶

But the story of the establishment of the General Committee does not end here. During the following year, Apirana Ngata, now a member of the Executive

231. Ngata to [illegible], 31 March 1909 (Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 82)

232. 'Urewera District Native Reserve – Appointment of General Committee', 18 March 1909, *New Zealand Gazette*, 1909, no 22, p 799

233. Native Minister to Native Under-Secretary, 13 February 1909 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), pp 636–637)

234. Native Under-Secretary to Native Minister, 15 February 1909 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), pp 634–635)

235. T W Fisher, memorandum for the Native Minister, 17 February 1909 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), pp 634–635)

236. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp 72–74

Council, ensured two further important changes to the Committee's composition.²³⁷ Rua was a key omission from the committee membership, and none of his followers was a member either. Ngata's changes were designed to include Rua and his people. The first was made the same month the General Committee was gazetted – March 1909. The second came in May 1910, when Ngata visited Te Urewera, and five new members were appointed to replace four who resigned and one who had passed away. Four of the new members were Rua's people, and the fifth was Rua himself.²³⁸

What were the circumstances in which these changes were made? The claimants and Crown, as we have seen, did not agree on Ngata's motives. Professor Binney pointed out that Rua had indicated in June 1908 that he wanted to make land at Maungapohatu available for settlement, and to raise money to develop 20,000 acres there; the implication is that he would sell.²³⁹ He was reported to have met with Carroll in Gisborne in November 1908, and offered to sell 100,000 acres of land to the Government; Carroll was reported to have accepted his offer.²⁴⁰ The General Committee, on the other hand, had offered to *lease* land: initially 28,000 acres over 10 blocks (January 1908);²⁴¹ then some 86,000 acres in 19 blocks by March 1908.²⁴² Binney saw Rua's offer to sell as a 'direct riposte to Numia's offer to lease'.²⁴³ She pointed to what she saw as the Government's dilemma in its dealings with Tuhoe: 'the *one* major Tuhoe leader who was prepared to sell land was shut out of the prospective General Committee'.²⁴⁴ Edwards disagreed: she saw Ngata as intervening in a situation where the Tuhoe leaders were unlikely to sort matters out themselves in the short term. Ngata recognised that the General Committee could not 'function effectively' without the support of Rua's followers, and that Rua's people would have to agree to any alienations offered by the General Committee. He also hoped he could get them to cooperate on issues of land management. To all these ends, 'he creat[ed] room for Rua's followers on the General Committee' – informally.²⁴⁵

237. Ngata was appointed to the Executive Council in January 1909; he was designated Member of the Executive representing the Native Race.

238. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp 82–83, 110–111

239. Binney, 'Encircled Lands, Part 2' (doc A15), p 394

240. *Poverty Bay Herald*, 26 November 1908 (Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 70)

241. Stout and Ngata, 13 March 1908, 'Native Lands and Native Land Tenure: Interim Report on Native Lands in the Urewera District', AJHR, 1908, G-1A, p 2

242. Binney, 'Encircled Lands, Part 2' (doc A15), p 393. Binney pointed out that there was a mix-up with the areas of two blocks in the English translation of the list of block offers; the list in the original report in te reo Maori shows the correct amounts (including 20,000 acres in Tauranga block omitted in the translated list). See also Numia Kereru, report, 26 March 1908 (Binney, supporting papers to 'Encircled Lands, Part 2' (doc A15(a)), p 68).

243. Binney, 'Encircled Lands, Part 2' (doc A15), p 395

244. *Ibid*, p 396

245. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp 82–83



The Governor, Lord Plunket, visits Taurau Marae, Ruatoki, April 1909. Plunket was accompanied by Pirana Ngata, then a member of the Executive Council, who used the visit to lay the groundwork for changes to the composition of the General Committee to include Rua and several of his people.

The changes to the General Committee of late March 1909 followed a visit made by the Governor, Lord Plunket, to Taurau Marae, Ruatoki, on the eve of the first meeting of the Committee. The Governor was accompanied by Ngata. He had been invited by Numia Kereru on what was a significant occasion. Binney saw it as his ‘entering into the Rohe Potae administered under the chairmanship of Numia’, who had retained authority over the Committee.²⁴⁶ Numia Kereru was seated next to the Governor in the official photograph taken at Taurau.

Rua and his followers were not present, but were staying in lower Ruatoki at another marae. Rua had asked to meet the Governor, who arranged to meet him at the roadside on his way back. Ngata made the introductions. The Governor ‘congratulated Rua on the measures he had introduced in his Maungapohatu community (farming and sanitation) and’²⁴⁷ “suggested that in order to achieve the most good, Rua should work in unison with the other leaders of the tribe”. Rua said he would like to do so ‘and thought the presence of Mr Ngata in the district would enable details to be arranged’.²⁴⁸

Following these meetings, Ngata reported to the Minister by telegraph that he had arranged an informal increase in the membership of the General Committee,

246. Binney, ‘Encircled Lands, Part 2’ (doc A15), pp 397–398

247. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 81

248. *Poverty Bay Herald*, 6 April 1909 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 81)

Ngata's Additions to the Membership of the General Committee, March 1909

*I*N continuation of my report of yesterday, I am glad to announce that I was able to bring the two sections of Tuhoë together last night and this morning. I took the responsibility last night of relieving the position by extending the Committee to thirty-four, one for each block, and asked Rua's section to nominate fourteen, who can act at once with the twenty legally appointed until Parliament can deal with the matter. The additional members will be consultative. Meantime, the legal formalities depending on the acts of the former twenty and the reports of their Chairman, while this enables the parties to come together it does not prejudice the legal standing of the Committee already gazetted. The assembled tribe and the extended Committee heartily approve the immediate opening of the Country for prospecting, and I have informed them that you have prepared everything for immediate gazetting. They desire to be supplied with copies of the Gazette and Regulations, also with samples of miners' rights to enable them to identify such rights when presented by prospectors. They ask that the guiding should be restricted to the Natives owning land in the District. You can therefore gazette all mining matter[s].

'Proceeding to land settlement, there is the greatest eagerness to have land opened up. I have suggested to them the following procedure: That each block Committee convene the owners and decide what area should be reserved for papakainga and Maori settlement; what for general leasing and sale. The Block Committee will then report to General Committee who will advise you under its Seal. They are arranging the preliminaries today.'

Apirana Ngata¹

1. Ngata, telegram, 31 March 1909 (Cecilia Edwards, comp, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3', 2 vols, various dates (doc D7(b)(i)), vol 2, p 1197)

to 34, so that there would be a member for each block. Rua's grouping had been asked to nominate 14 of the members, who would be able to participate in discussions but have no voting rights (see sidebar above). It seems remarkable and probably not coincidental that the General Committee, having been reduced from 34 members shortly before on the basis that it was unworkably large, was now increased to its original size.

We think it is clear that Ngata went to Ruatoki with the aim of making changes to the General Committee; he must have discussed them with Carroll before he left Wellington. Given that the membership had just been gazetted, such a major change – even an informal one – was bound to attract attention, and it was likely Carroll would have to defend it. Ngata referred to Parliament's having to 'deal with the matter' eventually – which indicates that he thought further legislative change

would be needed to secure the changes to the composition of the Committee that he had made.²⁴⁹ There is more than a hint of choreography in the Governor's meeting with Rua, the tone of the Governor's remarks to Rua, and Rua's reply. It would seem that Ngata had already begun laying the groundwork for the changes he wanted to make – and we doubt that he would have sprung his proposal on Kereru, whose cooperation he needed, without warning. Perhaps Ngata suggested that Rua himself be brought onto the committee – it seems odd that so many of Rua's supporters were nominated, but not their leader – and perhaps he had to compromise on that point with Numia. If that is so, it was a short-term compromise. It is obvious that Ngata was anxious to acquire land for settlement (we say more about this in the next section). But his telegram of 31 March 1909 certainly indicates that he was nudging Tuhoe towards dealing with their land along the lines the native land commissioners had been required to follow in their inquiry of 1907 to 1908 – and which had shaped their discussions with iwi throughout the motu. The element of compulsion was not there, however. Section 23 of the Maori Land Laws Amendment Act 1908 (which came into effect from 10 October 1908) brought the reserve, upon the recommendation of the General Committee, under the provisions of the Maori Land Settlement Act 1905. Under section 8 of that Act, the Governor in Council might declare the land to be vested in a Maori Land Board in fee simple, to 'be held and administered by the Board for the benefit of the Maori owners'. The board might reserve any part of the land for the 'use and occupation of the Maori owners, or for papakaingas [or other reserves]'; the balance it would classify by quality, subdivide, and lease for terms not over 50 years. Section 8 did not refer to sale, and this difficulty (from the Government's point of view) was surmounted the following year in the UDNR Amendment Act 1909. Section 7 of the amending Act provided that – with the consent of the General Committee – the Governor in council might vest any part of the land within the reserve in the appropriate Maori Land Board for sale or lease under part XIV of the Native Land Act 1909.²⁵⁰ Ngata, introducing the Bill into the House, stated that among its provisions were those which made 'extended provision for alienation.'²⁵¹

The General Committee did request reports from local committees, as Ngata advised, about their wishes for their lands: it distributed a circular.²⁵² Some committees sent responses – hapu of Ruatahuna began evaluating the lands from Te Waimana to Maungapohatu and Ruatahuna, and the east of the Tauranga River generally. By May 1909, when the president of the Waiariki District Maori Land Board, Judge JW Browne, travelled to Ruatoki to see how the General Committee was progressing with its work, the committee had received reports on four blocks:

249. Ngata, telegram, 31 March 1909 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p1197)

250. Section 7 further stated that, once the Governor had so vested land, all the provisions of part XIV of the Act should apply as if the land had been vested in the Board by a resolution of the assembled owners under part XVIII of the Act.

251. Ngata, 21 December 1909, NZPD, vol 148, p1386

252. Anita Miles, *Te Urewera*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1999) (doc A11), p 332

Ruatoki 1–3 and Parekohe. Browne recommended that these blocks be dealt with first, and reported also that Tuhoe were anxious for a road to be constructed up the valley from Ruatoki to Ruatahuna. But he told Numia there was little use asking the Government to construct the road ‘until some recommendation had been made as regards the settlement of the lands through which it will go.’²⁵³ No settlement, no road, in fact.

The General Committee met in May 1909, and confirmed the 1909 ‘cession’ (tuku) – evidently leases – of portions of the blocks, mostly along the route of the anticipated road from Ruatoki to Ruatahuna.²⁵⁴ At its August meeting at Rangitahi (Whirinaki), the General Committee considered reports from local committees regarding their wishes for land use in their blocks. These included the Paraoanui block, Tawhiuau, and the Maraetahia and Otairi blocks. The first block report to offer land for sale was that of the Paraoanui committee (signed by Rakuraku, Tamaikoha, Te Whiu, Te Hiko, and others) which offered 400 acres for sale, alongside 2,000 acres for lease and 1,000 acres to be set aside as a papakainga.²⁵⁵ So far, in other words, the local committees had hardly produced a flood of offers of land for sale.

Ngata’s move to appoint Rua to the General Committee should be seen in this context. Ngata told the House in December 1909, when introducing the UDNR Amendment Bill, that three weeks earlier a deputation ‘representing the majority of the owners of the Urewera country’ had spoken with the Native Minister, and indicated that they would be prepared to sell between 80,000 and 100,000 acres.²⁵⁶ Edwards suggested that since Numia Kereru was reported to be in Wellington in November 1909, he may have made such an offer (though we think this unlikely), or that, as on other occasions, Rua and Kereru each led a deputation.²⁵⁷ Binney, who could not find any record of a deputation, surmised that the offer must have come from Rua. And she brought to our attention the oral evidence of John Ru Tahuri, Rua’s adopted son, suggesting that ‘a deal had been struck in 1909.’ He recounted that Rua had been expressly invited to Wellington by Carroll and Ngata to discuss the sale of land.²⁵⁸ As he put it:

after Timi Kara [James Carroll] and Apirana [Ngata] failed to get him to sell land, they invited him down to Wellington in 1909. Did you know about that? And he went

253. JW Browne to Native Under-Secretary, 25 May 1909 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 88)

254. Numia Kereru and others, 3 June 1909, minutes of General Committee meeting of 26 May 1909 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)(i)), pp 653–654). For the original document in Maori see Paula Berghan, comp, supporting papers to ‘Block Research Narratives of the Urewera, 1870–1930’, 18 vols, various dates (doc A86(i)), vol 9, p 3108. Also see Binney, ‘Encircled Lands, Part 2’ (doc A15), p 406; Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 88.

255. Miles, *Te Urewera* (doc A11), p 335

256. Ngata, 21 December 1909, NZPD, vol 148, p 1386

257. *Dominion*, 8 November 1909 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 94)

258. Binney, ‘Encircled Lands, Part 2’ (doc A15), p 417

down. They did something – nobody knows what they did to him there, but they did something with him because he changed his stance. When he came back he called a big meeting at Maungapohatu with his followers. He said, sell the land.²⁵⁹

Binney's view was that the narrative 'seems to recall Rua's visit to Wellington late in 1909, that is, the Tuhoe delegation referred to by Ngata in parliament in December 1909': it fits, after all, with Ngata's account. And she pointed to 'the crucial memory of pressure brought by Carroll and Ngata' contained in the oral account. She hinted that the source of that pressure may have been the Tohunga Suppression Act, a 'weapon' that Carroll and Ngata now had available to them, although in fact they never used it to have Rua investigated.²⁶⁰ Tahuri continued:

So Rua went to Wellington in 1909. I said earlier on that Rua had been pestered by government to sell the land under his influence, that's all the Maungapohatu land down to Waimana, which is over 100,000 acres, up the Tauranga valley. Rua won't budge. So they sent Tai Mitchell from Rotorua to Maungapohatu for the same thing.²⁶¹ Rua told him to go back . . . And Api [Ngata] was sent up, and he [Rua] said to him if you want to sell land, sell yours in Te Tai Rawhiti [East Coast]! So that was the end of the matter.

As time went by, old Timi Kara thought, by gosh, we'll have to do something to break this barrier. So they invited him down to Wellington in 1909. They did something to him down there and he came back. He called a big meeting up at Maungapohatu . . . First thing he said, 'sell the land; the land doesn't belong to us. We're just tenants in common.' . . . He said, 'You sell the land and make use of the money from the government from the Bank of New Zealand.' There is a waiata about it. It said, the time will come.²⁶² He [Rua] said, 'Get their money, the Bank of New Zealand, and use it – because the day will come,' he said, 'those lands will come back to us.' Well, because of that, they gave the mandate to sell.²⁶³

Binney told us that whereas Te Kooti had warned (in the waiata he referred to) of the consequences of sale, Rua 'instead promised that the land would ultimately be restored by God, drawing on the scriptures for confirmation of the message'. She acknowledged, in placing this narrative before the Tribunal, that while '[a] family or communal memory, of course, is not "proof" of an improper pressure . . . it does remember that Rua persuaded the people to sell after his talks with

259. John Ru Tahuri, oral source, discussions with Judith Binney, 23–24 March 1998, tape 5A (Binney, 'Encircled Lands, Part 2' (doc A15), p 417)

260. Binney, 'Encircled Lands, Part 2' (doc A15), pp 417–418

261. Tai Mitchell had accompanied Judge Browne, president of the Waiariki Maori Land Board, on his visit to Ruatoki in May 1909.

262. Binney explained that Rua's reference was to Te Kooti's song composed for Tuhoe in 1891, in which he sang sarcastically (in translation): 'Get, go get the money belonging to the Governor at the Bank of New Zealand' – warning of the consequences for the poor, who would lose their land: see Binney, 'Encircled Lands, Part 2' (doc A15), p 418.

263. Binney, 'Encircled Lands, Part 2' (doc A15), pp 417–418

Carroll and Ngata; it certainly remembers an “arrangement”. And what happened next was Rua’s dramatic withdrawal of his offer to sell when he considered the ‘arrangement’ to have been broken.²⁶⁴

Rua withdrew his offer by letter dated 15 February 1910. The letter was sent in the name of Rua and his followers, the Iharaira (Israelites):

Mo nga whenua o Tuhoe i tuku[a] atu nei e ahau i runga i te tono mai, a whakaaetia ana e ahau 100,000 eka. I tenei ra kua kite iho ahau, matau katoa, i runga ano i te ripoata a Rapata Taute raua ko Ngata, e mau i te Ripoata, takawaenga a te Komihana Whenua Maori o te Takiwa o Te Urewera. 13 o Maehe nei 1908 G-1A. Kaore hoki i roto i te Urewera District Native Reserve Amendment ara, whakatikatika i te ture Rahui Maori o te Takiwa o Te Urewera 1909. Kei roto i te Ripoata G-1A e ki ana, ‘E whai mana ana te Komiti nui ki te hoko, waahi whenua atu ki te Karauna mo enei take katoa.’

E te Minita mo nga mea Maori, kua mohio ahau kua whakarerekitia nga take i whakaritea ai e ahau ki to aroaro. Tuarua, kei roto i te *Auckland Star* te 3 o Pepuere, e ki ana koe i roto i tau nupepa, ka hoatu e Te Urewera te 100,000 eka kia hokona e te Kawanatanga. Kua tino marama taku titiro iho, kua riro ke ma te Komiti Nui te mana hoko o taua 100,000 eka; inara kua riro ke he mana ke. No konei ka inoi atu ahau ki a koe, whakahokia mai aku take katoa ki roto i toku ringaringa.

Heoi ano, na Rua Hepetipa me Te Iharaira katoa.

Referring to the 100,000 acres of Tuhoe lands which I offered as requested. I, that is to say, all of us, have now seen the Interim Report of Sir Robert Stout and (A T) Ngata, Native Land Commissioner, for the Urewera District, of 13th March 1908, G-1A, in which the following paragraph occurs: ‘The General Committee has power to sell portions of land to the Crown for such purposes.’ Now, that paragraph is not incorporated in the Urewera District Native Reserve Amendment Act, 1909.

O Minister of Native Affairs, I apprehend that the matters or proposals which I discussed and laid before you have been entirely altered. Secondly, in the *Auckland Star* of 3rd February, you are reported as having stated that: ‘The Urewera people were handing over 100,000 acres of land to the Govt for sale.’ It appears clear to me from this that the General Committee possesses the power to sell that 100,000 acres; what I object to is that the mana goes to others (that is to the General Committee, and is not retained by Rua, Translator). I therefore ask you to hand back to me all of my former proposals intact.

That is all, Rua Hepetipa, and all the Israelites.²⁶⁵

On the face of it, Rua’s complaint was that he had just discovered that any sale – and he referred specifically to the 100,000 acres he had offered – must be made

264. Binney, ‘Encircled Lands, Part 2’ (doc A15), p 419

265. Rua Kenana and all the Israelites, 15 February 1910 (Binney, ‘Encircled Lands, vol 2 (doc A15), pp 415–416); Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)(i)), p 662). Based on a contemporary translation.

by the General Committee. The sale would thus become the Committee's sale, not his. Though it might seem surprising he had not known this before, it is clear that he thought Carroll had not been straightforward with him about what would happen in respect of his offer of land. He may have thought that Carroll was in fact prepared to accept his offer directly – and perhaps that the UDNR Amendment Act might allow for this. (As we have seen, that Act did reduce the powers of the General Committee in respect of alienations, in that the Governor in Council might vest land in a district Maori Land Board for sale or lease with the consent of the General Committee, but the Crown could still purchase land only from the Committee.²⁶⁶) Or, as Binney suggested, Rua may have expected he would be appointed to the General Committee himself,²⁶⁷ so that the sale might still seem to be his, and he and his people would retain control of its terms and of the proceeds. Either way, it is clear there were deeper concerns underlying Rua's move. He wanted to sell some land to raise capital for development; he wanted his own people to control what land they sold, and what they kept.

By the beginning of 1910, Edwards stated, 'rifts amongst the communities in the Urewera Reserve, particularly in respect of support for the General Committee, appear to have deepened.'²⁶⁸ In the end, Ngata went to Te Urewera in May 1910, after the 1909 UDNR Amendment Act had given the Governor power to appoint and dismiss General Committee members, and secured further changes to the composition of the Committee. His earlier move, to appoint the 14 Rua followers as consultative members, had been a failure as they had not attended the March 1910 meeting. Now Ngata had a new plan: he sought the Native Minister's authorisation for it and asked Carroll to take steps to secure the Governor's approval. At the meeting itself, Numia Kereru reported that one member had passed away and two members had resigned.²⁶⁹ Rua was present, and moved that some of his people be appointed to replace the three members. In the subsequent debate, two further members resigned. Ngata then moved that five of Rua's people be appointed – among them Rua himself and Paora Kingi. Kereru agreed, and the appointments were made.²⁷⁰ We agree with Edwards that Kereru probably felt he had little choice in all of this. He doubtless considered the possibility that whether he agreed or not, Carroll might see that the new members were appointed on Ngata's recommendation. Neither Kereru nor his leasing proposals retained their earlier support.²⁷¹

The membership of the General Committee thus reverted to the original number of 20 with deliberative powers. The meeting then considered proposals for selling land to the Crown. Rua moved, and Paora Kingi seconded, the first two

266. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp 94, 99; Urewera District Native Reserve Act Amendment Act 1909, ss 7, 8

267. Binney, 'Encircled Lands, Part 2' (doc A15), p 417

268. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 106

269. For the minutes of the General Committee meeting held on 27 March 1910, see Numia Kereru to Native Minister, 4 November 1910 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), pp 597–598).

270. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp 110–111

271. *Ibid.*, pp 112–113

proposals – for the sale of Maungapohatu and Tauranga; the two other blocks were Otara and Paraoanui North. Edwards stated that it is not clear from the minutes whether the Committee actually consented to the sales, but Ngata, in any case, understood as much, and reported that the General Committee had made the offer.²⁷² Thus, Rua finally became a member of the Committee, after the intervention of Ngata – and got his sales approved.

Tuhoe leader Tamati Kruger spoke to us of his grandmother's korero, and those left behind by her brother Numia Pokorehu and Te Pukenui:

No reira ki a au, ka kite te Kawanatanga, he pai ake ta ratau tautoko i a Rua, he tere ake te whakaeke o ratau hiahia tera i te tautoko i a Numia, kua kite ratau te whakakeketanga o Numia ki te rihi, ki te hoko whenua. Tenei ka wahia te komihana, ka whatia te tuara o te komihana, ka utanga a te Kawanatanga kia uru atu ki runga i taua komihana, nga apataki a Rua. Kia riro tonu ai ma te komihana e whakaae i te hoko, te rihi whenua.

I tona mutunga ake ka riro tonu te Komihana ma te Kawanatanga e whakahaere, e taki. Ka noho pereweta taua komihana, ka noho hai keretao ma te Kawanatanga.

Rehu wairua atu ana nga moemoea, nga manako o Numia. I tera e whai ana, hai ora ana mo tona iwi, a kua wetewetekina, kua turakina.

Ko Numia he tauira ia mo te Rangatiratanga hou ki roto o Ngai-Tuhoe. Tona rereke ki ona papa ki ona tuakana, i noho katoa era i raro i te kawa i te tikanga o Tumatauenga.

Numia, i whai i te kawa a Rongo-ma-tane, a Tane-te-wananga, ko Tane e whai ana ko te pupuri te Mana Motuhake o Tuhoe ma te whakawhitiwhiti korero, ma te whakaaro, ma te hanga ture e tu ana i runga i te tika, i te pono, i te pai . . .

Engari ka tika nga korero, kotahi tonu te wairua i roto i nga mahi katoa a Numia he rapu i te ora, i te pai mo tona iwi.

It was there that the government saw that it was more rewarding for them to support Rua; they could get quicker results than supporting Numia as far as leasing and selling land. The government wanted to divide the committee to break its back. . . . In the end the committee was run and steered by the crown. That committee ended up being an agent and they became puppets of the Crown.

Numia's dreams went up in smoke; his desires and all that he pursued for the benefit of his people had been dismantled and overturned.

As for Numia, he was a good example of a chief of those days in Tuhoe. He was different from his fathers, his older brothers; they all stayed under the mantle of the teaching of Tumatauenga.

Numia pursued the teachings of Rongo-ma-tane and Tane-te-wananga – an advocate of mana motuhake of Tuhoe by the process of dialogue and reflection. By the passing of laws that were honourable, righteous and satisfactory. . . .

272. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p113

There was only one motive in all of the work of Numia: to seek benefits and welfare for his people.²⁷³

We consider the broader question of reasons for the Crown's success in purchasing in the next section of the chapter.

13.6.4.7 Why did the General Committee struggle to establish itself as a strong political force?

We stated at the beginning of our analysis that the real failure of the self-government provisions of the UDNR Act took place in the early years after the passing of the Act. The Crown failed to ensure that the General Committee was established within a reasonable timeframe, and that it exercised the self-governing powers envisaged for it in the district, making decisions about the future of Te Urewera lands in broad terms. This failure was fatal to the ability of the peoples of Te Urewera to protect their lands when they had to deal with pressures of various kinds by the end of the first decade of the twentieth century.

The UDNR Act provided for the establishment of a district-wide series of committees, with a large representative General Committee. Time was needed for all the committees to establish themselves and, above all, their authority – and to establish a track record so that people had confidence in them and their respective roles.

The failure of the Crown to support Tuhoe in the establishment phase after the legislation had been passed, as well as its failure to amend the legislation as required so that title determination within the reserve would not delay the formation of committees, and to ensure that appropriate regulations were in place when they were needed, would have long-term ramifications.

The huge sense of urgency, of iwi-wide enthusiasm, and commitment to ensuring the committees would work could not survive a delay of more than a decade. As things turned out, the timing was crucial. Tuhoe lost the opportunity to establish their committees when the circumstances nationally were propitious – when the Liberals had given their support (if qualified) to district Maori Councils and to holding back from land purchase.

By the time the committees were finally established, the situation was very different. Increased pressures for land settlement reached not just across the North Island but even into Te Urewera. And this led to a situation where internal tension and disputes between Rua, the prophetic leader, and Numia Kereru, the traditional chief, would be conducted *outside* the framework of self-governing institutions, and could thus be exploited by central Government.

Such disputes within the iwi might always have arisen. There were many dimensions to the tension between Rua and Kereru, and the leaders who were aligned

273. Tamati Kruger, transcript of additional evidence, pt 2, 1 Paengawhawha 2005 (Maori) (doc 148), pp 7–8; Tamati Kruger, transcript of additional evidence, pt 2, no date (English) (doc 148(a)), pp 4–5

with each of them; but at a time when the Government was anxious to push its settlement agenda, their differing views about land management were very evident. And in any iwi there might have been the same strongly held views that sales (on the one hand) might bring the most useful returns, both to help people in their everyday struggle for survival and for economic development; or that leases were much preferable because they did not involve land loss. But the point is that the UDNR Act was supposed to have ensured that debates over land use and alienation in Te Urewera were internal ones. The committees should have been making strategic decisions about land retention, land alienation, and development. Had their authority been established (and recognised by the Crown) over a period of years, it should not have been possible for leaders to be making trips down to Wellington in 1908–09 to negotiate separately with Ministers. It should not have been possible for Ngata and Carroll to play fast and loose with the UDNR Act – even though both were under pressure in Parliament by this time, to show every effort was being made to open every possible acre to settlement. It should not have been possible for Ngata – a new player, whose background was the Stout–Ngata commission’s mission to convince Maori everywhere that they must ‘use’ their lands or lose them – to juggle appointments to the General Committee. It should not have been possible for Carroll to make individual payments to Rua’s people, as he would in 1910. The mana of the committees, their history of decision-making, would have protected them from such interventions. But because there had been no time for them to establish their authority, the Government could intrude into the affairs of Te Urewera without causing an outcry.

Clearly, it did intrude. Binney has suggested that Ngata used Rua to break through the resistance of the General Committee to sell and that Ngata’s willingness to ‘sacrifice’ Tuhoe land must be seen in the context of ‘older hostilities’ between Tuhoe and Ngati Porou. It suited Ngata, in her view, to be seen both as assisting the Liberals to advance their settlement agenda and as meeting Tuhoe’s needs to raise finance.²⁷⁴ The Crown, on the other hand, rejected what counsel called ‘serious allegation[s]’ about Ngata’s motives, citing the evidence of Edwards that every encouragement had been given to Numia Kereru and Rua to work together to overcome ‘serious divisions’ in the community. Even in 1910, when Ngata seemed to have given up on this aim, he hoped at least to secure the sales that Rua was prepared to make, so that these might have broad benefits for the iwi.²⁷⁵

We do not accept that the Crown was acting during this period as the honest broker. It had done so little for so long, and it is very evident that in the end it took an interest in the General Committee only because the law required its consent for both prospecting and land alienation. Whatever the motives of its Ministers – and Binney, as she acknowledged, inferred Ngata’s motives, and produced no evidence to support her supposition – the Crown was quick to tamper with the rights of

274. Binney, ‘Encircled Lands, Part 2’ (doc A15), pp 442–444

275. Crown counsel, closing submissions (doc N20), topics 14–16, pp 72–75

the people to elect the General Committee through their local committees, and to reduce or increase the size of the General Committee as it saw fit. The switch from an elected General Committee to an appointed one was a major violation of principle. It might have been acceptable if it had been temporary and if there was general agreement to it, but in fact it was permanent, and of lasting significance. The Crown, on the other hand, rejected counsel's serious allegations.

Carroll can also be criticised, in Edwards' view, for failing to ensure a 'proper regulatory regime' was established once the General Committee had been set up.²⁷⁶ The matter was raised by Judge Browne (the president of the Waiariki District Maori Land Board), who cited section 20 of the UDNR Act, which specified that the powers and functions of the General Committee, and the local committees, were to be prescribed by the Governor in Council. T W Fisher, then the Under-Secretary for the Native Department, advised Carroll that the UDNR Act 'had been modified in some respects by section 23 of the Maori Land Laws Amendment Act 1908, which provided for the lands to be vested in the Maori Land Board for leasing' on the recommendation of the General Committee. In other words, Fisher interpreted the amendment as 'indicative of a change of policy' since 1896, and added: 'it is probably not now the intention to confer such extensive powers on the Committee as was then intended'.²⁷⁷

What happened at this point was that the crucial importance of regulations to the functioning of the committee structure, so clearly signalled in the UDNR Act, was overlooked. Fisher focused only on the matter of alienation – perhaps because the prompt about regulations had come from the President of the District Maori Land Board. Having evidently failed to consider the matter of regulations himself now that the committees were all in place, Fisher then failed to remind the Minister of the Government's obligations under the UDNR Act to assist with empowering the committees in their local government functions. 'There is no evidence,' according to Edwards, 'that Fisher signalled to the Minister any need for formal consultation with [the] General Committee, the Local Committees or the communities of owners, on the possibility that the local government structures were not to be empowered in the manner envisaged in 1896'.²⁷⁸

Fisher gave Carroll poor advice, it is true. But on the other hand, Carroll had been closely involved in the negotiations leading to the UDNR Act and the shaping of the Act, and can hardly be absolved from responsibility at this point. In the end, the regulations gazetted in September 1910 did no more than provide rules under which General Committee meetings were to be run. Crucially, there were no regulations on the functions of the local committees, or the relationship between the General Committee and the local committees.²⁷⁹ Perhaps, given all the circumstances by this time, this was hardly surprising. But the Crown thus

276. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 94

277. Native Under-Secretary to Native Minister, 18 May 1909 (Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 84)

278. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 85

279. *Ibid*, pp 85–86

passed up its last opportunity to breathe life into the General Committee and the local committees.

The way in which the General Committee finally came into being and, as we will see, its very short life, with its functions limited to land alienation decisions, all show that the time for establishing meaningful self-government in Te Urewera had passed.

13.7 WHY AND HOW DID THE CROWN PURCHASE EXTENSIVELY IN UDNR LANDS FROM 1910?

SUMMARY ANSWER: Crown purchasing into UDNR blocks began in 1910, in the context of growing settler pressure (since 1907) for purchase and settlement in the reserve. Rua Kenana, who offered a number of blocks for purchase initially, was hopeful of raising finance so that Maungapohatu lands could be developed for farming by the community. The General Committee agreed in principle to the sale of some blocks, or more probably portions of those blocks, but the Government also made payments to individuals who were owners in a number of other blocks without the consent of the committee. Purchasing was formally halted in 1912 (though only a handful of shares had been purchased in 1911) until the final appeals against Urewera commission decisions were heard by the Native Appellate Court in 1912–13. By this time the Reform Government had assumed power. The new Native Minister, William Herries, was committed to vigorous Crown purchase in North Island areas which remained ‘unopened’, and in 1914 the Native Land Purchase Board decided to resume purchase in the reserve for what by now was assumed to be large-scale farming settlement – though this had never been envisaged in 1896. The board decided also to buy individual interests, despite being aware that purchases could by law be made only from the General Committee – a tribal body. The Crown had in fact never provided the General Committee with legal power to enter into contracts to sell on behalf of the owners in reserve blocks, and made its payments to individual sellers even in blocks the General Committee had agreed could be sold. It could do this because the Urewera commissions had identified individual owners in every block and listed their relative shares. But the interests of hapu-based communities of owners, as envisaged in the Act, had not been located on the ground, so that those communities had no way of protecting core lands and no security of tenure once Crown purchasing began. Well over 100,000 acres were purchased illegally before the purchases were validated retrospectively by legislation in 1916.

From this time, the Crown was empowered to purchase individual interests in reserve blocks, while individuals were empowered to sell – but only to the Crown. The key protective mechanism in the UDNR Act – that any alienation would be managed and effected by the General Committee – was thus removed. The General Committee ceased to have any purpose as far as the Crown was concerned, and its final meeting was held in 1914. The Crown’s purchase agent from 1915 was WH Bowler, who devoted himself to compiling lists of owners and travelling throughout the region (including visits to the east coast) to purchase shares.

The Crown extended purchase into new blocks every year, and by March 1921 had purchased the equivalent of 330,264 acres in 47 blocks, or 51 per cent of the reserve. The Crown's failure to ensure that UDNR committees were set up quickly, and that hapu titles were located on the ground, meant that there was no collective planning for economic development. Natural disasters at the turn of the century only compounded economic difficulties. Many people left the district, and many sold block shares in order to survive. The Crown failed, however, to buy all the interests in any single block – testament to owners' determination to retain interests in one or more blocks.

The Crown took advantage of the monopoly purchase right conferred on it by the UDNR Act (intended in 1896 as a protective measure for owners) to purchase at its own pace over a period of years, and its prices were based on valuations which did not meet the requirements of the Native Land Act 1909, designed to protect Maori owners from selling at artificially low prices. Valuations were made not by Government valuers but by Lands and Survey Department officials, who had a clear conflict of interest. The process by which they reached valuations was not transparent, but their main concern was to ensure that prices paid to those who sold would not compromise the success of the planned Crown settlement scheme. In the Te Whaiti blocks, which contained very valuable standing timber, the Crown denied owners the right to sell cutting rights on the market, then substantially undervalued the timber (failing to use superior measurement techniques which were available at the time). It exercised its monopoly right of purchase to buy up individual interests at its own price from owners who were out of options – ensuring that the Crown, not the owners, would mill the greater part of the Te Whaiti timber from 1938 to 1984.²⁸⁰ The standing timber on all other UDNR blocks was accorded no value at all. Reserve owners generally were also denied protections provided in legislation for all other Maori owners; the Crown failed (quite deliberately) to apply protections in mainstream legislation to ensure that those who sold were protected from landlessness. And it also denied reserve owners the right which all other Maori owners had to seek partitions in the land court, to protect their blocks from Crown purchase, or secure portions to particular hapu. Given the nature of titles awarded by the Urewera commissions this was a damaging curtailment of owners' rights. By an amendment to the UDNR Act in 1909 the Crown extended the jurisdiction of the land court over reserve lands, except that the court could not partition unless the Crown consented. This would enable it, in the years that followed, to continue purchasing in reserve blocks without facing the problem (as it was considered) of Maori-initiated partitions. The Crown itself refrained from seeking partitions, in the hope of buying all the shares in as many blocks as possible, but by 1919 realised that it would not succeed in buying out the owners in any single block. From this time, it began to think of consolidating all its interests in one large block of Crown land.

280. John Hutton and Klaus Neumann, 'Ngati Whare and the Crown, 1880–1999' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001) (doc A28), pp 11, 15

13.7.1 Introduction

Crown purchase in the UDNR took place in two phases. The first lasted through 1910 and 1911 (though the greater part of the purchases were made in 1910), and took place at a time when there was increasing settler pressure to open the UDNR lands for farming. At the same time, Rua Kenana was offering some blocks for sale, hoping to raise finance for development. The newly established General Committee agreed in principle to the sale of eight blocks, evidently meaning portions of those blocks. Instead of negotiating terms and contracting with the General Committee, the Crown then made payments to individuals identified as owners by the Urewera commission, not only in these blocks but also in a number of others to the sale of which the Committee had not agreed.

The second phase of purchasing, which resulted in the alienation of far more land, took place during the Reform Government's administration, under the guidance of W Herries, the Native Minister. The Native Land Purchase Board decided to tackle the UDNR in 1914, once the Native Appellate Court had issued its judgments on the final appeals from decisions of the Urewera commissions. Purchases were made under Herries' Native Land Amendment Act 1913 (an Act of national application), which empowered the Crown to purchase undivided interests from individuals, and individuals to sell directly to the Crown. The UDNR was in fact excluded from the Act's operation, but the Crown bought from individual owners in the reserve blocks anyway, ignoring the General Committee. In 1916, the law was changed (without consultation with Te Urewera leaders) to validate purchase from individuals in the reserve. The General Committee no longer had the key protective role in sales which Tuhoe and Ngati Whare leaders had agreed to in 1896. From 1915 to 1921, the Crown expanded purchase into an ever-increasing number of blocks through its agent W H Bowler.

13.7.2 Why did the Crown purchase in Te Urewera from 1910?

The primary reason for Crown purchase in UDNR lands was to acquire lands for Pakeha settlement. As we have seen, pressure to resume purchase throughout the North Island had mounted during the first few years of the twentieth century when the Liberal Government, in response to widespread Maori anger and political action, had refrained from embarking on new purchases. Settler pressure, as reflected in the press, led to sustained attacks on the policy in Parliament, and to the setting up of the Stout–Ngata commission in 1907 to identify lands that could be quickly made available for settlement. What Carroll and the commissioners were able to salvage was some recognition that Maori should retain land for themselves, and for their future development as well as their present needs. In their reports, Stout and Ngata were to urge strongly the Crown's duty in this respect. But Government policy and land purchase practice over the next decade would hardly reflect this. In particular, the Reform Government embarked on determined Crown purchase in many North Island areas from 1913.

The Urewera District Native Reserve, in this context, attracted particular attention from 1907 on – both because it was a large region from which purchase had long been excluded and because it seemed that this was about to change. When

the Urewera District Native Reserve Amendment Bill was given its second reading in the Legislative Council in December 1909, the Attorney-General, Dr Findlay, stated:

The general purpose of the Bill is to enable the work of European settlement of large areas in the Urewera country to be proceeded with. I am not absolutely certain of the figures, but I believe I am right in saying that it is estimated that probably 100,000 acres of land will be obtained in the district for the purpose of closer settlement, and the chief service this Bill performs is to make it possible by the conversion of the existing orders [namely, the orders of the Urewera commission] into freehold orders, to carry out that general purpose.²⁸¹

In the Lower House, Ngata had likewise argued that the passing of the Bill would promote settlement in the district, stating that ‘within a short time the Crown will be able to purchase between 80,000 and 100,000 acres in the district’ and that a further 150,000 acres had been offered for leasing. He acknowledged that without extensive survey, ‘one is not in a position to say whether the whole of that area – say, a quarter of a million acres – will be suitable, or such as can be readily made available for settlement’, concluding that, ‘[p]ower is now being sought from Parliament to enable that extensive tract of country to be opened up.’²⁸² William Herries, then in Opposition, objected to the fact that the Urewera country had been ‘placed under a separate law to any other Native land in the Dominion’ by the original UDNR Act and its amendments, particularly because it meant that land could not be alienated to private purchasers; nevertheless he would not oppose the passing of the Bill:

The Crown is the only person who can purchase land, and I am very glad to hear from the Minister [Ngata] that the Crown is going to purchase a large area. I hope that they will purchase an area of land where settlement is capable of taking place, and that they will not purchase mountain-tops. It is very rough country as a whole, and only small portions of it are really suitable for anything like close settlement. There is a part I hope they will purchase, and that is the head of the Whakatane Valley at Ruatoki, where there is a good flat that can carry a large number of settlers.²⁸³

William DS MacDonald, the member for the Bay of Plenty, seemed less concerned about establishing the quality of the land. He ‘trust[ed] the Government [would] find the money for the purchase and cutting up of this country in suitable areas to assist rapid settlement of this reserve [the UDNR], which has for such a long period been a bar to the progress of the district’ – that is, Whakatane and other ‘adjacent counties’. And he raised one of the perennial settler concerns at the time – the need to make Maori land pay its fair share of rates:

281. Findlay, 22 December 1909, NZPD, vol 148, p 1411

282. Ngata, 21 December 1909, NZPD, vol 148, pp 1386–1387

283. William Herries, 21 December 1909, NZPD, vol 148, p 1387

The settlers there have undergone very great hardships in connection with the blocking of land settlement in that district by the unopened Native areas . . . All that land will be available for pastoral or dairying purposes, and will soon be brought into profitable occupation. It will be only fair to the settlers who have been there so long, and are now paying the local and general rates and maintaining the roads, that this land should be brought into production, and so be made to bear its fair proportion of the local rates. The work of those settlers has greatly enhanced the value of the whole of the Urewera Block. Some of it is very valuable land, and will well repay the money spent on it; but it should bear its fair share of the local taxation.²⁸⁴

Ngata, though cautioning that the country had yet to be properly explored, and that it was therefore not clear whether the whole of the area offered for purchase would be made available for settlement, stated that, '[p]robably the bulk of it would be put on the market on the small-grazing-runs system.'²⁸⁵

A second reason for Crown interest in Te Urewera was mentioned by Ngata – though it does not seem that he meant the Crown should purchase the land he spoke of. He had 'no doubt', he said,

that if the Ureweras are properly approached they would consent to the reservation of a large tract of country between Lake Waikaremoana and Ruatahuna Valley for a national park similar to the Tongariro Park, and that would reserve for all time that interesting portion of country leading over the Huiairau Range. We must have somewhere in this country a portion of it through which no roads can be taken.²⁸⁶

From 1913, there were calls from various chambers of commerce to acquire all the land from water's edge to the skyline of Lakes Waikaremoana and Waikareiti as a fine scenic asset for tourism, in the national interest.²⁸⁷ The royal commission on forestry added a further reason – that preservation of the forest would help 'conserve the water-supply of the lake.'²⁸⁸ The potential of the lake's waters for the supply of electricity had already been recognised. The Government's enthusiasm for taking some 15,000 acres under scenery preservation mechanisms (replaced briefly in 1917–19 by proposals to buy the Waikaremoana block and reserve it) flagged in the face of Maori owner opposition – but all these factors raised the public profile of Te Urewera.²⁸⁹

Though the Liberals were enthusiastic purchasers by 1910, it was their successors in government, the Reform Party, who tackled purchase of reserve lands in a truly single-minded manner from 1912. Herries, the new Native Minister, 'immediately

284. MacDonald, 21 December 1909, NZPD, vol 148, pp1387–1388; Miles, *Te Urewera* (doc A11), p 338

285. Ngata, 21 December 1909, NZPD, vol 148, p 1387; Miles, 'Te Urewera' (doc A11), p 338

286. Ngata, 21 December 1909, NZPD, vol 148, p 1388

287. Tony Walzl, 'Waikaremoana: Tourism, Conservation & Hydro-Electricity (1870–1970)' (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A73), pp 130–135

288. AJHR, 1913, C-12, p xix (Walzl, 'Waikaremoana' (doc A73), p 134)

289. Walzl, 'Waikaremoana' (doc A73), pp 144–170

embarked on a comprehensive programme of Maori land-buying, largely in order to give effect to the wishes of its farmer supporters.²⁹⁰ Herries' views on Maori land have been summarised by Michael Belgrave in these terms:

All Maori land should either be taken into trust and leased to Maori and European alike, or individualised. Herries clearly preferred individualisation, blaming rental income for Maori indebtedness, an unwillingness to work and general moral turpitude. Once titles were individualised Maori would be free to develop their land; if it was not developed it should pass into Pakeha hands – by compulsion if necessary . . . Herries derided Maori landlords, denigrated Maori land boards, and vilified restrictions on the sale of Maori land.²⁹¹

And historians of the Maori Affairs Department have written that in the first six years of Herries' ministry, when he 'devote[d] himself heart and soul to the acquisition of Maori land . . . the [Native] Department was essentially a large land purchasing operation directed by the Native Land Purchase Board.'²⁹² The pressure to purchase Maori land increased at the end of the First World War, with newspaper reports pointing out the lack of land available for returned servicemen and condemning 'the curse of Maori landlordism.'²⁹³ In the case of Te Urewera, and with expectations raised by the initial Crown purchases under the Liberal Government, pressure was applied by Farmers' Union officers, the Whakatane Chamber of Commerce, Federated Farmers, the Bay of Plenty Development League, and others over the period from 1912 to 1919 to 'open up' the lands for the purpose of Pakeha settlement.²⁹⁴ In their 1921 report on the Urewera Consolidation Scheme (which was under consideration at the time), R J Knight (of the Lands and Survey Department), H Carr (of the Native Department), and Raumoia Balneavis (private secretary to the Native Minister) reported that there had been 'a strong and insistent demand in the Press and by local bodies in the Bay of Plenty to have the areas purchased by the Crown made available for settlement.'²⁹⁵

We cannot overemphasise the significance of these developments. In the mid-1890s, the whole thrust of negotiations between Te Urewera leaders and the

290. Richard Boast, 'The Crown and Te Urewera in the 20th Century: A Study of Government Policy' (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A109), p 46

291. Michael Belgrave, 'William Herbert Herries', in 1901–1920, vol 3 of *The Dictionary of New Zealand Biography*, ed Claudia Orange (Auckland: Auckland University Press and the Department of Internal Affairs, 1996), p 213; Boast, 'The Crown and Te Urewera in the 20th Century' (doc A109), pp 47–48

292. Graham V Butterworth and Hepora R Young, *Maori Affairs: A Department and the People who Made It* (Wellington: GP Books, 1990), p 68

293. Editorial, *New Zealand Herald and Daily Southern Cross*, 17 April 1920 (Miles, 'Te Urewera' (doc A11), p 409)

294. SKL Campbell, 'Land Alienation, Consolidation and Development in the Urewera, 1912–1950' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1997) (doc A55), pp 5–8

295. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme (Report on Proposed)', AJHR, 1921, G-7, p 4

William Herbert Herries, 1921. As the new Native Minister in the Reform Government from 1912, Herries actively pursued purchases of Maori land in the Urewera District Native Reserve from individual block owners, despite the safeguard in the Urewera District Native Reserve Act, which provided that sales and leases could take place only through the General Committee.



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Crown had been premised on agreement that Te Urewera would be preserved to those whose tribal rohe it was. But some 10 to 12 years later, a quite dramatic shift was under way. Te Urewera, like other areas of the North Island where purchasing was not yet taking place, was assumed to be available for farming settlement. Any perception that the Urewera reserve had been accorded a special status by agreement between its Maori leaders and the Crown, and by legislation giving effect to that agreement, was fast disappearing. By 1910, a settlement scheme was being assumed; by 1915 its scope had broadened considerably; and within a few years it would extend even to Ruatahuna. In this context, the rapid expansion of purchase into the great majority of the reserve blocks could be seen by officials as simply the justifiable pursuit of settlement goals. But this was not the future that Te Urewera leaders had agreed with the Crown.

13.7.3 How did the Crown purchase land in Te Urewera from 1910 to 1912?

Crown purchasing began at speed in 1910, after the General Committee had finally been established. At a key hui held in May 1910, Ngata intervened, as we have seen, to secure the appointment of five new members, including Rua Kenana, to the General Committee (following the death of one member and the resignation of four others). The Committee then considered proposals to sell four blocks (Maungapohatu, Tauranga, Otara, and Paraoanui North). As we have seen, it is not clear that the General Committee did consent to the sales; but Ngata ‘understood’

that that was what had happened.²⁹⁶ Ngata reported the offer of blocks to the Native Department and sought the service of District Surveyor Andrew Wilson to begin valuations so the Government could then make offers.²⁹⁷

Wilson was given instructions at once and was told to treat the matter as ‘very urgent’.²⁹⁸ He met with Maori at Waimana in late June, before submitting his report to Chief Surveyor Skeet in Auckland on 30 June.²⁹⁹ He enclosed a plan marking out the portions under offer, annotated with the Government’s valuations per acre, and showing a proposed road up the Waimana–Tauranga valley.³⁰⁰

From the outset, there was a strong focus in such reports on maximising Crown interests, and the interests of settlement; Maori interests were given little weight. Thus, Wilson ‘strongly recommended that the government *not* build [the proposed road] until it had acquired all the valley land’.³⁰¹ Nor would he value other lands that Maori owners asked about at Ruatahuna, Te Whaiti, and Ruatoki, since he did not think the time was right for starting purchase in those blocks:

I have an idea that if the Government acquire isolated blocks within the Rohe-potae in odd pieces here and there, and as the Natives will only sell until they acquire sufficient money for their present requirements, and also for certain, great pressure will be brought to bear on the Government to start constructing roads and organising a settlement scheme. This would be a big mistake, as they would have to construct roads through large areas of Native land enhancing its value, and later would have to pay an increased price for the same land, made more valuable by our own roads. . . . Rua is the prime mover in selling the land under offer. His object is a most transparent one. He wants two things, a little ready money, and a road from Waimana to Mangapohuta [*sic*], and if the Government act up to what he expects they will have to construct 30 miles of road to give access to 34,000 acres, while if the whole valley was acquired the same length of road would give access to 90,000 acres.

So Wilson recommended to Maori that they sell all the land along the road up the Waimana Valley to Maungapohatu if they wanted a better price – given the cost of roading. He estimated values for the various blocks (which we discuss further below), stating that he thought ‘this land will be rushed at 40/- per acre including roading’, and that the Waimana Valley was ‘promising grazing and sheep country, while some parts will do for dairying’. He then proposed:

296. Edwards, ‘The Urewera District Native Reserve Act 1895, Part 3’ (doc D7(b)), p 113. Edwards noted (pp 112–113) that Numia Kereru’s report of the Committee meeting records the proposals were considered at a stated price per acre for each block. The report was, however, written five months after the meeting and, therefore, ‘Either preliminary valuations were offered and later confirmed; or the prices were noted in the November report because by then they were known and had been accepted’.

297. Binney, ‘Encircled Lands, Part 2’ (doc A15), pp 422–424, 428

298. Lands and Survey telegram of instructions to Wilson, 1 June 1910 (Binney, ‘Encircled Lands, Part 2’ (doc A15), p 428)

299. Binney, ‘Encircled Lands, Part 2’ (doc A15), pp 430–431

300. A copy of the plan can be found in Binney, ‘Encircled Lands, Part 2’ (doc A15), p 429.

301. Binney, ‘Encircled Lands, Part 2’ (doc A15), p 430

Block name	Settlement name	Size
Otara	Hiakita's Taiope	150 acres
Paraoanui North	Omuruwaka	100 acres on one side of the river, 160 acres on the other
Omahuru	Ureroa	150 acres
Tauwhare–Manuka	Tauwhare–Manuka	200 acres
Tuaranga	Tawhana	300 acres on one side of the river, 100 acres on the other
Waikarewhenua	Taurawharona	100 acres

Table 13.1: Settlements as shown on Andrew Wilson's plan

That the Government start purchasing all the land which will be offered in the Waimana Valley. That Chief [Numia] Kereru be advised as to their intention. That the meeting he wants [to] be held be arranged for, which the Hon Mr Ngata should be asked to attend, and I think I am safe in saying most of the Valley will be disposed of to the Crown.³⁰²

But Wilson thought speed was of the essence, 'while the Natives are in the humour to sell.'³⁰³

In an attached plan, Wilson showed 'old settlements' which Maori wanted set aside from sale, though he claimed they had also given the Government 'full power over the land they reserve with respect to roads.' The settlements as shown on Wilson's plan are listed in table 13.1. Edwards noted that each of the settlements was located around the line of the proposed road.³⁰⁴

Wilson also reported separately to Ngata on 30 June 1910, reiterating his view of Rua's motives, and outlining his explanation to the owners that if they sold all their lands in the Waimana watershed, except for their settlement, 'the Government could afford to pay a better price, and on those principles I put from 12/- to 20/- per acre according to position & quality.'³⁰⁵

Wilson was thus aware that Maori owners were hoping to sell according to their own strategy, and for their own purposes. He aimed instead to persuade them to treble their offer of land in the Waimana Valley so that the Crown's proposed road would serve Crown land, leaving only small areas adequate for subsistence around Maori settlements.

302. Andrew Wilson to chief surveyor, 30 June 1910 (Binney, supporting papers to 'Encircled Lands, Part 2' (doc A15(a)), p 73)

303. Ibid

304. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 115

305. Wilson to Ngata, 30 June 1910, Wilson's outwards letterbook, qms-2260, Alexander Turnbull Library; Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 116

13.7.3.1 Rua's and the General Committee's offers to sell land, 1910

As a result of Wilson's arrival in the district, offers for sale of land accelerated. In 1908–09, the focus was on leasing ('cessions' were referred to, which evidently were leases); the purpose of which was to discharge the survey debts and other Urewera commission costs that Ngata had wrongly raised as an issue. In June 1909, the General Committee confirmed 'cessions' in 18 blocks, ranging from 500 acres to 4,000 acres, plus 10,000 acres in Parekohe block.³⁰⁶ By 1910, things were different. Rua had invited the General Committee to meet at Te Waiiti on 20 June to discuss matters relating to Waikaremoana, Te Whaiti, Ruatoki 2 and 3, and, as Numia Kereru put it in his report to Ngata, 'that portion of Tauranga and Maungapohatu which was sold'.³⁰⁷ Though the minutes do not clarify all the discussions at the meeting, proposals were put for the Maungapohatu, Ruatahuna, and Te Whaiti blocks which involved setting aside portions of the land for Maori occupation and farming, and offering further land for lease (in addition to the portion already offered for sale). Rua and his people, Numia reported, handed over 1,000 acres of the Maungapohatu Block for lease and 1,000 acres for farming, at the southern end of the block.³⁰⁸ In one block, Te Whaiti, it was proposed to offer 6,000 acres for sale to the Crown.³⁰⁹ But other blocks were in the offing too. Numia Kereru reported that he had met Wilson, who 'desires that portions of Parekohe, Mahuru-Paraoanui South, Te Wharemanuka, and Waikarewhenua should be sold'. Numia had received a letter from Rua agreeing to the sale.³¹⁰ Edwards concluded – we think rightly – that Wilson and Rua must already have discussed the sale, which meant that 'by now Rua was orchestrating his sales strategy directly through Ngata and Wilson, as opposed to the General Committee'.³¹¹ Numia advised that a meeting would be held at Waimana in late August to discuss further proposed sales and leases.³¹²

Rua then jumped the gun. Before the scheduled meeting at the end of August, he travelled to Wellington and, on 17 August, met with Carroll and Ngata and 'offered his interests and those of his followers in six other blocks: Ruatoki 1, 2, and 3; Waipotiki; Karioi; and Whaitiripapa (mostly land at or near the northern end of the Rohe Potae)'. He asked for an advance of £10 for each owner.³¹³ On 19 August, Carroll instructed Ngata to 'arrange with Rua' what he wanted, 'and we can authorise same'.³¹⁴ Rua visited Ngata on 22 August to confirm the offer; cash advances were authorised by Carroll under the authority of the Native Land

306. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp 88–89

307. Numia Kereru to Ngata, 28 June 1910 (Binney, supporting papers to 'Encircled Lands, Part 2' (doc A15(a)), pp 77–78)

308. *Ibid*

309. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp 116–117

310. *Ibid*, p 117

311. *Ibid*

312. Numia Kereru to Ngata, 28 June 1910 (Binney, 'Encircled Lands, Part 2' (doc A15), pp 431–432)

313. Binney, 'Encircled Lands, Part 2' (doc A15), pp 432–433

314. Carroll marginal note, no date, on Wilson telegram to Under-Secretary for Lands, 19 August 1910 (Binney, 'Encircled Lands, Part 2' (doc A15), p 433; Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 118)

Purchase Board; and the money was paid that same day.³¹⁵ Binney noted that the fares and expenses of Rua and his party of 11 in Wellington were paid for by the Government.³¹⁶ The Native Land Purchase Board later authorised Ngata to purchase the six blocks on 12 September 1910.³¹⁷

The General Committee had not given its consent to these sales, though Edwards suggests that the Board may have thought it had. If so, she was not sure why, as Ngata was aware a week before the meeting that the General Committee had not consented to the sale of portions of, or shares in, these blocks.³¹⁸ She noted that '[t]he extant correspondence sheds no light on what role Carroll envisaged for the General Committee in respect of the proposed sale, when he chose to deal directly with Rua in Wellington'. Her view was that while there might be 'no impropriety in Carroll meeting with Rua in Wellington in August 1910 and discussing potential sales', what did present problems was 'the making of advances to individuals before certain matters were settled and formalised'. Those problems included:

- ▶ the interests of the individuals had not been located on the ground;
- ▶ the General Committee's formal approval of the terms had not been obtained;
- ▶ a process for identifying the interests on the ground had not been settled;
- ▶ the method of advance payment was payment for shares; and
- ▶ the Crown was in effect buying undivided shares, not a specified portion of the blocks in question.³¹⁹

These are crucial points. They draw attention to the fact that from the outset the Crown approach to purchase in the UDNR was wrong-headed. The problems Edwards draws attention to are evident not just in the Crown's response to Rua's offers in Wellington, but more generally. As we have seen, it was not clear whether the General Committee had in fact consented to the sale of the four blocks considered in May 1910. Edwards pointed out also that it is not clear with any of these offers, or later ones, whether 'portions of blocks, or shares' were being offered; the sources, she says, 'are frustratingly imprecise on this question.'³²⁰ We think it is clear that the Crown's processes for purchase were ill-considered. Ultimately, this reflected the fact that despite the unique role for the General Committee laid out in the UDNR Act, this did not prompt any assessment of how purchase from the General Committee should in practice be effected. (We consider this further in the next section.) Instead, there was an opportunistic falling back on earlier practices of purchasing individual shares. This is the more surprising, given that the Liberal Government had just passed the Native Land Act 1909, with its provision for meetings of assembled owners – the purpose of which, according to the Native Minister, was to revive the old runanga system, so that owners could again

315. Ngata to Carroll, 22 August 1910, MA-MLP 1 1910/28/1, pt 1, Archives New Zealand, Wellington; Binney, 'Encircled Lands, Part 2' (doc A15), p 433

316. Binney, 'Encircled Lands, Part 2' (doc A15), p 433

317. *Ibid*, p 435

318. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 121

319. *Ibid*, pp 118–119

320. *Ibid*, p 122

make decisions about their land collectively.³²¹ But in the UDNR, the retrograde step of purchasing individual shares – with or without the consent of the General Committee – apparently seemed an obvious solution, given that the Urewera commission had not located hapu areas on the ground but had simply drawn up comprehensive lists of individual shares. This doubtless explains why proposals before the General Committee were couched in imprecise terms, and why Committee minutes are silent on the relationship between groups of owners willing to sell and precise portions of land offered for sale: sellers were not sure what they could offer, and the Committee was not sure what it was agreeing to.

Edwards suggested the General Committee might have considered it was consenting to ‘the blocks in question being opened for purchasing and they were guided by the owners’ indication that they wished to sell’.³²² In other words, the Committee had a broad idea which part of a block owners’ interests were located in. They might thus have thought of partitioning out those owners’ interests. We know that in the case of the Ruatoki offer (which Rua must have known was a challenge that would outrage Numia Kereru), the solution sought was partition. Early in September, Wilson reported to the Department of Lands:

Local [Ruatoki] owners object to valuation being made. Kereru & other chiefs advise that court must partition block first and define situation of sellers interests and that whole thing can be discussed at meeting held on twelfth [at Tanatana] local natives consider Maungapohatu natives have broken faith in selling without first consulting General Committee in terms of clause 7 of Urewera amended land act. I am leaving the Valuation over until after twelfth. So as not to cause friction.³²³

The consolidation commissioners later gave their own view of the purchasing procedure adopted, stating that the intention was for the Crown to partition out the interests of individual owners who gave their written consent to sell, and received payment; at which point the General Committee would affirm the sale by resolution ‘and thus comply with the law’.³²⁴ But such a procedure would have been quite contrary to the UDNR Act, and it does not appear that any attempt was made to implement it.³²⁵

We are certain that both owners and the General Committee would have wanted to identify defined portions of blocks for sale – or for lease. We agree with Edwards on that point.³²⁶ We note also that Ngata told Parliament during the debate on the UDNR Amendment Bill in 1909 that the proposals set out in the Bill ‘are in the direction of obtaining from the whole of the owners of a block specified

321. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 688

322. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 123

323. Wilson to Under-Secretary for Lands, 6 September 1910 (Binney, ‘Encircled Lands, Part 2’ (doc A15), p 435)

324. ‘Report on the Proposed Urewera Lands Consolidation Scheme’, 31 October 1921, AJHR, 1921–22, G-7, p 2

325. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 123

326. *Ibid*, p 122

portions of the block.³²⁷ In discussions between Te Urewera leaders and Wilson about sales, ‘portions’ of blocks had also been specified and, as we noted above, the land use proposals put before the General Committee, for lease or settlement of land in a few blocks, and the 1909 ‘cession’ proposals also referred to precise acreages of the blocks.³²⁸ But it soon became apparent that this was not the basis on which Crown purchasing would proceed.

In the wake of Rua’s offers to sell, Ngata attended the September meeting of the General Committee at Tanatana in the Waimana Valley. By now the Native Land Purchase Board had authorised payment of advances to vendors of a number of blocks valued by Wilson, and the committee agreed to the sale in principle of four blocks: Omahuru (6,600 acres) at £1 an acre; Paraoanui South (5,510 acres) at 17 shillings an acre (corrected later to the Government’s valuation of 17s 6d); Waikarewhenua (12,500 acres) at 12 shillings an acre; and Tauwharemanuka (28,860 acres) at 15 shillings an acre. Mika Te Tawhao from Waiohau moved to sell each of the four blocks, and Rua seconded three of the four motions. The motion to sell the Tauwharemanuka block was seconded by Te Whetu Te Paerata. In the event, the Tauwharemanuka block would not be bought by the Crown in 1910.³²⁹ The blocks offered for sale by the General Committee in September, as Binney observed, were not the same as the six blocks offered by Rua in Wellington in August. She noted that the minutes for the meeting of 13 September 1910 are ‘utterly silent’ about the six other blocks offered by Rua – a silence she categorised as ‘the absence of permission.’³³⁰ (The General Committee would, however, agree at its October meeting – after the Board had approved purchasing there – to the sale of Karioi block.³³¹)

Thus, the General Committee (under the guidance of its chairman, Numia Kereru), had embarked on sales, abandoning its attempt to offer leases in the face of pressure from both the Government and from Rua. Numia had become involved in selling, in Binney’s view, ‘not only because he could not now stop the process but because he also presumed that the government would build the promised arterial roads into the Urewera from the eastern Bay of Plenty.’³³²

Purchase on the ground now began with speed. On 17 September, it was reported in the *Poverty Bay Herald* that Ngata had ‘successfully completed negotiations with the native owners for the purchase of 60,000 acres, comprising the basin of the Tauranga River, seven miles inland from Waimana settlement. The purchase operations are now in progress.’³³³ The day after the 13 September meeting, £30,000 was set aside by the Government under the Native Land Act for the

327. Ngata, 21 December 1909, NZPD, vol 148, p 1387

328. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), pp 122–123

329. Binney, ‘Encircled Lands, Part 2’ (doc A15), pp 434–435

330. *Ibid*, p 435

331. *Ibid*, p 437

332. *Ibid*, p 431

333. *Poverty Bay Herald*, 17 September 1910, p 5 (Binney, ‘Encircled Lands, Part 2’ (doc A15), p 436)

purpose of buying Te Urewera land.³³⁴ The Lands Department's chief accountant and native land purchase officer, RA Paterson, immediately began purchasing.³³⁵ And his own account makes it clear that he was buying from individual owners. In an interview published in the *Poverty Bay Herald* on 30 September 1910, Paterson described the process by which he had gone about purchasing interests in the blocks over the previous 'eight days':

'we have put through no less than five hundred people. This meant the interpretation of nine deeds to each person, each time . . . As an instance I may say that we put through as many as eighty-five people in one day . . . and up there, we managed to put them through very fast indeed. To tell you the truth,' continued Mr Paterson with a smile, 'we were in a hurry to get out of it. Maori customs, Maori tucker, and Maori bedding didn't quite appeal to us. Of course, remember the Natives were very kind to us, and did their best to make us as comfortable as possible . . . [W]e will be finished in probably two months. Later on we'll be going into land purchases in the Whakatane Valley, and Ruatoki. We are practically in that now,' he added.³³⁶

By 25 October 1910, Paterson reported that he had bought 27,070 acres in seven blocks and had already spent £20,911, that is, over two-thirds of his budget, half of it on the Tauranga block: 'The amount was distributed over about 800 people. The largest payment would be about £250 covering seven blocks [that is, to an owner with interests in seven blocks], but that was exceptional.' Paterson evidently anticipated that this land would be opened for European settlement in a short time. He stated that the Parekohe and Tauwharemanuka blocks were still 'to be dealt with,'³³⁷ though he would in fact purchase only a few shares in the Parekohe block (approved for sale and lease by the General Committee at its meeting of 26 October) and none in the Tauwharemanuka block.³³⁸

Paterson (or his associate William Pitt) continued to buy shares, returning to the district in early November 1910, and a purchasing officer was still there in early December.³³⁹ But at that point, Ngata wrote to Numia that further selling in all blocks that had been valued from Parekohe to Maungapohatu would be deferred. The Crown, Binney suggested, had run out of money.³⁴⁰ Numia conveyed the gist of Ngata's letter to the General Committee at its meeting of 12 December at

334. Binney, 'Encircled Lands, Part 2' (doc A15), p 438

335. Ibid

336. *Poverty Bay Herald*, 30 September 1910, p 5 (Binney, 'Encircled Lands, Part 2' (doc A15), pp 438–439)

337. Paterson to Ngata, 25 October 1910 (Paula Berghan, comp, supporting papers to 'Block Research Narratives of the Urewera, 1870–1930', 18 vols, various dates (doc A86(e)), vol 5, p 1718); Binney, 'Encircled Lands, Part 2' (doc A15), p 439

338. Binney, 'Encircled Lands, Part 2' (doc A15), pp 436–437, 448

339. Binney cited 'Memos to this effect', 3 November 1910, 7 December 1910 (Binney, 'Encircled Lands, Part 2' (doc A15), p 449).

340. Binney, 'Encircled Lands, Part 2' (doc A15), p 439

Waikirikiri Marae, Ruatoki. Rua was not present. Numia moved in light of this that further motions for land sales not be put, which led to ‘uproar’ – some members opposing and some agreeing with his motion – so that he tried unsuccessfully to withdraw it. It was eventually decided – unanimously – that all the motions should be abandoned.³⁴¹ The General Committee did not meet again until March 1914.

On 31 March 1912, the Government formally suspended purchasing in Te Urewera due to the appeals before the Native Appellate Court.³⁴² Some shares were bought in 1911, including those of one owner in the Parekohe block, and of three owners in Te Whaiti block who were each paid for the equivalent of 450 acres by the Native Land Purchase Board in January 1911. The arrangement had been authorised in November 1910, on Ngata’s personal instruction to Carroll; the sale had not been authorised by the General Committee.³⁴³ Binney argued that: ‘the General Committee lapsed for four years because it was no longer needed by the government for land alienation. From the viewpoint of the government it had no other function.’³⁴⁴ Our view, as we have stated, is that the committees were set up years later than they should have been – and that this obstacle to their success was compounded by the Crown’s sudden interest only when it appeared that they were necessary to the Crown’s agenda of opening Te Urewera to prospecting and settlement. Its calculated intervention in the operation of the General Committee at that point to ensure that it focused on land alienation (when no provision had been made for it to attempt land development) left the Committee in disarray.

A summary of all Crown purchasing in the UDNR before 31 March 1912, compiled from a number of sources, is set out in table 13.2.³⁴⁵

341. Binney, ‘Encircled Lands, Part 2’ (doc A15), pp 437–438; Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 125

342. See Binney, ‘Encircled Lands, Part 2’ (doc A15), p 452; Knight, Carr, and Balneavis, ‘Report on Proposed Urewera Lands Consolidation Scheme’, 31 October 1921, AJHR, 1921–22, G-7, p 3.

343. Binney, ‘Encircled Lands, Part 2’ (doc A15), p 453

344. *Ibid*, p 441

345. *Ibid*, p 449, tbl 4, see also pp 450–451. Binney’s source was a summary compiled in June 1915, sent to WH Bowler (Paterson’s successor) by the Under-Secretary for the Native Department, which had been copied in SKL Campbell, comp, supporting papers to ‘Land Alienation, Consolidation and Development in the Urewera, 1912–1950’, 3 vols, various dates (doc A55(b)), vol 2, pp 17–18. This summary included amounts paid and rates, in addition to the figures compiled by Bowler showing the number of shares purchased in his 14 September 1914 memorandum to the Under-Secretary for the Native Department, where he first collated the information: Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(e)), pp 1622–1623. For details of the equivalent acres and General Committee consent, see Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), pp 126–127, tbl 21. Edwards cited Under-Secretary for Lands to Under-Secretary, Native Department, 23 December 1914. Binney noted a number of discrepancies in the June summary – for instance, the prices paid per share (or acre) do not calculate to the total sum paid for each block. There was also some confusion in the sources as to whether prices paid were calculated per share or per acre. The prices paid for the first seven blocks were calculated by acre (her source for this was a map dated August 1915), but Binney stated that ‘advances’ paid to Rua and others on the last six weeks were paid for as shares. A further summary, compiled in December 1914, calculated the total paid at £31,403 19s 8d, plus an additional £366 3s, slightly higher than the total given in table 13.2 (which is sourced from the summary of 8 June 1915).

13.7.3.2 *The resumption of Crown purchasing in the UDNR, 1914–21 – direct purchase from individual owners*

In November 1914, the Native Land Purchase Board, which conducted purchasing on behalf of the Crown, and included the Minister among its members, resolved to resume purchasing in the UDNR: ‘That action be taken to acquire individual interests at prices fixed by District Surveyor for Crown Lands Department.’³⁴⁶ In other words, it would ‘purchase direct from individual owners without reference to the General Committee.’³⁴⁷

The policy of Crown purchase from individual Maori owners – as in the latter part of the nineteenth century – had been provided for in the Native Land Amendment Act 1913, which embodied Herries’ determination to expand the Crown’s powers of purchase generally. He had not approved of the Native Land Act 1909 and the channelling of Crown (and private) purchase through ‘meetings of assembled owners’ and Maori Land Boards, which had to approve owners’ decisions.³⁴⁸ He thought it was a proper role for the Crown to buy Maori land and control the pace of settlement, and he tended to label private buyers ‘speculators’. He had never approved of the special status of the Urewera reserve. Herries indicated in Parliament in December 1909 that it had been intended that the UDNR Act 1896 should be repealed under the Native Land Act 1909 – a claim borne out by the first draft, in which the Act and the 1900 amendment Act are listed in the schedule of Acts to be repealed. Herries was a member of the Native Affairs Committee at the time, and it is possible he sought the repeal himself.³⁴⁹ But, by 1914, he had come to see the advantages in the UDNR Act: it gave the Crown a monopoly to purchase in reserve blocks. As a ‘matter of general policy’, he informed the Attorney-General that he believed ‘it would be best for the Crown to purchase what it requires before the [UDNR Act 1896] is repealed.’³⁵⁰

In the UDNR, of course, purchasing from individual owners was not supposed to be possible. The Native Land Purchase Board was aware of this, as is evident in the instructions of the Under-Secretary for Lands to Land Purchase Officer Bowler in December 1914: ‘It will require to be left to future legislation to validate these purchases, the present state of the law plainly requiring that all purchases should be made through the General Committee of the Urewera natives.’³⁵¹

The Crown acknowledged in its submissions that the board knew at that time that ‘the law plainly required them to contract with the General Committee and no other party’. Moreover, the board intended to start buying anyway, without seeking legislative remedy. Counsel thought this ‘strange’ when the UDNR was

346. Native Land Purchase Board minutes, 7 November 1914 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 140)

347. Knight, Carr, and Balneavis, ‘Report on Proposed Urewera Lands Consolidation Scheme’, AJHR, 1921, G-7, p 2

348. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 685–687

349. Miles, *Te Urewera* (doc A11), p 354; Herries, 21 December 1909, NZPD, vol 148, p 1387

350. William Herries to Attorney-General, 22 March 1915 (Miles, *Te Urewera* (doc A11), p 362)

351. Under-Secretary for Lands to Bowler, 22 December 1914 (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)(i)), p 780)

TE UREWERA

13-7-3.1

Block	Area (acres)	Shares		Equivalent acres
		Total	Acquired	
Waikarewhenua	12,400	5,029	2,215 ⁵ / ₄₀	5,515
Tauranga	39,020*	4,558	2,536 ⁶ / ₆	21,886
Maungapohatu	28,462	6,238	823 ¹ / ₁₀	3,588
Paraoanui North	3,300	918	474 ¹ / ₂	1,754
Paraoanui South	5,410	1,733	1,014 ⁷ / ₁₂	3,225
Otara	2,530	2,660	1,635 ⁹ / ₂₆	1,651
Omahuru	6,450	2,377	1,369 ³ / ₂	3,806
Parekohe	20,960	6,655	12 [†]	?
Waipotiki	8,200	4,126	31 [†]	?
Karioi	2,428	2,972	30 [†]	?
Ruatoki 1	8,735	4,239	65 [†]	?
Ruatoki 2	5,910	4,512	60 [†]	?
Ruatoki 3	6,800	4,517	60 [†]	?
Totals	150,605	50,534	10,324 [‡]	41,425

* Plus 300 acres in reserves

† Advances

‡ Excluding fractions

Table 13.2: Crown purchasing in the UDNR before 31 March 1912

Amount paid			Rate				Date of General Committee consent
£	s	d	Per acre		Per share		
			s	d	s	d	
3,181	5	8	12	-	-	-	13 September 1910
16,159	4	9	15	-	-	-	27 May 1910
2,258	12	-	12	-	-	-	27 May 1910
1,491	-	8	17	6	-	-	27 May 1910
2,770	9	7	17	6	-	-	13 September 1910
1,597	2	-	20	-	-	-	27 May 1910
3,716	6	4	20	-	-	-	13 September 1910
35	-	-	Not stated		Not stated		Not sighted
23	-	-	-	-	14	6	Not sighted
9	-	-	-	-	6	-	16 October 1910 [§]
49	10	-	-	-	11	-	Not sighted
29	2	6	-	-	9	6	Not sighted
					9	9	
32	12	6	15	-	-	-	Not sighted
31,353	6	-					

§ Value unknown

expressly excluded from the 1913 Native Land Amendment Act's provisions for purchase from individual owners.³⁵²

It is even more remarkable, in our view, when both the Attorney-General and the Solicitor-General were involved in consideration of this issue. The Attorney-General, A L Herdman, went to Te Whaiti on 3 March 1915 and met Maori owners. Among the matters raised were restrictions on their dealing with private companies, particularly timber companies, and the owners sought further meetings. It was this discussion which prompted the Attorney-General to seek advice on the status of the earlier purchases. Edwards drew our attention to the fact that Herries also responded to the matters raised by the Attorney-General, and sent a full briefing paper to the Prime Minister highlighting the anomalous status of the Te Urewera purchases – but he was preoccupied by the risk to the Crown, and focused particularly on what he called the inadequacy of sketch surveys which meant that exact block acreages were not known.³⁵³ He referred to advice from the chief surveyor that, because of this, the Crown should pay only a proportion of purchase money until it had completed its purchases and a 'ring survey'³⁵⁴ could be made of the interests it had acquired. An attached summary outlined the history of the UDNR and Crown purchase in it. Edwards pointed out that it would have alerted the Attorney-General to the fact that the General Committee had power to sell to the Crown, but it contained no mention that the local government structures (specifically the General Committee) had been established, nor of the fact that the committee had been the contracting party for purchases already made.³⁵⁵ (It had not, in fact, been the contracting party; though it had been instrumental in some of the purchases.)

The Solicitor-General's advice to the Attorney-General on alienation powers under the amended UDNR Act was given on 25 March 1915. The Solicitor-General did refer to the

exceptional provisions . . . made . . . for investigating titles to this area of Native Land and for establishing in the district a form of local government or control by the Natives themselves through the agency of a general committee and local committees for the different blocks.

The Solicitor-General noted that, by section 6 of the amending Act of 1909, the reserve was inalienable except as provided by the UDNR Act 1896 and its amendments, and went on to list forms of alienation which were permitted by that

352. Crown counsel, closing submissions (doc N20), topics 14–16, p 77

353. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp 140–141

354. Chief surveyor to chief judge, Native Land Court, 29 July 1914 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 860); Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp 134, 141

355. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp 141–142

legislation.³⁵⁶ Of most interest is his advice that section 109 of the Native Land Amendment Act 1913 empowered the Crown to purchase from individual owners even in the UDNR:

Finally, by Section 109 of the Native Land Amendment Act 1913 power has been conferred upon the Crown to purchase or lease any Native Land whatever, notwithstanding anything to the contrary contained in any other Act. When so acquiring land the Crown may negotiate either directly with individual owners or deal with the assembled owners under the provision in that behalf in the Native Land Act.

The Crown in submissions to us asserted that the Solicitor-General's statement was erroneous.³⁵⁷ But purchasing began again in mid-1915 in blocks opened to purchase earlier, on the basis of his opinion. Not until some time later, counsel said, was it realised that the UDNR was not subject to section 109 of the Native Land Amendment Act 1913. Edwards suggested that there are two possible dates for official recognition of the mistake. It might be August 1915 (the date Crown counsel favoured), when a minute of Native Under-Secretary Fisher (on the issue of landless provisions) could be interpreted to mean that he thought the provisions of the Act did not apply in the UDNR.³⁵⁸ We were not convinced, however, that the minute need be read in this way, or that it dated from August.³⁵⁹ We considered a letter Fisher wrote to the Under-Secretary for Lands on 12 August 1915 (quoted by Edwards), in which he indicated that he thought the provisions did apply in the reserve, a more reliable guide to his views at that time. The alternative date is June 1916, when in Edwards' view the 'most explicit' statement was made by Fisher, pointing out that the acquisition of interests would need to be validated by legislation.³⁶⁰ We take it, therefore, that officials may not have realised until June 1916 (when Fisher said a fix was needed) that the Act applied, and that they then acted quickly to amend the legislation. But for some 15 months, until August 1916, the Crown bought illegally in reserve blocks on the basis of the mistaken advice of the Solicitor-General.

356. Solicitor-General to Attorney-General, 29 March 1915 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), pp17–19); Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p143

357. Crown counsel, closing submissions (doc N20), topics 14–16, p77

358. *Ibid*

359. Fisher, minute, no date, on Bowler to Native Under-Secretary, 16 July 1915 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p1089)

360. Fisher to Under-Secretary for Lands, 12 August 1915 (Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp195–196); Fisher to Under-Secretary for Lands, 19 June 1916 (Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p145). Edwards, in response to Tribunal questions about this issue, revised her view of the period during which officials operated under the flawed advice of the Solicitor-General: Cecilia Edwards, answers to questions of clarification from the Waitangi Tribunal on 'The Urewera District Native Reserve Act 1896, Part 3', 26 April 2005 (doc L33), pp5, 10.

In August 1916, a ‘legislative fix’ was applied to validate all prior and prospective purchases.³⁶¹ Section 4 of the Native Land Amendment and Native Land Claims Adjustment Act 1916 provided that:

Notwithstanding anything to the contrary in the Urewera District Native Reserve Act, 1896, or in any other Act, the Crown shall be deemed to have and at all times to have had power to purchase the interest of any individual owner in the land comprised in the First Schedule to the aforesaid Act, and every owner shall be deemed to have and to have had power to sell his interest to the Crown, but to no other person.

In Parliament, Herries explained the necessity for this amendment as follows:

Clause 4 enables the Crown to purchase the Urewera lands. We have been purchasing for many years, but there is some doubt as to whether under the original Urewera Act our purchases are legal. This is to validate the purchases and to enact that in future the Crown purchases shall be considered as valid.³⁶²

There was nothing wrong with the purchases, he underlined – but there was one problem:

the original Act provided that a general committee should be set up and that this committee should have power to sell to the Crown. The general committee has never been set up, and we are making provision to validate the purchases that we have made direct from the Natives.³⁶³

Was Herries misleading the House when he made the remarkable claim that the General Committee had never been set up? Edwards thought not, because Herries was still making the assertion in internal correspondence a year later. He might have forgotten about the committee, she suggested, since he had seen only one report since he had been Minister which referred to the General Committee, relaying its consent for the grant of a timber license for Te Whaiti block (see later discussion). He might have relied on the briefing paper to the Prime Minister, which said nothing about the General Committee, rather than on the files. And T W Fisher, his Under-Secretary, was on paid retirement leave at the time the Bill was introduced and passed.³⁶⁴ By September 1916, C B Jordan, new to the job, was acting under-secretary.³⁶⁵

All of which sounds plausible. But, on the same day, Ngata also spoke to the Bill, and gave it his support: ‘so far as the “washing-up” clauses of this Bill are concerned,’ he said, ‘I have found them, by investigation in the Native Affairs

361. Crown counsel, closing submissions (doc N20), topics 14–16, p 77

362. William Herries, 3 August 1916, NZPD, vol 177, p 741

363. Ibid

364. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), pp 146–147

365. Ibid, p 147

Committee, to be satisfactory, and, as far as the evidence goes, to be above suspicion.³⁶⁶ Why did he say nothing about the General Committee, in the establishment and operations of which he had played such a key role? Probably there was more than one reason. At precisely that time, Rua Kenana was on trial in Auckland following his arrest at Maungapohatu in April by an armed police expedition. He was charged with offences including resisting arrest, using seditious language, and resisting arrest on an earlier occasion when summonsed on charges relating to the illicit sale of alcohol.³⁶⁷ Doubtless Ngata did not wish to risk drawing attention to the fact that Rua had been a member of the General Committee, and that he himself had been responsible for that. But his silence on the past history of the General Committee – and, indeed, on its role in previous land transactions – must be seen as contributing to the Government’s easy justification of its retrospective validation of the illegal purchasing carried out in the UDNR.

We might also suggest that Ngata – and perhaps Herries too – was eager to avoid questions about the Government’s role in the purchases of 1910–11, as well as those during 1915–16. Its role was, in fact, indefensible. The law required it to negotiate only with the General Committee for ‘any portion’ of land within the UDNR (UDNR Act, section 21); and, when it did purchase ‘any land . . . from the General Committee . . . the contract of purchase shall be carried into effect by a Proclamation in the same manner as in the case of a purchase from the assembled owners under Part XIX of the Native Land Act, 1909.’³⁶⁸ (We refer below to the relevant provisions of part XIX.) The Crown, as we have seen, acknowledged that: ‘The [Native Land Purchase] Board knew at that time [1914] that the law plainly required them to contract with the General Committee and no other party.’³⁶⁹ The Crown, in other words, could not as a matter of law contract with individual owners. Such a contract, though it bore all their signatures, was of no effect. The consent of the General Committee (which was given only to the sale of eight blocks, in 1910) was not enough. The Crown’s failure to issue a proclamation in accordance with section 13 of the UDNR Amendment Act 1909, which counsel acknowledged as a further omission on its part, is doubtless explained by the fact that the Crown could not point to any contract with the General Committee as the basis for such a proclamation.

This concession by Crown counsel highlights the Crown’s failure to take steps to ensure that the General Committee could exercise its powers under the law, should it wish to – that is, to contract to sell ‘any portion’ of land to the Crown. The Committee had been left, in fact, in a legal limbo. It was a unique tribal body empowered to alienate; by agreement between Te Urewera leaders and the Crown it was the sole conduit for alienation. But neither in the UDNR Act nor in

366. Ngata, 3 August 1916, NZPD, vol 177, p 746

367. Judith Binney, ‘Rua Kenana Hepetipa’, in 1901–1920, vol 3 of *The New Zealand Dictionary of Biography*, ed Claudia Orange (Auckland: Auckland University Press and the Department of Internal Affairs, 1996), p 446. We consider claims made in this inquiry in relation to the arrest and trial of Rua Kenana in a later chapter.

368. Urewera District Native Reserve Amendment Act 1909, s 13

369. Crown counsel, closing submissions (doc N20), topics 14–16, p 77

mainstream native land legislation was provision made for legal tribal titles. The individualisation of title by the land court in accordance with native land legislation had left Maori owners everywhere unable to collectively manage their lands, or to transfer title collectively to purchasers or lessees. The Crown had eventually recognised this, and provided in 1894 for owners to incorporate, and in 1900 for Maori land councils (superseded in 1905 by Maori land boards) to act for Maori owners. Under the Native Land Act 1909 a Maori land board still had to act as the owners' agent in any legal transaction (see chapter 10).³⁷⁰ Despite these Crown attempts to solve the problem it had created for Maori owners elsewhere, it took no steps during the same period to empower the General Committee to transact sales or leases.

This was, in our view, a startling omission, as the General Committee's role in alienations was the key mechanism in the UDNR Act 1896 designed to protect owners. The Crown has admitted some failure on its part to provide regulations under the UDNR Act, but it would seem that what was needed here was legislative change. Given the number of amendments made to the UDNR Act, we cannot see that this would have been a problem.

We have no evidence that the Crown turned its mind to this crucial matter. It failed to do so when it received the reports and title orders of the Urewera commission, showing that hapu titles had not been awarded. The Crown further failed to consider how to give effect to the powers accorded the General Committee in 1909 when it amended the UDNR Act (and provided for the General Committee to consent to vesting of land by the Governor in Council in a Maori land board for sale or lease by private purchasers – in effect, a recognition of the inability of the Committee to sell or lease itself). The Crown failed again in 1914, when it was prepared to acknowledge that contracts with the General Committee were necessary for legal alienation, and it failed also in 1916, when it simply validated its earlier dealing with individual owners and provided also that individuals had power to sell their interests to the Crown from that time on, despite any provisions to the contrary in the UDNR Act or other Acts.³⁷¹

We are bemused by the Crown's limited concession that: 'All the sales in the period from 1910–1914 were therefore technically outside the provisions of the [UDNR] Act.' Therefore some 40,000 acres were illegally acquired during these years.³⁷² But that is not the full extent of it. The figure must be considerably higher – given the amount of purchasing that went on until the Act was amended in August 1916 – well over 100,000 acres. Bowler's figure as at May 1916 was 'over 100,000 acres' and to the end of 1916 was nearly 170,000 acres.³⁷³ We consider the

370. Native Land Court Act 1894, s122; Maori Land Administration Act 1900; Maori Land Settlement Act 1905

371. Native Land Amendment and Native Land Claims Adjustment Act 1916, s 4

372. Crown counsel, closing submissions (doc N20), topics 14–16, p 77

373. See respectively Steven Webster, 'The Urewera Consolidation Scheme: Confrontations between Tuhoë and the Crown, 1915–1925' (commissioned research report, Wellington: Waitangi Tribunal, 2004) (doc D8), pp 196–197 and Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), app 2, app 3, pp 243–246.

position was in fact that sales in the period before and after 1916 were ‘technically legal’. Those before were technically legal only because the Crown had retrospectively pardoned its earlier flouting of the law.

13.7.3.3 How did Crown purchasing operate between 1915 and 1921?

The bulk of the Crown’s purchasing in the reserve blocks from 1915 was carried out by Bowler. Initially, Bowler’s purchasing was confined to the blocks within which the Crown had already purchased interests: the Waikarewhenua, Tauranga, Maungapohatu, Paraoanui North, Paraoanui South, Otara, Te Whaiti, and Omahuru blocks. But, over the next few years, the Crown would extend its purchasing throughout the reserve, opening new blocks to purchase until nearly all were included in its programme. Bowler conducted a very systematic purchase campaign on the ground, designed to ensure that as few owner interests as possible escaped the Crown’s net. At the same time, the Crown took steps to enhance its position by revoking the land court’s jurisdiction to partition numbers of reserve blocks, because it came to see Maori owner applications for partition as a threat to its purchase programme. These various tactics, exercised in a district where there was widespread poverty, created a very uneven playing field.

Bowler alerted his superiors at the outset to difficulties that the Government might face securing the land it wanted for settlement. His first progress report to Under-Secretary Fisher, dated 13 June 1915, provides a useful insight into the seeming lack of any clear policy about how purchasing should be conducted within such an extensive region and also Bowler’s personal attitudes towards both his task and the peoples and lands of Te Urewera.³⁷⁴ Bowler was less than optimistic – despite the fact that he had been ‘rushed the whole time by Natives anxious to sell’ and that for the first week he ‘had to keep a man on the door to regulate the crowd, but [the man] was summarily discharged when I learnt he was accepting bribes for letting people in out of their turn.’³⁷⁵ While Bowler thought it would be possible to acquire ‘considerable’ areas within the district, he thought his task would be ‘greatly facilitated’ if either Herries or Maui Pomare could visit Te Urewera and encourage the people to sell, as ‘[s]everal of the Natives whom I saw expressed a desire to discuss matters with one of the Ministers before considering the question of any further sales.’³⁷⁶ Bowler added this had worked well when earlier purchases began, leading to ‘considerable interests’ being acquired.³⁷⁷ Bowler estimated that the UDNR was owned by more than 1,000 people, who, he claimed, ‘practically make no attempt to utilise it profitably, and are never likely to do so’. He was concerned that some owners would never sell, and that many individuals had interests in multiple blocks. At this early stage, he was already flagging what he saw as

374. *Ibid*, p154

375. Bowler to Native Under-Secretary, 4 July 1915, MA-MLP 1 1910/28/1, pt2, Archives New Zealand, Wellington

376. Maui Pomare, member of the House of Representatives for Western Maori, was a member of the Executive Council representing the native race at this time.

377. Bowler to Native Under-Secretary, 13 June 1915 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp19–21)

a looming problem for the Crown arising from its purchase of individual interests: How would the Crown separate out its interests from those of Maori, on the ground, and how could it fund settlement in a cost-effective manner if it had to cope with Maori-owned lands in the midst of its own blocks? He wrote to the Under-Secretary:

What appears to me to be the worst feature of the Urewera area, from a purchase and ultimate settlement view, is the fact that it comprises so many individual blocks. The same families and groups of families appear in block after block. Obviously some of the Natives will never sell, and the most that can be ultimately hoped for is, after the geographical location of the Crown and Native-owned areas has been determined by the Court, a kind of chequer-board district owned alternately by the Crown and by Natives. Many of the Natives will own scattered interests in many blocks, without any reasonable possibility of consolidation, and the Crown will be faced with the necessity of roading, at the expense of its own areas and of the ultimate settler, the whole district.³⁷⁸

In light of these concerns, Bowler proposed that the Crown compulsorily acquire the whole of the UDNR, leaving reservations for its people in one locality.³⁷⁹ That extraordinary proposal went no further – though, as we will see, Bowler was not the only official to suggest some form of compulsory acquisition – and Bowler continued to purchase individual undivided interests.

The Crown's short-term answer to the dilemma he had pointed to was to control the jurisdiction of the land court to partition. The UDNR Amendment Act 1909 – a major amending Act – empowered the court to exercise its jurisdiction over UDNR lands, but its powers in respect of the partitioning of land and the exchanging of interests could be exercised only if the consent of the Governor in Council were obtained (section 5). In other words, the Crown in effect secured control on a case-by-case basis over the land court's power to partition reserve blocks.

It is interesting that the 1909 legislation by which the Crown secured this power was passed in December; and that in June of that year the General Committee had drawn attention to the contentious matter of tribal and family subdivisions and had sought authorisation to inquire into and fix boundary issues on the basis of evidence before them. Numia Kereru wrote to Carroll that difficulties arose as the people considered the leasing and sale of their lands, and the setting aside of papakainga. People were anxious, he said, for the Committee to be able to make decisions.³⁸⁰ But Carroll referred the letter to Fisher, and Fisher at once recommended against empowering the committee 'to locate tribal and family boundaries'. He thought it best if 'the work of the committee should be confined to the

378. Bowler to Native Under-Secretary, 13 June 1915 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 21)

379. Ibid

380. Numia Kereru to Native Minister, 2 June 1909 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 657)

location of those areas which can be vested in the [District Maori Land] Board for purposes of settlement. The question of tribal and family boundaries could be dealt with later by the court 'on partition'.³⁸¹

Three points emerge from this correspondence. First, the request from the General Committee highlights the fact that the work of the Urewera commissions had not delivered the kinds of titles that were useful to the people – despite being empowered to partition blocks by the UDNR Act Amendment Act 1900. Its preoccupation with listing individual owners had left key issues unresolved. (Despite this, the offers to 'cede' land which they had recently made, as Edwards pointed out, were made because Ngata had told the leaders that they owed a considerable amount of money arising from survey and title investigation costs.³⁸²) Secondly, the committee's suggestion to take over and fill a useful role in setting boundaries – to assist the people themselves – was immediately quashed in Wellington. Thirdly, the Government thought the committee would be most usefully employed assisting the work of settlement, by vesting land in boards.

All of this was ominous for the future of the General Committee. As it turned out, the Crown's retention of the power to control the jurisdiction of the court to partition, and its denying the General Committee a role, would ultimately be of crucial importance in assisting the Crown's purchase programme. It was at this point that the imperfections in titles which were the outcome of the commission's work became very apparent. The Crown has admitted those imperfections – and, in particular, the problems they posed for owners once the Crown began purchasing in blocks:

Specifically, the ability of a group of owners to have security of tenure in respect of a given location within a block was not guaranteed once the Crown began buying undivided shares, because the title did not locate areas where specified rights were held by specific groups of owners.³⁸³

The Crown pointed to the fact that surveys were not sufficient to enable registration of titles under the Land Transfer Act (which the UDNR Amendment Act 1909 had provided for, deeming orders of the commissioners to have the same operation as a freehold order made by the land court under the Native Land Act 1909).³⁸⁴ It submitted that the failure to complete titles with full survey and registration so that they could function as Maori freehold titles was a key failure of the process of title determination as undertaken by the Urewera commission.³⁸⁵ As we will outline in chapter 14, we do not agree that such steps were or should have been necessary for owners of the reserve, who had wished to retain and use their own lands and resources. But the Crown's acceptance of responsibility for

381. Native Under-Secretary to Native Minister, 17 June 1909 (Edwards, supporting papers in 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 656)

382. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 91

383. Crown counsel, closing submissions (doc N20), topics 14–16, p 62

384. *Ibid*, p 51

385. *Ibid*, p 7

failing to make regulations that allowed for location of a shareholding ‘if that was required’, and for ‘more sophisticated land management arrangements’, is properly made.³⁸⁶ This was where the General Committee might have played a useful role. Failing this, owners’ right to seek partition had to be safeguarded so that they could re-establish hapu control over blocks to assist land management, or try and protect parts of blocks from Crown purchasing. Initially, the Crown seemed to have no difficulty with partition applications. Three orders in council between September 1910 and January 1913 authorised the court to hear partition applications from owners in 19 blocks – notably Te Whaiti, Ruatoki, and Ruatahuna.³⁸⁷

In the case of Te Whaiti, which Ngati Manawa sought to have partitioned, the Government was anxious that the court proceed in light of Ngata’s explanation to Carroll in September 1910 that it was essential to define the boundary between Ngati Manawa and Ngati Whare if any part of the large block were to be acquired ‘for settlement’.³⁸⁸ In fact it was the block’s rich timber resource the Crown had its eye on.³⁸⁹ Ngata also recommended that the Minister apply for the partition of Ruatoki 1, 2, and 3 blocks, as dairy farming had begun and there were disputes about land near the dairy factory.³⁹⁰ But as we have seen, the sale by Rua and his followers of their shares in Ruatoki blocks led to a call by Numia Kereru and other leaders for sellers’ shares to be partitioned out. (It is interesting that a section – section 12 – was included in the Native Land Claims Adjustment Act 1911 that ‘directed’ the land court, on partitioning the Ruatoki blocks and Te Whaiti, to ‘define the tribal or hapu boundaries’, cancelling existing orders if necessary, then allocating relative interests anew between members of a tribe or hapu. We assume this was Ngata’s response to local concerns.)

In the case of both Te Whaiti and Ruatoki, the court partitions that followed were to be of great importance in the history of those lands: the Crown began purchasing in Te Whaiti soon after the block was partitioned, while at Ruatoki the first partitions heralded subdivision on a substantial scale – which in fact protected the blocks from purchase (see the sidebar opposite).

386. Crown counsel, closing submissions (doc N20), topics 14–16, pp 53, 64

387. The court was authorised to partition Te Whaiti and Ruatoki 1, 2, and 3 blocks by Order in Council dated 12 September 1910: ‘Conferring Jurisdiction on Native Land Court’, 12 September 1910, *New Zealand Gazette*, 1910, no 84, p 3421. Orders in Council dated 30 September 1912 and 13 January 1913, made under the provisions of the Urewera District Native Reserve Amendment Act 1909, authorised the land court to partition the following blocks: Ruatahuna, Karioi, Paraeroa, Waikaremoana, Opootea, Tiritiri, Maraetahia, Tarapounamu-Matawhero, Paraeroa South, Te Tapatahi, Maungapohatu, and Taneatua (1912), and Otairi, Omahuru, and Tauwharemanuka (1913): ‘Conferring Jurisdiction on Native Land Court’, 30 September 1912, *New Zealand Gazette*, 1912, no 75, pp 2830–2831; ‘Conferring Jurisdiction on Native Land Court’, 13 January 1913, *New Zealand Gazette*, 1913, no 3, pp 92–93.

388. Ngata to Carroll, 7 September 1910 (Boast, ‘Ngati Whare and Te Whaiti-nui-a-Toi’ (doc A27), p 133)

389. Native Under-Secretary to Herries, 26 July 1912 (Boast, ‘Ngati Whare and Te Whaiti-nui-a-Toi’ (doc A27), p 135)

390. Ngata to Carroll, 7 September 1910 (Boast, ‘Ngati Whare and Te Whaiti-nui-a-Toi’ (doc A27), p 255)

The Partition of the Te Whaiti and Ruatoki 1, 2, and 3 Blocks

The Ruatoki and Te Whaiti blocks had very different histories after their initial partition. At Te Whaiti, Ngati Manawa had hoped to retain tribal control of their land, so that they – and not the General Committee – could deal with it. Ngati Whare, for their part, had been trying to make arrangements for their timber to be milled by private interests for some years. In 1913, Judge Browne partitioned Te Whaiti block between Ngati Manawa and Ngati Whare. He concluded that there was historically no internal hapu or tribal boundary, and the owners occupied the land ‘in common’. But the boundary line he drew reflected eventual consensus among those Ngati Manawa and Ngati Whare present. The new blocks were Te Whaiti 1 (45,048 acres), awarded to a ‘basically’ Ngati Whare list of (449) owners and Te Whaiti 2 (26,292 acres), awarded to a ‘basically’ Ngati Manawa list (262 owners). That is, the judge awarded the larger portion (in terms of its standing timber) to Ngati Whare, but by far the most valuable portion to Ngati Manawa – quite unintentionally, in Richard Boast’s view.¹ In 1914, Ngati Whare secured the consent of the General Committee to the sale of timber on 20,000 acres, but the matter stalled in the hands of the Native Department and the Native Minister. The Crown began buying Te Whaiti interests in September 1915, soon after it resumed purchase into Reserve blocks.² As we outline in a later section, Crown purchasing in the block was approved. Further applications for partition from Te Whaiti owners were received by the land court, evidently in 1915, and notified to the Native Department. The Native Under-Secretary advised Bowler – as he would do on so many occasions – that partition should not proceed ‘until after a fair run has been made for acquiring interests.’³ Purchase was particularly successful in Te Whaiti 2 (since Ngati Manawa mainly lived elsewhere); by 1918 they retained only 5,565 acres out of 26,292 acres, while Ngati Whare retained 15,708 acres out of a total of 45,048 acres of Te Whaiti.⁴

At Ruatoki, the hearing of Numia Kereru’s application for partition of the block in May 1912 led to agreement that Ngati Koura would have one portion of the block (Ruatoki 1A), and Ngati Rongo and Te Mahurehure the larger portion (Ruatoki 1B).⁵

Subsequently, a great deal of division took place as family groups began to fence

1. Richard Boast, ‘Ngati Whare and Te Whaiti Nui-a-Toi: A History’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 1999) (doc A27), pp 136–139

2. John Hutton and Klaus Neumann, ‘Ngati Whare and the Crown, 1880–1999’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001) (doc A28), pp 191–194

3. Native Under-Secretary to Bowler, 9 September 1915, MA-MLP 1 1910/28/10, Archives New Zealand, Wellington (Cecilia Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3: Local Government and Land Alienation under the Act’ (commissioned research report, Wellington: Crown Law Office, 2004) (doc D7(b)), p 210)

4. Boast, ‘Ngati Whare and Te Whaiti Nui-a-Toi’ (doc A27), p 132

5. Steven Oliver, ‘Ruatoki Block Report’ (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A6), p 110

and farm the land. There were 112 partitions in Ruatoki 1 by September 1917, 80 per cent of them under 100 acres; 32 in Ruatoki 2 and 3.⁶ The high quality of the land and the expense of the survey required for its division in fact protected it from purchase – though not from the social and economic impacts of excessive division, for which a separate consolidation scheme was later designed to rectify the particular problems facing Ruatoki owners. (We consider this in a later chapter.) By 1917, the Crown was interested in how to progress purchase at Ruatoki but was advised by a staff surveyor from Lands and Survey Department that areas offered for sale to the Crown were ‘the most barren and unprofitable land on the Ruatoki’.⁷ He recommended against purchase unless the Crown could also buy Ruatoki 1.

The Crown decided initially it could not seek cancellation of existing partitions, but moved to prevent further partition of Ruatoki 2 and 3 to facilitate further purchasing. The court’s power to partition in the two blocks, gazetted on 29 June 1916, was withdrawn by Order in Council of 27 September 1917.⁸ But the Minister directed purchase of individual interests in unoccupied subdivisions of the Ruatoki block in February 1918, and Bowler was authorised to apply for cancellation of partitions when he had completed buying, to assist cutting out the Crown purchases. Purchasing, however, did not go ahead. Bowler pointed out that the Crown had already met the survey costs for subdivisions of Ruatoki 1, 2, and 3 blocks, and that:

- ▶ the costs were a charge on the land which would have to be deducted from purchase money, leaving little to pay to owners who sold; and
- ▶ if the partition orders were cancelled, the surveys would then be rendered useless, and the Government would ‘again arrive at an impasse in regard to the survey costs’.⁹

In short, Crown purchasing in Ruatoki would be quite uneconomic. For the Crown, that was enough to put an end to the matter.

6. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), pp 200–203

7. Percy Wilkinson to chief surveyor, 5 April 1917, MA-MLP 1 1910/28/10, Archives New Zealand, Wellington (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 202)

8. Edwards, ‘The Urewera District Native Reserve Act, Part 3’ (doc D7(b)), pp 203–205

9. Bowler to Native Under-Secretary, 15 March 1920, MA-MLP 1 1910/28/10, Archives New Zealand, Wellington (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)(i)), p 1111)

Once Crown purchasing began in earnest in 1915, however, the Crown’s view of Maori partition applications changed. Crown officials insisted on protecting the Crown’s interests as it purchased in reserve blocks by preventing owners from proceeding with partition applications in the land court. As a result, few blocks were partitioned (only six by 1921), and Crown officials did not shrink from seeking cancellation of those partitions that Maori owners did manage to secure in the

court. The stand-off that developed between the chief surveyor and Judge Browne over the partitioning of Tauwharemanuka block illustrates both unbending official attitudes and the readiness of the court, on occasion, to resist undue pressure and to protect Maori interests. On 7 August 1915, Skeet wrote to the Under-Secretary for the Lands Department stating that the Tauwharemanuka block ‘separates the Crown’s purchases and it is essential that this land should be acquired by the Crown to make a composite block for settlement purposes’. He had learned that the block had recently been partitioned into nine divisions,³⁹¹ and he recommended that the Native Land Purchase Board notify Judge Browne ‘to refrain from making any further partitions in the reserve [the UDNR]’.³⁹² Skeet was also concerned that the land court, on partitioning the block, had allotted land on the Whakatane River ‘on what will be one of the main roads through the country’: if the ‘Natives’ retained those areas, he argued, the back portion of the block would have to be acquired at a ‘very much reduced price’ if settlement were to be successful.³⁹³ He continued to urge that Judge Browne be asked to cancel the Tauwharemanuka partitions to avoid a situation in which the Crown would face ‘little bits of Maori land dotted over the block’ – while Bowler took the same line.³⁹⁴ The danger from the Crown’s point of view, Edwards stated, was that ‘any kind of partition activity posed a risk’:

The nature of the risk was simply that having purchased shares in anticipation of cutting out suitable land to offer for settlement, the Crown would find that by the time it came to define its interests in a given block, the best parts would have already been taken, thus leaving the Crown with land that proved unsuitable for settlement purposes.³⁹⁵

In mid-December 1915, Skeet added a further reason for cancelling the Tauwharemanuka partitions. He was by now aware that the owners were prepared to sell the No 9 subdivision of 20,833 acres to the Crown, but intended to retain the rest of the block themselves. This, in his view, was an unlikely outcome:

391. Chief surveyor to Under-Secretary for Lands, 7 August 1915 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)(i)), pp 757–759); Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 195. Section 109 of the Native Land Act 1909 provided that the Native Land Court should have exclusive jurisdiction to partition native freehold land; though section 110 provided that the court’s jurisdiction should be discretionary; the court might refuse to exercise its jurisdiction in the public interest, or the interest of the owners, or of ‘other persons interested in the land’.

392. Skeet to Under-Secretary for Lands, 7 August 1915 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)(i)), p 152); Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 195.

393. Skeet to Under-Secretary for Lands, 11 August 1915 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(e)), p 1566).

394. Skeet to Under-Secretary for Lands, 4 December 1915 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)(i)), p 133); Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 197.

395. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 193.

I do not for a moment think that the Natives either will or do intend to retain this land. What really will happen will be that after the Crown have finished their purchases in the district, and roaded the country and got settlers into it, then the native owners in these eight subdivisions will approach the Crown to buy interests in their blocks at enhanced values, the Crown in fact practically buying their own improvements.³⁹⁶

Fisher, the Native Department Under-Secretary, sought Judge Browne's views as to how the owners generally felt about sale. The judge, clearly irritated, replied that the chief surveyor knew nothing of the facts of the case. Many of the owners of the block were living on the land, and all the owners had been represented before the court when the decision as to partition was reached. Most had 'little or no land outside the Tuhoe boundary', and many of the families would not sell. The court was unconcerned about the chief surveyor's views of its partitions, particularly in light of the fact that the Crown had not so far acquired any interests in the block. He added that the Crown seemed to forget that the land belonged to Maori:

As regards the memo by the Chief Surveyor at Auckland, he, in all his tirades against partitions of Native land by the Court consistently refuses (with an object no doubt) to recognise the fact that the land belongs to the Natives and not to the Survey Department or the Crown and that in making partitions the Court has to a very large extent to consult the wishes of the Native owners.³⁹⁷

Judge Browne's shot across the bows of the Crown purchasers is a graphic reminder of the way in which they marginalised the rights of Maori owners in the interests of Crown settlement imperatives. As the judge saw it, the Crown viewed owners merely as an obstacle to its plans; their wishes and interests were of little concern to officials. In such circumstances, he saw the court as protective of Maori owner interests against the Executive. The partitions were not cancelled, and the Native Land Purchase Board decided to begin purchase in all of them in February 1916.³⁹⁸

The chief surveyor, evidently unabashed, was still urging in June 1916 that partition was 'inimical to Crown's purchase operations and future settlement of land'. He asked that the two orders in council of 1912 and 1913 conferring on the land court jurisdiction to make partitions in certain reserve blocks (see above) be revoked, and reiterated that the judge should be instructed 'to refrain from

396. Skeet to Under-Secretary for Lands, 16 December 1915 (Paula Berghan, comp, supporting papers to 'Block Research Narratives of the Urewera, 1870-1930', 18 vols, various dates (doc A86(f)), vol 6, pp 1774-1775)

397. Judge Browne to Native Under-Secretary, 14 January 1916 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(f)), pp 1770-1772)

398. By 1919, the most interests had been purchased in Tauwharemanuka 9 and the fewest in Tauwharemanuka 1, 2, and 4: see Berghan, 'Block Research Narratives' (doc A86), pp 294, 299.

making these partitions.³⁹⁹ He echoed Bowler, in fact, on the importance of considering compulsory taking of blocks in some circumstances. And he went so far as to suggest that Maori would not need any land in the reserve at all:

It is exceedingly doubtful whether any of the Urewera country will ultimately be used or required by the Natives at present residing there. In my opinion it must all, sooner or later, come into European occupation, and for this reason I beg to suggest that it is not advisable to subdivide the blocks, but rather that the Crown should be assisted in its purchasing operations by the enactment of some clause similar to section 20(2) of the Maori Land Settlement Act 1905, so that where the Crown has acquired the majority of the interests in any Block, they can compulsorily take the rest.⁴⁰⁰

At the same time that the chief surveyor was contemplating Te Urewera without Maori (and thus the foolhardiness of allowing partition), Fisher, the Native Department Under-Secretary, also expressed his concern about partitions initiated by Maori owners. He wrote to the Minister that ‘serious inconvenience and delay’ might be caused to Crown purchasing by the Native Land Court’s jurisdiction to partition in a number of Te Urewera blocks.⁴⁰¹

The Native Land Purchase Board, in response, recommended that the land court’s jurisdiction to partition be revoked. Accordingly, the Orders in Council permitting partition of a number of reserve blocks were revoked by the *Gazette* of 29 June 1916.⁴⁰² The Crown, in other words, took advantage of the special UDNR legislation to limit the rights of owners. As Edwards noted, under mainstream Native Land legislation, non-sellers could have applied to partition out their interests. But that right was denied the owners of reserve blocks.⁴⁰³

Bowler, meanwhile, had reported more success by July 1915, having purchased the equivalent of some 15,920 acres. He informed Fisher that owners were anxious to sell, although there was a ‘tendency’ for them to retain interests in the Maungapohatu block. He then suspended operations while Lands and Survey department officials led by Andrew Wilson conducted their valuation (discussed below).⁴⁰⁴

399. Chief surveyor to Under-Secretary for Lands, 1 June 1916 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 193)

400. Chief surveyor to Under-Secretary for Lands, 1 June 1916 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)(i)), pp 126–127)

401. Fisher to Herries, 2 June 1916 (Miles, *Te Urewera* (doc A11), p 396)

402. ‘Revoking three orders in council permitting partition of various blocks in the Urewera reserve’, 29 June 1916, *New Zealand Gazette*, 1916, no 72, p 2224 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 194)

403. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 195

404. Bowler to Native Under-Secretary, 17 July 1915 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(h)), p 2728); Miles, *Te Urewera* (doc A11), p 364

By the end of September, Bowler had acquired the majority of shares in the blocks under purchase.⁴⁰⁵ In January 1916, Te Pouwhare informed Herries of the outcome of a meeting at Taneatua at which it was agreed that owners wanted to sell interests in the Tauwharemanuka, Karioi, Parekohe, and Waipotiki blocks to raise money for the war effort.⁴⁰⁶ The Native Land Purchase Board immediately approved purchasing in these blocks.⁴⁰⁷ By April 1916, Bowler was also instructed to purchase in the Ruatoki South, Te Purenga, Te Wairiko, Poroporo, Te Tuahu, Taneatua, Pukepohatu, and Paraeroa blocks. While Herries preferred that Bowler secure interests in the blocks adjacent to those already purchased in, he was instructed to buy any interests in any of the approved blocks.⁴⁰⁸

Bowler's initial wish was to complete blocks he was doing well in, rather than to start new blocks. But the Native Minister continually instructed that purchase be opened in new blocks. In December 1916, Bowler advised the Native Department that while he thought purchasing should be pursued in all blocks except the Ruatoki subdivisions, he did not recommend opening up purchasing in new blocks, as this had the effect of slowing progress in older blocks. He reported that resident owners of the Te Whaiti, Maungapohatu, and Otarā blocks were inclined to keep a 'portion' of their interests, but predicted that if no new purchases were commenced he could purchase most of these blocks.⁴⁰⁹ In April 1917, however, Bowler reported that despite having thoroughly 'combed out' the district, his purchasing rate had slowed, and he suggested opening further blocks for sale.⁴¹⁰ In May, the Native Minister approved purchasing in the Hikurangi Horomanga, Te Ranga a Ruanuku, and Tarapounamu-Matawhero blocks at prices fixed by the Lands Department in 1915. In August, Bowler reported that while progress had slowed in the blocks that had been under purchase for some time, he had made good progress in purchasing interests in the three new blocks.⁴¹¹ This was a familiar pattern. Generally, Bowler reported a rush of sellers to begin with, followed by a slower, careful process of picking up remaining interests and successions over the following years.

In September 1917, C B Jordan, the Under-Secretary for the Native Department from 1916 to 1921, recommended that purchasing be authorised for all the remaining reserve blocks in which the Crown thought it might buy shares.⁴¹²

405. Miles, *Te Urewera* (doc A11), p 369

406. Te Pouwhare and others to the Minister of Native Affairs, 15 January 1916 (Miles, *Te Urewera* (doc A11), p 369). Under section 5 of the Native Land Amendment and Native Land Claims Adjustment Act 1915, provision was made for Maori to contribute to patriotic funds from proceeds of alienations through the Maori land boards.

407. Miles, *Te Urewera* (doc A11), p 369

408. *Ibid*, p 370

409. Bowler to Native Under-Secretary, 1 December 1916, MA-MLP 1 1910/28/1, pt 2, Archives New Zealand, Wellington; Miles, *Te Urewera* (doc A11), p 397

410. Bowler to Native Under-Secretary, 26 April 1917 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 804); Miles, *Te Urewera* (doc A11), p 399

411. Miles, *Te Urewera* (doc A11), p 399

412. *Ibid*; see also Bowler to Native Under-Secretary, 26 April 1917 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 804).

Geographically, the blocks in which land had not yet been purchased lay to the south and centre of the reserve: the Ierenui Ohaua, Kohuru-Tukuroa, Manuoha, Ohiorangi, Paharakeke, Tapatahi, Tauwhare, Tawhiuau, Ruatahuna, Waikaremoana, and Waitiripapa blocks.⁴¹³ In July 1918, approval was given for the purchase of the Ohiorangi, Tauwhare, and Kohuru-Tukuroa blocks at a valuation of 10 shillings per acre; the Ierenui Ohaua block at eight shillings per acre; and the Ruatahuna block at an average of six shillings per acre. However, in the case of the latter block, the Crown was forced to undertake a new valuation.⁴¹⁴

The purchase of interests in the Ruatahuna block did not begin before mid-1919. The Crown had not regarded the block as a priority for purchase until Bowler's acquisition of the more accessible UDNR lands had slowed to a crawl. As recently as 1917, the Native Minister had instructed that purchase in Ruatahuna and a number of other blocks should not proceed because of the cost of roading and opening up the land, and their unsuitability for soldier settlement.⁴¹⁵ In light of this, it is not clear why the Crown decided to begin purchase in Ruatahuna at all. But here, as in Tauwharemanuka, existing partitions of the block were regarded – once the Crown found out about them – as a nuisance. The Ruatahuna block had been partitioned into five divisions at a sitting of the appellate court at Taneatua in 1913: Ruatahuna 1 (Arohana), Ruatahuna 2 (Kahui), Ruatahuna 3 (Huiarau), Ruatahuna 4 (Waiiti), and Ruatahuna 5 (Parahaki).⁴¹⁶ But this fact had somehow been completely overlooked by the authorities.

In October 1917, in ignorance of the 1913 partition, Judge Wilson travelled to Ruatahuna with the district valuer, Mr Burch, and Tai Mitchell, a surveyor, with the intention of partitioning the block to resolve a dispute between Ngati Tawhaki and Ngai Te Riu⁴¹⁷ – evidently a result of continuing tension after the first and second Urewera commissions had both rejected Ngati Tawhaki claims.⁴¹⁸ Wilson had earlier sent Raureti Mokonuairangi to investigate, who reported that the owners wished the lands to be partitioned for each hapu and whanau.⁴¹⁹ Wilson then proposed that some 1,000 acres of the Ruatahuna block be 'partitioned off by the Native Land Court in favour of those Natives and their families who are actually living on the Block,' so as to 'enable occupants to farm their lands without interfer-

413. Miles, *Te Urewera* (doc A11), p 400

414. *Ibid*; see also Jordan to Bowler, 20 July 1918 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 976).

415. Native Under-Secretary to Bowler, 25 September 1917 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 796); Campbell, 'Land Alienation, Consolidation and Development' (doc A55), pp 27–28

416. Miles, *Te Urewera* (doc A11), p 403

417. Heather Bassett and Richard Kay, 'Ruatahuna: Land Ownership and Administration, c 1896–1990' (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A20), p 106

418. The Ngati Tawhaki claim was based on a gift from Tuiringa of Ngai Te Riu to their ancestors; they had remained in occupation in the area, according to the authors of the Tuawhenua report. The dispute was triggered when Ngati Tawhaki fenced off some two acres of land to cultivate at Tataramoa near the junction of Mangaorongo Stream and the Whakatane River: see Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two' (doc D2), p 137.

419. Bassett and Kay, 'Ruatahuna' (doc A20), pp 103–104

ence from other co-owners. This would also assist the Crown, he said, to obtain the balance of the land (some 56,000 acres, as Bassett and Kay note wryly).⁴²⁰ The Native Minister also hoped that if he revoked the 1916 Order in Council so that a partition could take place the owners would agree that no more than the 1,000 acres would be partitioned. On this understanding, a new Order in Council was issued in October 1917, to allow partition of the Ruatahuna block.⁴²¹ But when the judge arrived at Ruatahuna, he learned to his surprise that the block had already been partitioned. He was able to confirm this in the court minute book, but why he had not done this earlier is a mystery to us. It appears the orders had never been drawn.⁴²² At that point, he embarked on mediation among the owners. He then took the opportunity to inspect the Ruatahuna lands, which led him to urge that the people be allowed to secure their key lands from the impact of purchase of interests. He reported to Jordan with some surprise that all of the flat land was under close settlement, with 'very large areas' being fenced and grassed – evidently more than Wilson's partition plan had allowed, Bassett and Kay suggested.⁴²³ His plan seems to have been prepared without a clear understanding of the situation on the ground. Wilson wrote:

After seeing the Block I feel impelled to suggest that the Natives should be allowed to cut out their holdings. There is a considerable settlement at Ruatahuna, and the fact that a Presbyterian Mission has opened a school there with an attendance of 77 pupils is strong evidence of the progress made by the Tuhoe people.

I found the Natives a quiet, law abiding and industrious people.⁴²⁴

Crown officials, however, had no intention of allowing the Maori owners quiet enjoyment of their land. Bowler had already indicated his wish to start buying in Ruatahuna and Waikaremoana blocks, and in January 1918 had been instructed to commence purchasing in the five Ruatahuna blocks – though in the end he had to wait until the partitions were surveyed (by compass survey) and valued.⁴²⁵

420. Wilson to Native Under-Secretary, 7 August 1917 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(f)), pp 2122–2126); Miles, *Te Urewera* (doc A11), p 403; Bassett and Kay, 'Ruatahuna' (doc A20), p 105

421. Bassett and Kay, 'Ruatahuna' (doc A20), p 105; Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two' (doc D2), p 139

422. It is possible that the delay was the result of the Ruatahuna 'Subdivision orders' not having been forwarded to the Chief Judge with other orders made by the Native Appellate Court; they were temporarily 'detained', for reasons which were not explained to the chief judge: see W P Waitai to chief judge, 27 February 1914 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(e)), pp 1626–1627). According to Bowler, the records were discovered in the chief judge's office only in 1918; he reported in September that the orders were then being prepared: see Bassett and Kay, 'Ruatahuna' (doc A20), pp 106, 111.

423. Judge Wilson to Native Under-Secretary, 8 October 1917 (Bassett and Kay, 'Ruatahuna' (doc A20), p 106)

424. Judge Wilson to Native Under-Secretary, 16 February 1918, MA-MLP 1 1910/28/11, Archives New Zealand, Wellington; Miles, *Te Urewera* (doc A11), pp 403–404

425. Bassett and Kay, 'Ruatahuna' (doc A20), pp 108, 113

Bowler had not been in favour of Wilson's intended partition for the residents of Ruatahuna in 1917, fearing that if the block were 'cut up into a number of subdivisions the position may be prejudiced if at any time the Crown decides to purchase.'⁴²⁶ Skeet echoed his concerns, fearing that the judge's partitions (aimed, we note, at preserving people's kainga and farms) would be 'cutting the eyes out of the block.'⁴²⁷ In August 1918, Bowler recommended that since the 1913 partition had been overlooked until recently, it should continue to be ignored. This would enable him to 'acquire very substantial interests' in the block.⁴²⁸

Bowler also disagreed with James Carroll, who was opposed to the purchase of the block and considered that the Government should leave it for Tuhoe. In Bowler's view, '[i]f the Crown does not commence operations now it is not unlikely that values will go up in the near future, and if the purchase is not gone on with at all the probabilities are that ultimately the block will be left to be exploited by the speculator.'⁴²⁹ This was a common refrain among those who advocated Crown purchasing as a 'protection' against private speculation. (This term was often used by Crown agents to characterise dealings, or proposed dealings, by private parties in land and timber, where these might provide competition to the Crown and push up the price it had to pay.) The Crown, accordingly, proceeded with its plans to purchase.

As soon as he had the new valuations, and despite the objections received from the people of Ruatahuna, Bowler began purchasing in the blocks early in 1919. By April 1920, he had purchased 1,930 acres of Ruatahuna 1, 697 acres of Ruatahuna 2, 3,023 acres of Ruatahuna 3, 609 acres of Ruatahuna 4, and 6,273 acres of Ruatahuna 5 blocks.⁴³⁰

Maori objections to Crown purchasing were ignored. In September 1918, Rawaho Winitana and 99 others wrote to Herries from Waikaremoana, stating that 'the Ruatahuna Block should not be purchased':

Purchase has been going on in all of the other blocks in the Urewera Country. We agree to these other blocks being purchased, but as to Ruatahuna we implore you not to allow it to be purchased. Portions of this Ruatahuna Block have been improved and sheep and cattle are depasturing on them. We are agreed that this land should be conducted as a farm.⁴³¹

426. Bowler to Native Under-Secretary, file note, no date (Bassett and Kay, 'Ruatahuna' (doc A20), p109)

427. Skeet to Department of Lands and Survey, 30 January 1918 (Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two' (doc D2), p139)

428. Bowler to Native Under-Secretary, 12 August 1918 (Bassett and Kay, 'Ruatahuna' (doc A20), p109)

429. Bowler to Native Under-Secretary, 9 September 1918 (Miles, *Te Urewera* (doc A11), p404)

430. Miles, *Te Urewera* (doc A11), pp 406–408

431. Rawaho Winitana and 99 others to Herries, 23 September 1918 (Miles, *Te Urewera* (doc A11), p407)

Similar letters were sent by Te Wao Ihimaera and 16 others, and by Te Amo Kokouri and 121 others.⁴³² ‘Ruatahuna,’ Miles concluded, ‘was a centre of Tuhoe efforts to maintain control over their land and its administration but this did not seem a factor in Government considerations as to whether it would buy there or not.’⁴³³ In short, the Crown simply proceeded with purchase in the face of owner opposition and the pleas of community leaders. By this time, its primary focus was on completing its purchase programme, and on securing maximum economic benefit for the Crown before its interests were separated from those of the remaining owners.

By 1919, officials were starting to think of consolidating the Crown’s purchased interests, either by exchange between the Crown and Maori owners or by special legislation. By the end of May 1920, a consolidation scheme, rather than partitioning out the Crown’s interests in Te Whaiti blocks, was the preferred option.⁴³⁴ In August, the chief surveyor gave instructions that a preliminary study for a consolidation scheme should be made. The impetus for consolidation was growing.

13.7.3.4 *Bowler’s methods of purchasing*

Claimant historians have described land purchase officer WH Bowler as predatory. When asked by counsel for the Wai 36 Tuhoe claimants if she agreed that ‘at the very least it seems that he [Bowler] was ruthlessly efficient,’ Crown historian Cecilia Edwards responded: ‘Oh, he was an amazingly efficient officer.’⁴³⁵ Elsewhere, Edwards described Bowler as ‘a diligent and enthusiastic purchasing officer.’ She noted that ‘[w]hile he invariably appeared to adhere to the rules and regulations, it seems as though he was not always entirely correct in the way that he applied them.’⁴³⁶

Before commencing purchasing in earnest in June 1915, Bowler prepared himself for his task by conducting a large amount of clerical work – compiling ownership lists, and suchlike – to ensure, ‘among other things, that no double payments were made to those who had already sold their interests to the Crown.’⁴³⁷ Webster presented detailed evidence on Bowler’s ‘network of purchasing venues and agents’ who assisted him in his absence. In August 1915, Bowler reported favourably on help he had received from Tu Rakuraku of Waimana, who ‘identified the payees and detected two of three attempted cases of impersonation and was of great use in other ways.’⁴³⁸

Bowler’s headquarters was in the Auckland office of the Ministry of Lands, with an unofficial administration centre at the Waiariki District Native Land Court at

432. Miles, *Te Urewera* (doc A11), p 407

433. Ibid

434. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), pp 218–219

435. Cecilia Edwards, under cross-examination by counsel for Wai 36 Tuhoe claimants, Taneatua School, Taneatua, 4 March 2005 (transcript 4.1, p 272)

436. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 167

437. Miles, *Te Urewera* (doc A11), p 363

438. Bowler to Native Minister, 6 August 1915 (Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp 159–160)

Rotorua, and he remained in regular correspondence with the Native Land Court in Gisborne. He travelled extensively through the region:

Bowler set up purchasing operations mainly during the summer months, and mainly in Whakatane (where he usually stayed at the Whakatane Hotel), but for shorter periods he also set up operations at Taneatua, Waimana, and Ruatoki in the northern Urewera, occasionally at Te Houhi, Te Whaiti, Ruatahuna, and Maungapohatu in the interior, and even Wairoa, Gisborne, Nuhaka, Matapuna, . . . Napier, Hastings, and Taumarunui to contact Tuhoe working, traveling, or resident in those more distant East Coast centres.⁴³⁹

Webster noted that Bowler ‘was encouraged at least once (29 August 1917) to set up operations in locations where there were no hotels, so the Natives might be kept from coming under their improvident “influence”, but argued that most payments were ‘probably made in towns which Tuhoe frequented or where they could find him during visits which he publicised through his agents.’ He found that deeds ‘were apparently signed by Tuhoe in a surprising variety of places, from post offices, offices of solicitors, and offices of Justices of the Peace in towns around the Urewera, to Native Land Court registries and Native Ministry offices in Rotorua, Gisborne, Napier, Auckland, and Wellington.’⁴⁴⁰

Bowler also appears to have attended various special events and occasions at which people of Te Urewera were present in large numbers and possibly in need of cash. Webster noted that ‘it is likely that he attended some Tuhoe hui such as land meetings, weddings, tangi (funerals), and hurahunga kohatu (unveilings).’⁴⁴¹ Miles suggested that many of those who sold were absentees, and a number of those appeared to live at Gisborne:

Bowler recorded excursions to the East Coast on a number of occasions in order to pick up stray shares in blocks under purchase. He would visit fairs, agricultural shows, markets, and the like offering to buy Urewera interests and obviously hoped to be able to purchase shares from those who needed cash on the spot.⁴⁴²

In January 1917, Bowler and his agents attended a carnival in Wairoa, at which, Bowler reported, he purchased a disappointing number of shares – the equivalent of some 2,000 acres at a cost of about £1,100.⁴⁴³ He wrote to his agents to seek out First World War recruits who might wish to sell before they embarked, and even encouraged them to visit wounded soldiers in military hospitals. It seems

439. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), p 153. Webster cited Fisher to Bowler, 29 August 1915; Jordan to Bowler, 21 August 1917; Fisher to Bowler, 5 February 1916; Hinaki Ropiha to Bowler, 9 February 1916; Bowler to Native Under-Secretary, 8 December 1916; Bowler to Native Under-Secretary, 24 January 1917; Bowler to Cook, 5 January 1919; T Wilson to Lewis, 15 March 1920.

440. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), p 154

441. Ibid, pp 154–155

442. Miles, *Te Urewera* (doc A11), p 374

443. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 159

that sometimes he acted as a collector for the war effort at the same time as he made purchases.⁴⁴⁴ Later in 1917, Bowler went to Hamilton to attend the trial for perjury of some of Rua's followers but after their solicitor claimed the Crown was taking advantage of their plight 'to induce them to sell their land', he decided not to take signatures until the cases were decided.⁴⁴⁵ But Bowler was not above taking advantage of people's plight. In March 1918, he proposed calling a halt to the purchasing until the Native Land Court sat at Whakatane or Taneatua in July when, he said, Tuhoe 'will probably have exhausted their funds and will want to sell further interests'.⁴⁴⁶

A remarkable feature of Bowler's purchasing was the portable card index which he had instituted by 1917. It was his tool for on-the-spot identification of owners, their number of shares in each block, and the progress of purchase in each. In October 1917, he explained to Fisher that he would need some 3,000 cards, and a tin sidebar with a leather case in which he could carry up to half this number of cards when travelling.⁴⁴⁷ Each card contained 'summary details of an individual block: acreage, valuation, value per share, and a running total of purchases'. In respect of purchases, the date of purchase, number of vendors and shares, and the total amount paid was recorded. He also kept a separate index with a card for each owner.⁴⁴⁸ The great advantage of the index, he explained to Fisher, was that he would be able to identify immediately all the interests an owner might have, and thus buy them all when he was dealing with an owner who was prepared to sell.⁴⁴⁹ In other words, he would not miss any interests an owner might have in other blocks.

A graphic illustration of how Bowler used this kind of information to pressure owners to sell is found in correspondence between him and Kahui Hakeke (son of Hakeke Tamaikoha, the eldest son of Tamaikoha) and Hakeke's younger relative, Poniu Tumoana. In February 1920, Poniu wrote to Bowler asking the value of his shares in seven named blocks. Subsequently, Bowler not only advised the total value of Poniu's shares in these blocks (£42 13s 8d) but added that he had shares in five other blocks (whose value also he specified). Poniu's reply, in English, was brief and to the point: 'no[;] selling only those blocks mentioned'.⁴⁵⁰ To Kahui Hakeke, Bowler adopted the line that most of his shares, scattered as they were, would only be a nuisance: the sensible course would be to sell them, while keeping

444. Webster, 'The Urewera Consolidation Scheme' (doc D8), p155

445. Bowler to Native Under-Secretary, 30 March 1917 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p1346)

446. Bowler to Native Under-Secretary, 26 March 1918 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p983); Miles, *Te Urewera* (doc A11), p408

447. Bowler to Native Under-Secretary, 4 October 1917 (Webster, 'The Urewera Consolidation Scheme' (doc D8), pp172-173)

448. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p160

449. Webster, 'The Urewera Consolidation Scheme' (doc D8), pp172-174

450. Poniu Tumoana to Bowler, ca March 1920 (Webster, 'The Urewera Consolidation Scheme' (doc D8), p78)

Bowler's Attempt to Persuade Kahui Hakeke to Sell his Shares

On 11 November 1920, Bowler wrote to Kahui Hakeke to try to persuade him to sell his shares in seven blocks:

Na reira pea e tika ana kia kiia ko ou paanga katoa ki Te Urewera e tata ana ki te rima rau eka.

Engari, koia nei te raruraru – e kore e taea e te tangata te whakatopu i enei paanga. Kei te takitaki haere nga paanga nei pena me te tapuae o te tangata. Me pehea e taea te whakaoti? Me pehea e taea te whakarite i tetahi tikanga pai mo te tahe ki a koe?

Ki taku mohio kotahi tonu te huarahi e puare ana. Me hoko i enei paanga ki te Kawanatanga, kia whai-moni koe mo etahi o ou take kei waho atu o nga whenua raruraru nei.

Na, mo te taha ki te hunga e nohoo ana i te kainga, e kaha ana ahau ki te kii kua hokona te nuinga o o ratou paanga.

Therefore perhaps it would be accurate to say that your total shares of the Urewera [lands] are nearly 500 acres.

But here is the problem – these shares cannot be gathered together by a person. The shares are scattered like the tapu footsteps of man. How should this be settled? How should we arrange some good provisions which suit you?

So far as I know, there is only one road open. Sell these shares to the Government, so you will have money for other goals away from the troublesome land.

Now, so far as those other living at your settlement are concerned, I can say with certainty that they have sold most of their shares.¹

1. Steven Webster, 'The Urewera Consolidation Scheme: Confrontations between Tuhoe and the Crown, 1915–1925' (commissioned research report, Wellington: Waitangi Tribunal, 2004) (doc D8), pp 78–79 (translation by Steven Webster with Himaima Tumoana)

some just at his home Tauwharemanuka (see the sidebar above).⁴⁵¹ Doubtless, he had become practised at dispensing this advice over the years.

To identify all individual shares, Bowler also embarked on the compilation of a comprehensive, up-to-date list of all 'non-sellers', which he wanted published in the *Kahiti*.⁴⁵² We note Bowler's use of the term 'non-sellers' (rather than, say, 'owners') and his pointed wording in the body of the notice – which would be echoed in later notices. This first published list was distributed in November 1916

451. Webster, 'The Urewera Consolidation Scheme' (doc D8), pp 78–80

452. Bowler first suggested this in December 1915: Bowler to Native Under-Secretary, 14 December 1915 (Binney, supporting papers to 'Encircled Lands, Part 2' (doc A15(a)), p 82).

(although it was not published in the *Gazette*). It was introduced in both English and Maori as follows:

Urewera Blocks.

Lists of Non-Sellers.

The Natives mentioned in the schedules hereto have not yet sold certain interests to the Crown. If they desire to sell, the Native Land Purchase Officer at Auckland will arrange to purchase their interests.

Nga Whenua o te Urewera

Rarangi Ingoa o Nga Tangata Kaore Ano i Hoko

Ko nga Maori e mau ake nei nga ingoa kaore ano i hoko i o ratou hea ki te Karauna. Ko nga mea o ratou e pirangi ana ki te hoko me tuhi atu ki te Apiha Hoko Whenua Maori a te Kawanatanga, kei Akarana, mana e whakarite he taima hei hokonga i or ratou hea.⁴⁵³

The 1916 list was incomplete (covering just nine of the 22 blocks under purchase by 1 December 1916), with Bowler concentrating his efforts on those blocks in which the fewest unsold shares remained.⁴⁵⁴ Below each block name were the names of non-sellers listed alphabetically, together with details of gender, age (in the case of minors), and the relative interest of each person in the block.⁴⁵⁵ Where successors had been appointed, their relative shares, often fractionated, were also listed.⁴⁵⁶

Much more comprehensive lists of 'non-sellers' were published in the *Kahiti* of 17 October 1918. By this time, Bowler had compiled such lists for nearly every reserve block (39 in all), and in a lengthy schedule he listed owners in alphabetical order, the blocks in which each held interests (identified by an assigned number), and the total monetary value of those interests.⁴⁵⁷ Bowler had evidently engaged in a great deal of painstaking arithmetic, dealing both with the conversion of complex fractions of shares held by successors and, in some blocks, with shares allotted to different lists of owners to which the commissioners had assigned different values. As he explained to the Under-Secretary, who noticed that the value of owners' shares in the Maraetahia and Maungapohatu blocks varied:

One section of the owners, the Ngati Hape tribe, were awarded 352 acres *geographically undefined*. These persons numbered 70, and hold in equal shares. Consequently each of them is entitled to one-seventieth of 352 times 5/-, or (say) £1.5.2. In the list

453. Schedule, no date (Webster, 'Urewera Consolidation Scheme' (doc D8), pp 170–171)

454. The list included 'non-sellers' in a tenth block, Tahora 2A (3), which was not within the UDNB, but was a rim block in which Bowler had been buying up individual interests since 1915; the Crown had proclaimed the block as under negotiation, making private offers illegal: see section 10.7.3.

455. Schedule, no date, MA-MLP 1 1910/28/1, pt 2, Archives New Zealand, Wellington

456. Webster, 'Urewera Consolidation Scheme' (doc D8), p 172

457. 17 October 1917, *Te Kahiti o Niu Tireni*, 1918, no 58, pp 679–694. Where blocks had been subdivided, each subdivision was given its own number.

each owner's interest is expressed as '2 shares', so that the value of 1 share in the Ngati Hape list is 12/7d.

The remaining owners own the balance of the block, 5160 acres, and the relative interests total 1261, so that each share is in this case worth £1.0.5½.

The position, although not unusual, has arisen several times in connection with blocks in this district. In the Hikurangi–Horomanga block, now under purchase, there are *three* different sections of owners, and in each list the monetary value of a share is different. [Emphasis in original.]⁴⁵⁸

In November 1919, updated lists of 'non-sellers' were published in the *Kahiti* after Bowler urged that such lists be circulated before a land court sitting began at Whakatane late that month. The panui, Webster points out, covered 17 pages of fine print, listing over 2,300 individuals as 'non-sellers'. Bowler was finally sent 140 copies of the special *Kahiti* that contained his notice, with two schedules giving the same kind of information as the notice of the previous year: the first listed 44 blocks (the five Ruatahuna partitions had been added to the list), assigning each a number; the second listed in alphabetical order every owner who retained shares, identified the relevant blocks by number (rather than listing the names of owners under each block), and then gave the total value of each owner's shares.⁴⁵⁹

Thus, personal information about the value of each owner's shares was published in the *Government Gazette*, and it is clear that the Crown's purpose was to encourage owners who had 'not yet sold' to do so without further delay, by tallying the cash value of all their shares. The claimants drew our attention to the tone of this notice; and we accept that it also implied that owners *should* in fact proceed to sell:

Ko nga tangata kaore ano kia hoko e whakaarohia ana he pai, me tae mai, me tuhi mai ranei ki te tangata e mau ake i raro nei tona ingoa kia whakaotingia te hokonga i o ratou paanga. Ka utua te moni mo te hokonga a muri tonu o te hainatanga i nga tiiti hoko.

For those persons who have not yet sold and who think that that is OK, you must go or write to the person whose name is below to complete the sale of their shares. Proceeds for your sales will be paid immediately after the signing of the deed of sale.⁴⁶⁰

Possibly the most reprehensible of all was Bowler's attempt to buy minors' shares. He expressed an interest in them almost as soon as he took over purchase in the UDNR, in mid-1915. Fisher, replying to his query, doubted whether the Public Trustee could deal with the minors' shares. Bowler pursued the point

458. Bowler to Native Under-Secretary, 1 August 1917 (Miles, *Te Urewera* (doc A11), pp 399–400)

459. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp 164–165

460. *Te Kahiti o Niu Tireni*, 20 Noema 1919, no 48, p 811 (translation by Brenda Tahi, 25 April 2003) (Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two' (doc D2), p 148)

(by telegram): ‘do you not think it unwise to neglect opportunity obtaining further interests.’⁴⁶¹ Bowler approached the Public Trustee at Auckland in May 1916 (perhaps not for the first time), sending him a list of minors holding shares in a number of blocks, and urging him to sell the shares to the Crown. ‘[A]ll relatives,’ he stated, had sold their shares, the Crown now held over 100,000 acres of the reserve, and the remaining shares of minors were microscopic and would be useless if cut out of the Crown’s interests.⁴⁶² He appears subsequently to have asked the Native Land Court to forward the necessary trust orders sought by the Trustee, as well as the deeds for signature, as the Trustee returned ‘at least two batches of receipts’ and acknowledged receipt of purchase money due to minors listed for their shares in Te Whaiti 2, Tauranga, and other blocks.⁴⁶³ In 1917, Bowler was successful in securing the agreement of the Public Trustee in Wellington to the sale of minors’ interests, even though he could not produce the special valuation of those interests required by law and sought by the trustee. This time he enlisted the help of Under-Secretary for Native Affairs Jordan, who informed the Trustee that the ‘purchase of quite a number of blocks is well on the way to completion, and the principal outstanding interests appear to be those of minors for whom you are trustee.’⁴⁶⁴ If the Crown could not acquire those interests, they would remain scattered throughout the reserve when the Crown’s interest was partitioned out, greatly adding to the survey and roading costs that would have to be borne by minors when their interests were converted into land. As Webster has shown, there were far more owners who retained shares in blocks than Bowler implied, but his arguments must have seemed compelling to the trustee. Over the next few months, a ‘series of purchases’ from the Public Trustee was completed.⁴⁶⁵ Even he could not resist the insistent and unseemly demands of Crown purchase in a context which made the shares of every individual a target; the minors’ interests the trustee was responsible for were no less vulnerable than those of any other owner.

Bowler was always active, also, in ensuring that titles were current. As early as September 1915, he had identified out of date block titles as a problem. ‘Many of the Natives,’ he wrote, ‘do not know what blocks they are in. Others having come into the titles by numerous succession orders, are unaware that they still retain unsold interests.’⁴⁶⁶ His preoccupation with alerting owners to their holdings was, as we have seen, a key driver in his circulation of published lists throughout Te Urewera.

In October 1918, Bowler claimed to have ‘carded’ all deceased owners, and to have lodged in the land court applications for appointment of their successors

461. Bowler to Fisher, 30 June 1915 (Webster, ‘The Urewera Consolidation Scheme’ (doc D8), p 196)

462. Bowler to Public Trustee, 4 and 10 May 1916 (Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp 196–197)

463. Public Trustee to Bowler, 15 and 22 June 1916 (Webster, ‘The Urewera Consolidation Scheme’ (doc D8), p 197)

464. Jordan to Public Trustee, 26 March 1917 (Webster, ‘The Urewera Consolidation Scheme’ (doc D8), p 198)

465. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp 198–199

466. Bowler to Native Under-Secretary, 26 September 1915 (Miles, *Te Urewera* (doc A11), p 370)

– 1,000 applications in all.⁴⁶⁷ He was able to do this because section 14 of the Native Land Act 1909 provided that the Native Minister might apply to the court to exercise its jurisdiction ‘in any matter’; the right to apply for succession was not limited to heirs. In January 1919, when reporting the heavy toll the flu epidemic had taken on the people of Te Urewera, Bowler pointed to the 400 succession applications he had lodged in its wake.⁴⁶⁸

13.7.3.5 *Why were Maori prepared to sell?*

We refer finally to a question often posed: why did Maori sell? In light of the number of interests the Crown acquired in reserve blocks, it is clear that many owners were prepared to sell. There were many reasons why. The Crown’s bypassing of the General Committee at the start of its major purchasing push in 1915, and then its legislative empowering of individuals to sell, were crucial. Without the shield of the General Committee and of functioning local committees, individuals – deprived of any collective planning which might have brought them economic benefits – faced poverty armed only with their scattered shares in various blocks, easy prey for a land purchase officer offering cash for a signature.

At the very beginning of the Crown’s push to secure land for settlement in Te Urewera, we should note the pressure exerted by Ngata, then a member of the Native Land commission. We referred above to his attendance at a hui at Ruatoki in January 1908, when he told Tuhoe leaders, quite wrongly, that they were obliged to recompense the State for the costs of the Urewera commission, and survey costs. We noted that this was the trigger for the first offers to lease by the General Committee. Rua Kenana, when he offered land for sale, also referred to the need to meet survey costs.⁴⁶⁹ And it was given as a reason also by individuals who later offered to sell.⁴⁷⁰

Crown counsel acknowledged:

Potential prejudice arises from the fact that survey and commission costs were raised in the context of discussions about future land use in January 1908, and that it was made explicit that Tuhoe were under some kind of obligation to compensate the State for these costs (even though they were not).

While the government did not in fact make any attempt to recover these costs, survey costs were mentioned by many prospective vendors as a motivation for selling shares.⁴⁷¹

Counsel for the Wai 36 Tuhoe claimants drew our attention also to the fact that Ngata’s emphasis on the Tuhoe obligation to meet survey costs came at a

467. Bowler to Native Under-Secretary, 4 October 1918 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p162)

468. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p163

469. Binney, ‘Encircled Lands, Part 2’ (doc A15), p396

470. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), pp172–173

471. Crown counsel, closing submissions (doc N20), topics 14–16, p90. Also see Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), pp75–77.

particularly bad time for Tuhoe. He put it to Edwards that, when Ngata visited in January 1908, ‘Tuhoe were feeling very vulnerable in terms of the loss of land through survey costs and through other mechanisms.’⁴⁷² He referred specifically to the costs associated with the Ruatoki partitions; the loss of two-thirds of the Matahina c and c1 blocks for survey debts, and of 881 acres of Tuararangaia block in September 1907. In addition, the entire community of Te Houhi were ejected from their ancestral lands between April and June 1907 as a result of the Waiohau fraud (see chapter 11). Counsel suggested that, in this context of lands lost in lieu of survey and other debts associated with determination of title through the Native Land Court process, Ngata’s statement that Tuhoe had an obligation to pay for the costs of the Urewera commission ‘was received as an implicit, if not explicit, threat.’⁴⁷³ Edwards acknowledged as much: ‘I do take your point about these other factors which, for Numia and certain of these chiefs appear to have, would have been adding quite a level of disquiet.’⁴⁷⁴ And she agreed with our presiding officer that the chiefs would have been ‘highly apprehensive.’⁴⁷⁵ The evidence points to the fact that the chiefs felt themselves under pressure, and that this was a key factor in their initial agreement to alienate land.

Doubtless it was not the only factor. Rua, certainly, had decided he must sell land to raise capital for development. From the start, he had wanted to make his community economically autonomous. Binney noted in *Mihaia* that Rua had ‘recognized the root problem of Tuhoe poverty; although they were wealthy in land, they were totally without the means to make it productive.’⁴⁷⁶ Thus, he persuaded families to pool their resources so that he could buy stock and develop cooperative farming. He wanted to achieve the same success Ngata had on the East Coast with flocks of sheep. And he wanted money ‘to underpin the Maungapohatu bank, which he had transferred directly into the community’s authority in May 1909.’⁴⁷⁷ He came to hope that the sale of land would bring returns that would allow for large-scale development – based on export of produce – sufficient to secure the community’s future. We were told that many of the owners of Waikarewhenua, the hapu Ngai Tama of Waimana, sold their lands to fuel development at Maungapohatu, as Rua intended.⁴⁷⁸ Binney argued that Rua saw the official General Committee as ‘obstructionist: a team of old men and aristocratic chiefs’ who could not support his entrepreneurial vision.⁴⁷⁹ But, in the end, the committee was driven to offer land for sale too, though we are certain that it meant to sell

472. Counsel for Wai 36 Tuhoe, cross-examination of Cecilia Edwards, Taneatua School, Taneatua, 4 March 2005 (transcript 4.1, p 255)

473. *Ibid*, pp 256–257

474. Cecilia Edwards, under cross-examination by counsel for Wai 36 Tuhoe, Taneatua School, Taneatua, 4 March 2005 (transcript 4.1, p 257)

475. Presiding officer, during questioning of Cecilia Edwards, Taneatua School, Taneatua, 4 March 2005 (transcript 4.1, p 257)

476. Binney, Chaplin, and Wallace, *Mihaia* (doc A112), p 24

477. Binney, ‘Encircled Lands, Part 2’ (doc A15), p 420

478. Tuawhenua Research Team, ‘Te Manawa o te Ika, Part Two’ (doc D2), p 150

479. Binney, ‘Encircled Lands, Part 2’ (doc A15), p 415

only parts of blocks, as we have noted – clearly hoping to keep the greater part for the owners. The prejudicial economic impact of the Crown's failure to ensure that the committees were all set up quickly was the loss of the opportunity to plan for and implement economic development through komiti hapu and the General Committee. Admittedly, this might have been difficult at the turn of the century, when frosts and flooding, by turns, had such a terrible impact on crops in various years. Murton pointed to impoverishment in this period – 'the context within which people were having to make decisions'. By the early twentieth century, the peoples of Te Urewera had become more vulnerable to natural disasters and infectious diseases, and they were now 'dependent on fewer resources from fewer areas'.⁴⁸⁰ But collective management bodies from Te Whitu Tekau on down had been actively undermined by the Crown and could play no role in leading a recovery.

The reasons why individuals sold their interests in blocks from 1915 onwards are not hard to find. In July 1915, for example, two individuals sold their interests while in Wellington, as they needed the money to get home; others needed money for medical expenses.⁴⁸¹ Some sold their interests 'because it was the only way to get money for European clothes and food supplies such as tea, sugar, flour and other commodities'.⁴⁸² In February 1915, Pera Te Horowai offered to sell interests in the Te Whaiti block, informing the Native Department that the local people were facing starvation caused by heavy frosts and the high price of flour.⁴⁸³ In February 1916, Hinaki Ropiha wrote directly to purchase agent Bowler, inquiring when he was 'likely to come along with the cheque-book' as he had 40 people willing to sell because 'they are short of both food and money'.⁴⁸⁴ In her analysis of letters written by individuals and groups requesting the sale of land, or the withholding of land from sale, Edwards likewise identified a range of reasons for selling shares: 'desire to obtain cash for short term needs (unspecified debt, survey costs, material need); and the desire to obtain capital for developing land outside the district'. Edwards found that '[t]he letters appear to more frequently cite the wish to obtain funds for land development than they do material need'.⁴⁸⁵ But Murton pointed out that while some individual sellers received substantial amounts for their interests in more valuable blocks, most sellers received little more than a couple of pounds.⁴⁸⁶ The value of an individual share varied from 2s 10d in the Ohiorangi block to £21 1s 4d in the Te Whaiti 2 block.⁴⁸⁷ Crown counsel concluded that '[g]iven the rela-

480. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 380–381

481. *Ibid*, p 380

482. Evelyn Stokes, J Wharehuia Milroy, and Hirini Melbourne, *Te Urewera Nga Iwi Te Whenua Te Ngahere: People, Land and Forests of Te Urewera* (Hamilton: University of Waikato, 1986) (doc A111), p 64

483. Boast, 'The Crown and Te Urewera in the 20th Century' (doc A109), p 64

484. Hinaki Ropiha to Bowler, 9 February 1916, 15 January 1916 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 56–57); Campbell, 'Land Alienation, Consolidation and Development' (doc A55), p 21; Murton, 'The Crown and the Peoples of Te Urewera', vol 1 (doc H12), p 380

485. Edwards, 'The Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 167–173

486. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 371

487. *Ibid*, p 368

tively small amounts earned, it seems less likely that the proceeds were used for investment purposes rather than subsistence.⁴⁸⁸ We agree. The small sums that most people received for their sale of interests in a particular block also help to explain why the process of sale continued: people found it necessary to raise further cash over time. The Crown accepted the conclusion of Peter McBurney that ‘Maori poverty was a significant factor in the sales, as was the inability of Maori to deal with the land collectively’.⁴⁸⁹

It is also clear that owners who had been awarded interests in a number of blocks were prepared to sell because they realised they could do so strategically. In other words, they sold in some blocks, while retaining interests in others. Bowler himself commented on this. And anthropologist Dr Stephen Webster described this reaction among Tuhoe as the development of ‘counter-tactics in defence of their lands’. He was struck by the extent of part-selling among owners, pointing to the fact that in the 1919 panui published in the *Gazette* over 2300 individuals were listed as ‘non-sellers’ in 44 blocks, while a 1920 report of Bowler’s pointed to 7488 ‘signatures required to complete’ the purchase of the area. Webster calculated that, on average, owners retained shares in two or three blocks, but the actual number of blocks in which owners retained shares varied between one and 23.⁴⁹⁰ He made a special study of alienation by the Tamaikoha whanau (or ‘hapuu lineage’) – an extensive kin-grouping within which Tamaikoha’s children by his wives held shares inherited from both parents in ‘most’ of the 35 blocks of the reserve.⁴⁹¹ From his data, he concluded that there was a pattern in the retention of shares among this grouping, in accordance with a ‘roughly graded range of such tactics’:

. . . (i) retention of virtually all shares, apparently relatively unusual; (ii) retention of leading or strong rights but sale of lesser rights . . . ; (iii) retention of symbolic rights, or token shares . . . ; (iv) sacrifice of leading or strong rights for shares foreseen to have more practical value, near the promised roading or near centres of settlement or schooling; (v) ‘banking’, or selling shares piecemeal when needed for cash, often avoiding selling all shares in any block; (vi) selling everything . . . for some purpose or enterprise free of the troublesome land.⁴⁹²

Most of these tactics, he concluded, were ‘different forms of the “part-selling” which frustrated Bowler’ and made his purchasing more difficult.⁴⁹³

488. Crown counsel, closing submissions (doc N20), topics 14–16, pp78–79

489. Peter McBurney, summary of ‘Ngati Manawa and the Crown, 1840–1927’ and brief of evidence, March 2004 (doc F7), p19 (Crown counsel, closing submissions (doc N20), topics 14–16, pp78–79)

490. Draft report [in Bowler’s hand], [circa end of 1919 or 1920] (Webster, ‘The Urewera Consolidation Scheme’ (doc D8), p179)

491. Steven Webster, summary of evidence and response to statement of issues, 23 June 2004 (doc E6), pp 6–7

492. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp186–187

493. *Ibid*, p187

These were useful strategies at a time when there were wider financial and social pressures on hapu and iwi which impacted on whanau. Counsel for Wai 36 Tuhoe referred to the cumulative pressures Tuhoe faced during the years 1916 to 1920 – a time when key leaders, including Numia Kereru and Te Whenuanui, were lost to them. The police incursion to Maungapohatu in 1916 and the arrest, trial, and imprisonment of Rua Kenana imposed substantial costs on the Maungapohatu community, while from 1915 to 1918 Tuhoe leaders were also engaged in lengthy and expensive preparations for taking their case for title to Lake Waikaremoana to the courts. The influenza pandemic also struck towards the end of the period.⁴⁹⁴ We note that it was one of the few events that produced a lull in Bowler's activity – albeit short-lived. Bowler reported that the pandemic had been 'very bad in the district at the back of Whakatane and I have abandoned any idea of pushing on with the Urewera purchases for the present, as it would be extremely dangerous to bring any number of the natives together.'⁴⁹⁵

And we might add that Tuhoe were also very conscious of the war effort: Te Pouwhare of Ruatoki wrote to the Native Minister in 1915 that Tuhoe had decided at a hui to subscribe funds for those engaged in the war through the sale of interests in Tauwharemanuka, Parekohe, Karioi, and Waipotiki blocks.⁴⁹⁶ As Te Pouwhare put it, 'no scheme has, as yet been put forward for using the proceeds of these sales of the past', so their idea of supporting the war effort seemed a good one.⁴⁹⁷ In other words, it was much easier to contribute donations through an established process, for a national cause, than to overcome the barriers to managing tribal economic development. This is a statement which speaks for itself.

13.7.3.6 Did the Crown ensure that Maori sellers would not become landless?

The Crown has conceded that in purchasing undivided individual interests in the reserve blocks, it did not follow the usual protective mechanisms applying to Crown purchases of Maori land during this period.⁴⁹⁸ These protections included the landlessness test, initially designed to ensure that Maori sellers retained 'sufficient' land, that had been in place since the 1870s. During the first years of the twentieth century, they changed rapidly (see the sidebar over). Counsel further conceded that 'irrespective of the position at law it was incumbent on the government to have exercised due care in respect of the Urewera vendors, given the decision to purchase undivided interests in 1914 without the consent of the General

494. Counsel for Wai 36 Tuhoe, closing submissions, part A (doc N8), p 8

495. Bowler to Native Under-Secretary, 6 November 1918 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 962); Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 163

496. Berghan, 'Block Research Narratives' (doc A86), p 288

497. Te Pouwhare to Native Minister, 20 November 1915 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(f)), p 1779); Berghan, 'Block Research Narratives' (doc A86), pp 288–289

498. Crown counsel, closing submissions (doc N20), introduction and overview, p 10, topics 14–16, pp 76–78

Provisions to Ensure Maori Sellers Were Not Left 'Landless', 1909, 1913

A 'Landless Native', as defined by the Native Land Act 1909, 'means a Native whose total beneficial interests in Native freehold land (whether as tenant in fee-simple or as tenant for life, and whether at law or in equity) are insufficient for his adequate maintenance'.

The Native Land Act 1909 provided that a land board or the land court could not confirm an alienation unless satisfied that 'no Native will become landless within the meaning of this Act by reason of that purchase'. When the Crown was the purchaser, the Native Land Purchase Board also had to be satisfied that the purchase would not leave any Native landless, and it had a duty to make 'due inquiry' on that score (section 373(1)). The duty was watered down, however, by section 373(2), which provided that no purchase would be invalidated 'by any breach of the requirements of this section'.

The Native Land Amendment Act 1913 repeated (in section 109) that it was the duty of the Native Land Purchase Board, before completing a purchase, to ascertain that it would not render any Native landless. The 1913 Act also spelt out how the board was to ascertain this: it was to get from the Registrar of the Native land district or districts in which any lands owned by the Native were situated, particulars of all land in which that Native was beneficially interested (section 109(10)). No change was made to section 373(2) of the principal Act, however, so that a board's failure to ascertain whether a purchase would render a Native landless would still not invalidate the purchase.

Committee⁴⁹⁹ – that is, without the 'key protective feature of the UDNR Act 1896 (s 21).'⁵⁰⁰

Fisher, in fact, raised with Bowler the question of the position of a particular seller in the Tauranga block in July 1915, asking him to check whether the seller had 'sufficient other land'.⁵⁰¹ Bowler could not answer him, but he noted the significance of Fisher's request in relation to his purchase of other interests:

I take it as a general rule the Crown only undertakes the purchase of lands which are suited for settlement and of which the Natives are making no use. Am I to refuse to purchase, in cases of this kind, unless I have definite information as to the other lands owned by the alienors? If this principle is laid down, I am afraid that my operations will be considerably curtailed.

499. Crown counsel, closing submissions (doc N20), introduction and overview, p10, topics 14–16, pp 79–80

500. Edwards, answers to questions of clarification (doc L33), p3

501. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p145

A pencilled note in the margin read: 'N[ative] S[ecretary] directed that no action should be taken re reply to this.'⁵⁰²

This remarkable interchange speaks volumes. We note that Bowler, having raised the question, and sounded his warning to Fisher about the possible dangers of taking the requirement in the legislation seriously, proceeded with purchase without much concern for the interests of Maori sellers. Bowler, as Edwards put it,

was, in accordance with his role as Land Purchase Commissioner, more concerned with the purchase of lands for settlement purposes (and protecting the Crown's interest in blocks where purchasing had occurred) than the impact of the sales process on the people from whom he purchased shares or co-owners in the blocks concerned.⁵⁰³

It is not surprising that, a year later, Judge Browne (in his capacity as President of the Waiariki District Maori Land Board), expressing his fears for the well-being of a particular vendor in a Waimana subdivision, spoke of the broader context that concerned him:

The Government is buying interests in the Urewera country and *as far as I am aware is making no enquiries as to whether the persons from whom it is purchasing will be left landless by reason of the sale or not.* Many of the Natives are I think selling under the impression that the Government will make reserves for them out of Crown land. [Emphasis in original.]⁵⁰⁴

Indeed, Ngata would raise the question of 'many' landless people in 1921, as plans for consolidation of the Crown's interests gathered momentum, suggesting that 20,000 acres should be set aside by the Crown for them. Then, as earlier, the Crown side-stepped the issue. When RJ Knight of the Lands and Survey Department inquired whether he should turn down the request or 'make an evasive non-committal reply', Brodrick, the Under-Secretary for Lands, advised him to be 'non-committal if asked about land for landless Natives.'⁵⁰⁵

Webster found it difficult to estimate how many people were left landless by the end of Bowler's campaign. He pointed to two figures, however. A report of the consolidation commissioners in 1924 listed 31 war veterans who had 'come forward to ask for the return of some Crown land to avoid dependency on their

502. Bowler to Native Under-Secretary, 16 July 1915 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p1089); Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp145-146

503. Edwards, answers to questions of clarification (doc L33), p3

504. Browne to Native Under-Secretary, 4 December 1916 (Jeffrey Sissons, 'Waimana Kaaku: A History of the Waimana Block' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A24), pp91-92)

505. Knight to Guthrie, 21 June 1921, and Under-Secretary for Lands to Knight, 16 July 1921 (Webster, 'The Urewera Consolidation Scheme' (doc D8), p366)

families.⁵⁰⁶ In light of the uncomfortable nature of this request, he considered that would have been a minimum figure. Webster calculated also, comparing figures given at the time for owners who retained interests in the reserve in 1919–20 with those calculated by Clementine Fraser for late 1921, that ‘as many as 185 additional Tuhoe were made landless/kore whenua’ between November 1919 and 1921.⁵⁰⁷ He did not attempt, he added, to calculate the number of those already landless before November 1919.⁵⁰⁸ The figures he did calculate, however, including the veterans, would equate to some 10 per cent made landless.⁵⁰⁹

Two hundred people of this rohe, at least, were without land within their rohe. This ominous state of affairs is in stark contrast to Seddon’s promise made at an 1894 hui in Te Urewera, when he pledged Crown protection of the people: ‘I say they will never be landless – never be without money, food, or clothes. They will be more prosperous than Tuhoe have been since they have been Tuhoe.’⁵¹⁰ (See chapter 9.)

But, 20 years later, as we have seen, officials quite deliberately decided against active steps to protect sellers against landlessness – which, given the Crown’s determination to buy as many interests in reserve blocks as it could, was hardly surprising. Landlessness might have been more widespread had not owners themselves adopted strategies to retain some shares in the face of Bowler’s predatory campaign. We examine the short- and long-term effects of this campaign in chapter 15.

13.7.4 Crown purchasing in the reserve and the fate of self-government – overview

We have looked carefully at how the principles of the UDNR Act 1896 were eroded over a period of 20 years by Crown policies and legislation. The Crown undermined the unique character of the UDNR Act: its provision for tribal self-government, for a better process of title determination in which owners participated as decision-makers – which would also result in hapu titles – for the safeguarding of Te Urewera land for its peoples, and protection of individual owners with few financial resources from relentless purchasing. It lost sight of, or ignored, the rights of reserve owners and communities.

506. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), p 179

507. Webster’s sources for the number of ‘non-sellers’ (most of whom retained some interests) in 1919–20 were the lists in the *Kahiti* of November 1919, and Bowler’s later report. He referred to Fraser’s ‘careful tabulation and culling of “non-seller” names’ from primary sources on the consolidation to reach a comparative total of ‘non-sellers’ for late 1921: Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp 179, 273.

508. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp 179–180, 273

509. There are considerable difficulties in assessing the Maori population of Te Urewera, as we discuss in a later chapter. We rely on statistics of Whakatane County for the Maori population between 1906 and 1926, which was 2,403 in 1921. Though this poses problems (much of Whakatane County is not part of the Te Urewera inquiry district, and the county also excluded some parts of Te Urewera), the vast majority of the peoples of Te Urewera lived in Whakatane county – 92 per cent in 1901.

510. Seddon’s speech was reported in the AJHR of 1895: ‘Pakeha and Maori: A Narrative of the Premier’s Trip through the Native Districts of the North Island’, March 1894, AJHR, 1895, G-1, p 55.

By March 1921, the Crown had purchased into the vast majority of reserve blocks. Its purchases of interests in 47 blocks amounted to an equivalent of 330,264 acres, or 51 per cent.⁵¹¹ It made a start with purchasing in 1910 in selected blocks, consulting the General Committee and securing its consent for some but not all of these blocks. Officials made it clear that the Crown wanted sales, not the leases that the General Committee had initially hoped to transact. There was a pause in purchase from 1911 to 1915, when the Crown embarked on purchase with huge determination to maximise its land-holding in the reserve. Such enthusiasm was not confined to its purchase agent on the ground, W Bowler, whose carefully worked out strategies to locate owners and acquire, if possible, virtually all their interests might seem unparalleled. But it is clear that the Native Minister and the Native Land Purchase Board were also single-minded in their approach to reserve purchase. They were prepared to buy in defiance of the UDNR Act, which required the General Committee to contract with the Crown to sell, and were prepared also to legislate to validate purchases from individuals retrospectively. From 1915, purchase from individuals proceeded at speed – particularly when new blocks were opened and a number of owners saw the opportunity to raise badly needed cash, perhaps deciding they would prefer to sell in a new block while retaining interests in land with which they were reluctant to sever their connection. Crown officials were prepared even to abrogate the rights of Maori owners (well established in Native Land legislation) to seek to partition out their interests, specifically because it would interfere with Crown purchasing. In other words, officials put the Crown's interests well ahead of owners' rights to farm and develop their own lands. Nor did they show any interest in protecting owners from landlessness, though this remained a statutory duty of the Native Land Purchase Board.

The Crown, having identified the particular resources it wanted to secure in the reserve – initially gold (until it became clear there was none), then timber at Te Whaiti and the northern lands for settlement, and the lands adjacent to Waikaremoana for tourism and hydroelectric generation – created a 'controlled environment', as Miles put it, to ensure the success of its purchasing operations.⁵¹² (It refrained, however, from buying into the Waikaremoana block at this time.) The piecemeal approval of blocks to be purchased ensured that the Crown – through Bowler, and what can only be called his very well-oiled machine – was able to exert great control over the process. Gradual purchase over a period of years – which Bowler defended as being in the Crown's best interests – was 'aimed at preventing Tuhoe from only offering their least attractive interests (and speculating on the rest)' which meant that the people had to adapt to the Crown's purchasing timetable.⁵¹³ Some owners, Miles suggested, might have sold reluctantly in the northern blocks as they waited for the Crown to open purchase in the

511. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), app 6: summary of purchases by March 1921, pp 251–253. Where blocks had been partitioned, each partition is counted separately.

512. Miles, *Te Urewera* (doc A11), p 412

513. *Ibid*, p 413

lesser-valued southern blocks.⁵¹⁴ That is not to say the Crown had things all its own way. It was unable to purchase any one of the 47 reserve blocks in its entirety, and so had to implement a consolidation scheme to secure ownership of a single, large block of land of its own (as opposed to co-ownership of undivided shares in Maori blocks). Such incomplete purchasing, in Stephen Webster's view, constituted 'the little triumphs of the Tuhoe, despite the Crown's acquisition of most of their land.'⁵¹⁵ This was a pyrrhic victory, of course. As Edwards put it: 'At the end of the day, the sellers appeared . . . to have exercised one of the few options available to them in terms of their interests under the reserve legislation, as it was implemented: that was to sell part or all of their interests.'⁵¹⁶ No provision was made for local committees to manage their lands, or to incorporate owners for this purpose, or to ensure the provision of secure hapu titles so that development finance might be borrowed.

The General Committee itself suffered three body blows over a period of some 20 years. First, it was not set up when it should have been, in the years immediately following the passing of the UDNR Act. The Crown amended the Act in 1900, but failed to take the opportunity to separate the electoral provisions of the Act from the slow title-determination processes of the Urewera commission. It did nothing in 1902, even though the members of local committees had been named at the end of the commission's work. In fact it waited for the outcome of the slow appeals process before setting up local committees. Thus, the committees were not established until 1908, and the General Committee not until the following year. Secondly, the General Committee – when it was finally set up – suffered Crown intervention in its constitution and membership; and neither it nor the local committees were provided with the regulations under the Act, as they should have been, to assist their respective roles and functions. The Crown made it clear that the General Committee mattered to it only to approve land alienations and the opening of Te Urewera to prospecting and mining. Thirdly, after a further hiatus until final appeals from Urewera commission orders were heard, the General Committee – which had never been provided with legal power to contract with the Crown to sell or lease land – was deprived even of its power to give or withhold consent to, and to manage, land alienations as the Crown moved to buy extensively into reserve blocks.

In fact, the UDNR Act was eroded by a number of legislative amendments, the great majority of which were made without consultation with Te Urewera leaders, who nonetheless expected that consultation and discussions with the Government on matters so crucial to the well-being of their communities would continue. Some changes were incorporated directly into amending UDNR legislation; others were made in sections of native land Acts. Major changes were made to mainstream native land legislation during this period, and the Crown itself either was

514. Miles, *Te Urewera* (doc A11), p 413

515. Webster, 'The Urewera Consolidation Scheme' (doc D8), pp 212–213

516. Cecilia Edwards, summary of 'The Urewera District Native Reserve Act 1896, Part 3', 28 January 2005 (doc L4), p 20

confused as to whether key provisions in native land Acts applied in the reserve, or simply failed to apply its own law. This meant that reserve owners were denied some protections that were available to all other Maori owners (as the Crown has conceded). Because reserve owners fell between two legislative regimes, and were uncertain of their rights, the Crown could ride roughshod over those rights. Examples of perils of this kind for reserve owners include loss of protections in the valuation of land, and protections against landlessness. Valuations of reserve blocks did not meet the requirements laid down in the Native Land Act 1909. And whether or not the Native Land Purchase Board had a statutory duty to protect reserve owners against landlessness it was, as Crown counsel has conceded, incumbent on the Crown to protect any individuals among them who were selling their shares.

The Crown also manipulated the role of the Native Land Court in the reserve to suit itself. The UDNR Amendment Act 1909 provided that the land court might exercise all the jurisdiction vested in it by the Native Land Act 1909, but excepted (in particular) its jurisdiction relating to partition unless leave of the Governor in Council was obtained. Thus, the Government secured power over the partitioning process in the blocks, which in time it would use to assist its purchasing policy. By subsequent orders in council (in 1912 and 1913) the court was authorised to partition named blocks in the reserve. Maori owners, as we have noted, would take advantage of this provision for several reasons. They might seek partition to assist their own land use on the ground, or to resolve title dilemmas which they considered Urewera commission awards had visited upon them by awarding them undivided shares in large blocks rather than recognising community titles to smaller blocks. Partition, it was hoped, would allow better recognition of hapu rights to particular ancestral lands. And Maori owners might also seek partition to protect themselves from continuing Crown purchase of undivided shares, and safeguard kainga and lands of particular importance to them. Partition, in other words, was considered useful by owners. But when the Native Land Purchase Board later decided that partitioning (in response to Maori owners' applications) would interfere with the Crown's continued purchase of interests, new orders in council in 1916 revoked the court's authorisation to partition in reserve blocks. This is an example of the Crown's cynical use of such a power to deny owners rights in the land court which owners in blocks outside the reserve all possessed.

Above all, the Crown failed in practice to uphold the exclusive legal power of the General Committee to alienate land. From 1914, it used the newly created individual shares against the interests of the owners themselves, ignoring the General Committee. The Solicitor-General himself, however, advised that the purchases were in accordance with Native Land Amendment Act 1913, and therefore were in order. The Government eventually realised that this was not so, and retrospectively validated its purchases. But instead of encouraging the General Committee to take up the role legislated for it to manage alienation (if alienation were deemed necessary) on behalf of communities of owners, the Government increased the speed of its purchase from individuals.

In all these instances, the Crown put its interests before those of the owners. At

the root of them all was a lack of commitment to preserving the spirit and purpose of the UDNR Act – a determination, in fact, to render it irrelevant. And the Crown certainly succeeded in that. The sidelining of the General Committee was the outcome of political and bureaucratic pressure for purchase and settlement over a period of more than 10 years, from 1908 to 1921. In retrospect, it is evident what a misguided policy this was. It was certainly not in the interests of Maori owners, though they got small amounts of cash to survive on as they sold their interests in various blocks. But they lost quantities of land, and exposed themselves to the aftermath of aggressive Crown buying in every block once the Crown sought to separate the interests it had purchased from those of the Maori owners – namely the Urewera Consolidation scheme (which we discuss in the next chapter). The Crown's determination to keep direct private purchasers out of the reserve is mirrored in other districts in this period, such as in Taupo/Kaingaroa (where it used prohibition orders under the Native Land Act 1909 to secure control of the process of alienation by prohibiting all alienations other than those to the Crown)⁵¹⁷ – and we assume it was motivated by the same purpose. Also, as we have seen in chapter 10, the Crown imposed block-specific monopolies in the Te Urewera rim blocks at this time, where it judged these necessary to protect and further its purchases. Bowler was quite certain that it was the Crown's role to acquire 'all large areas of virgin country' to protect settlers, not Maori, from speculators. And the Crown, he suggested, should be one jump ahead; if it bought ahead of demand, it could keep the costs of purchase down. Even if land was not very good, he wrote (in respect of several Taupo blocks), 'sooner or later [it would] become capable of being profitably utilized.'⁵¹⁸ The result was, as the Central North Island Tribunal pointed out, that much of the land bought between 1911 and 1928 remained idle. But it took until 1932, and the deepening of the Depression, before the newly established National Expenditure commission delivered a scathing criticism of the Government's general land purchase policy. It had failed, the commission said, on a number of counts: the native land settlement account had run up huge costs (over £1 million, including interest payable on the purchase price), it had failed to deliver completed blocks which could be made available for settlement in a timely manner; and it had failed to secure adequate returns on leased lands. The commission recommended that purchase of native lands should cease until economic conditions improved.⁵¹⁹

For Maori owners, of course, it was by then too late. The saddest thing about the purchase campaign in reserve blocks is that it was so futile. The farming settlement in Te Urewera the Crown had confidently banked on and promoted in the 1910s did not happen. While the Crown constantly held out for the purchase of more interests in the various reserve blocks, and delayed partitioning out what it had bought, the market it had detected for farms evaporated. Or, perhaps, that market

517. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 689, 694, 698–703

518. Bowler to Native Under-Secretary, 17 April 1918 (Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 708)

519. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 708

had not existed in the first place – the Government, after all, had not thought of Te Urewera as a suitable district for settler farming in the mid-1890s. Eventually, in March 1924, the Crown put up 18 sections of third-class ‘heavy bush’ land (totaling 28,564 acres) for sale or lease, 12 in the Waimana Valley, and six in the vicinity of Te Whaiti; and a further three sections in the Waimana Valley (totalling 3,322 acres) were offered to settlers in May 1924.⁵²⁰ Despite extensive advertising, only three leases were taken up, and in July 1924 the decision was made that it was best to withdraw all the Crown’s remaining bush-covered sections from the market.⁵²¹ There could be no more telling comment on the wrong-headed direction of purchase policy over the previous 10 years.

The economic cost of large-scale purchase to both the peoples of Te Urewera and the Crown was huge. As Dr Loveridge, considering Crown purchase policy generally at this time, put it, ‘the country in general, and Maori in particular would have been much better off in the long run’⁵²² if in the early twentieth century the Crown had redirected its investment funds not into continuing Crown purchase of Maori lands but into a ‘rather different kind of investment which might have ensured full Maori participation in the colonial economy through development of their own lands.’⁵²³ We can only agree that the Crown, unable to jettison the colonial preoccupation with settler land acquisition and interests, missed its opportunity to include Maori who still retained tribal lands in the country’s economic and political development at that time.

The great defeat of the UDNR Act was the Crown’s wholesale undermining of the General Committee. Our view, as we have explained, is that the Crown’s inordinate delay in taking the necessary steps to ensure the setting up of the Committee was enormously damaging to its prospects of establishing its authority – particularly given the unpropitious circumstances in which it was finally set up. The Crown looked to the General Committee only when it wished to open the reserve to prospecting, mining, and settlement, and it seemed that the requirements of the UDNR Act to secure the consent of the Committee (that, at least, was how the Crown interpreted the Act) could not be evaded. At that point the Crown’s collective actions were self-serving and unhelpful to a newly constituted body facing its own internal pressures:

- ▶ It suggested a fast-track process to the election of a General Committee at the beginning of 1908, and at the same time prompted Te Urewera leaders to

520. ‘Opening National-endowment Lands in Auckland Land District for Sale or Selection’, 6 March 1924, *New Zealand Gazette*, 1924, no 14, pp 640–641; ‘Opening Lands in Gisborne Land District for Sale or Selection’, 15 May 1924, *New Zealand Gazette*, 1924, no 33, p 1178

521. Philip Cleaver, ‘Urewera Rooding’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A25), p 77; Klaus Neumann, “. . . That No Timber Whatsoever Be Removed”: The Crown and the Reservation of Maori-owned Indigenous Forests in the Urewera, 1889–2000’ (commissioned research report, Wellington: Waitangi Tribunal, 2001) (doc A10), p 57

522. Donald Loveridge, summary of ‘The Development of Crown Policy on the Purchase of Maori Lands, 1865–1910’, November 2004 (Wai 1200 RO1, doc A77(b)), pp 17–18 (Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 708)

523. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 708

consider land alienation ('cession') to meet what was presented as an obligation to meet survey and Urewera commission hearing costs; and it did not subsequently explain to those leaders that the advice about costs, which was entirely contrary to the provisions of the UDNR Act, was wrong.

- ▶ It thus impressed upon the General Committee that its key purpose was to consider land alienation; and the Committee operated accordingly.
- ▶ It interfered with the composition of the Committee, reducing its size so that a number of local committees were no longer represented on it, then making appointments itself – a strategy which does not seem to have reduced tensions within the leadership, if that was what had been hoped.
- ▶ It failed to provide regulations (even when prompted by a Native Land Court judge) to define the powers and functions of the General Committee and local committees respectively (as provided by the UDNR Act 1896, and again by the UDNR Amendment Act 1909), thus leaving the committees without the kind of operational guidance that had been anticipated in 1896.
- ▶ It failed to empower the General Committee to inquire into and determine tribal and family boundaries, when that power was sought, which might have led to security of tenure on the ground for communities of owners and assisted them in land management and in protecting blocks from Crown purchase.
- ▶ It was inconsistent in seeking and securing the consent of the General Committee to the first alienations in 1909–10, and failed completely to empower the Committee to transact alienations, which meant that it would prove easy to by-pass the Committee altogether in all its purchasing from 1915, dealing instead with individual owners.

The subsequent unhappy history of the General Committee shows that it could not survive this combination of Crown intervention (on some issues) and Crown failure to act (on others). What this led to was a succession of Committee meetings during 1909 and 1910 which dealt with alienation (first leases and then sales) – and which ceased altogether when Ngata indicated at the end of 1910 that no more sales would be proceeded with.

The final meeting of the General Committee in 1914 sums up the way in which it had by then been neutralised by the Crown. It met because it had an important proposal to consider: Ngati Whare, who had been hoping to begin commercial milling on their land for some time, thought they were finally in a position to do so. The proposal was debated in both March and April, the motion supporting the proposal passed and forwarded to Wellington. But the Crown (as we discuss in the next section) did not take it through the processes laid down in the 1909 Amendment Act, thereby ensuring that Ngati Whare would not enjoy a financial return from their timber, and clearing the way for its own purchase of the blocks.

Crown purchase from individual owners in reserve blocks (including Te Whaiti), which started over a year later, confirmed the demise of the General Committee. Numia Kereru, its chairman, passed away in mid-1916.

Following Numia's death, the General Committee appears to have maintained what Miles has referred to as a 'de facto existence despite the Government's best

efforts to ignore it.⁵²⁴ Judge Wilson referred to the General Committee in August 1917 and described Te Amo Kokouri as a member at the time. Te Pouwhare wrote to the Native Minister the same year, advising that a Committee meeting was to be held; he would send a report of it. In 1918, Rawaho Winitana and 99 others of Waimako sought the reappointment of the Committee:

the General Committee, appointed under the Act of 1896, is non-existent, as also is the Provisional Committee. Twenty members were appointed to this Committee. The reason for its non-existence was on account of Kereru's decease. Wherefore, we pray that you re-appoint this committee to administer the Urewera Reserves Act in connection with the blocks hereinbefore referred to [Waikaremoana, Ruatoki 1, 2, and 3, Ruatahuna].⁵²⁵

Te Pouwhare wrote to the Minister again in July 1919, referring to a Committee set up to deal with tribal matters generally: such a body was needed to deal with local disputes, and some funding should be made available to it. Pouwhare asked for its members to be gazetted and for regulations. Edwards stated that the committee appeared to be a small number of original members of the General Committee.⁵²⁶ At this point Herries asked Judge Rawson whether the Committee actually existed; the land court said it had no record of the Committee, though the judge 'recalled the amended legislation under which they were to be set up'.⁵²⁷ Herries' response was to ask the judge to report when next he visited the district, but he had already reached the view that the Committee would not serve the interests of the Crown: 'I think the existence of the committee might be at present a hindrance to purchasing interests. When consolidation of interests is wanted, the Committee might be called into existence.'⁵²⁸

In May 1919, Te Amo Kokouri and 121 others requested that the General Committee and Provisional Committee again be set up to administer the blocks.⁵²⁹ But they had by then set up their own Komiti Kaumatua at Ruatahuna to deal with local affairs. Te Amo Kokouri was its chairman. The Tuawhenua researchers recorded that it continued in existence at least until 1924. The establishment of the Komiti, they said, was an important development: 'This was the Ruatahuna people establishing their own mechanism for local governance, where the Crown had refused to reinstate the Komiti Nui o Tuhoe.'⁵³⁰

524. Miles, *Te Urewera* (doc A11), p 407

525. Rawaho Winitana and 99 others to Herries, 23 September 1918 (Miles, *Te Urewera* (doc A11), p 407)

526. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 222

527. *Ibid*, p 223

528. Native Minister to Native Under-Secretary, 23 September 1919, marginal comment on Rawson to Native Under-Secretary, 13 September 1919 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 576)

529. Te Amo Kokouri et al to Native Minister, May 1919 (Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 222)

530. Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two' (doc D2), pp 141-142

But there was no support from the Government for the reinstatement of the General Committee.⁵³¹ Why would there be? The Crown had consigned the General Committee to oblivion. With it went the aspirations of Tuhoe and Ngati Whare for self-government – aspirations recognised by the Crown in 1896 – at iwi and local level. And with it also went the protection which the iwi understood had been negotiated for the reserve lands.

13.7.5 Were valuations of land and timber, and prices paid, fair?

The question of whether the prices paid for UDNR lands from 1910 to 1920 were fair is closely related to the question of whether the valuations on which prices were based were lawful and fair – though valuations alone did not determine prices. We pointed in our discussion of prices paid for Te Urewera rim blocks (see chapter 10) to the impact of a range of factors on prices: the Crown's dealing with individuals in need of cash for food and other necessities – and by-passing of collective decision-making; its use of monopoly powers to exclude private competition and remove Maori choices about their land; and its single-minded determination to purchase Maori land, regardless of Maori interests or of whether the land was really needed for settlement. We examine here the impact of these factors on valuations and prices paid for reserve blocks.

There had been major changes in the law affecting the valuation of land, including Maori land, since the rim block purchases of 1881 to 1903. In 1896, a new Valuation Department was created by the Government Valuation of Land Act 1896. Its job was to create a general roll of all properties which would be the authoritative basis for land tax, stamp and estate duties, local authority rating assessments, and mortgage lending by Government bodies. The positions of Valuer-General and district valuers were created.⁵³² Nine years later, the Maori Lands Settlement Act 1905 provided that prices paid to owners of Maori land must be 'not less than the capital value of the land as assessed under the Government Valuation of Land Act 1896'.⁵³³ For the first time, there was legal provision for a minimum price for Maori land, based on a Government valuation. This provision was carried forward into the comprehensive Native Land Act 1909. Also in 1909, there were changes to the law affecting reserve blocks specifically. We begin with the valuations of reserve blocks made in this new regime.

The claimants and the Crown gave opposing answers to the questions we consider here. Claimant counsel – drawing on the evidence of Tamaroa Nikora, Stephen Robertson, and Bruce Stirling – submitted that significant flaws existed in the valuation method adopted for reserve blocks.⁵³⁴ Valuations (not strictly speaking valuations, in their view, but 'estimates of value' compiled by Lands Department officers with limited expertise) were too low, and development costs,

531. Edwards, summary of 'The Urewera District Native Reserve Act 1896, Part 3' (doc L4), pp18, 20

532. Government Valuation of Land Act 1896, ss2(2), 10, 11

533. Maori Land Settlement Act 1905, s25

534. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p99

including roading, were deducted from the land's value, so that Maori owners were in effect paying the costs of development.⁵³⁵ Above all, there was no market in which to measure value, because the Crown had a monopoly on purchase. In light of this, the Crown had an added duty to ensure the price it paid for UDNR land (which was purchased illegally) was at market value.⁵³⁶

The Crown, as we have seen, rejected claimant 'contentions'. Purchase prices, counsel submitted, were fair. Claimant criticisms that the Crown failed to obtain proper valuations for the land, and relied instead on officials who were not valuers and inappropriate methods of valuation, were unjustified. Such criticisms arose from confusion as to the method of valuation used.⁵³⁷ The Crown did not specifically address the impact of its purchase monopoly on its valuations. It suggested that Wilson based his 'settlement value' (evidently the value of the land when ready for settlement, minus the costs of development) on his knowledge of comparable settlement values elsewhere; that it was not the practice to note the value of comparative land; and that there is insufficient evidence, given the quality and remoteness of the land, that land values on which sales were based from 1910 to 1921 were lower than they should have been.⁵³⁸

We are clear that the process by which reserve blocks were valued was defective, unlawful, and did not adequately protect Maori land owners. So, we have concluded that we cannot accept the Crown's contention that the valuations were fair.

In respect of timber, we focus on the valuation of and prices paid for the valuable timber of Te Whaiti, though we also consider more briefly the issue of timber valuation across the whole of the rest of the reserve. We uphold the claimants' submissions that the timber across blocks other than Te Whaiti was not valued, despite the fact that there were substantial quantities of merchantable timber on the blocks. The claimants submitted that the Crown was negligent in its valuations of Te Whaiti timber and very unfair in its methods of purchasing the land on which the timber stood.⁵³⁹ The Crown in response made a number of important acknowledgements, in particular that the valuation of the forests was such that the Crown paid a low price for them.⁵⁴⁰ Counsel conceded in their closings that Te Whaiti owners were 'actively constrained' in their ability to harvest their forests, in a way that had not been intended under the UDNR Act.⁵⁴¹

We heard a considerable amount of evidence on Te Whaiti timber valuation. We have concluded that the timber was neither properly measured nor properly valued. Moreover, the Crown in effect defeated the attempts of Te Whaiti owners to sell cutting rights to private buyers, deciding instead to buy individual interests

535. *Ibid*, pp 99, 113

536. *Ibid*, p 99

537. Crown counsel, closing submissions (doc N20), topics 14–16, pp 81–82

538. *Ibid*, pp 84–85

539. Counsel for Ngati Whare, closing submissions (doc N16), pp 73–74; counsel for Wai 36 Tuhoë, closing submissions, pt B (doc N8(a)), pp 179–180

540. Counsel for Ngati Whare, closing submissions (doc N16), pp 88–89; Waitangi Tribunal, statement of issues, stage 2, no date (paper 1.3.6), p 125

541. Crown counsel, closing submissions (doc N20), topics 14–16, p 91

in the blocks itself and secure the land and its timber in this way. The Crown did not even consider the desirability of securing their most valuable resource to the Te Whaiti owners.

We address the following questions about valuations and prices paid for reserve land and timber:

- ▶ Was the process of valuing reserve blocks lawful?
- ▶ Were valuations, and prices paid to Maori owners, fair?
- ▶ Were valuations and prices paid for standing timber fair?

13.7.5.1 Was the process of valuing reserve blocks lawful?

The issue here is whether the reserve (governed by its own special legislation) was subject to provisions in the mainstream Native Land legislation and, if it was, whether the valuations made of UDNR blocks complied with that law. We begin by outlining the main valuations of UDNR blocks.

The first valuations (of eight blocks in the Tauranga Valley, northern Te Urewera)⁵⁴² were made in 1910 by District Surveyor Andrew Wilson of the Department of Lands and Survey after Ngata reported that the General Committee had consented to four proposals to sell land. The majority of the UDNR blocks were valued in 1915 by Wilson and Crown Lands ranger AB Jordan, accompanied by another ranger, RC Pollock, who valued the timber on Te Whaiti block. In addition, Wilson supplied new valuations for the nine subdivisions of Tauwharemanuka in 1916, after it was partitioned the previous year.⁵⁴³

District valuers were sent to the reserve only occasionally, so the only Government valuations made were those based on district valuer JH Burch's valuation of the Te Whaiti block (July 1915), revised in August 1915 to show separate valuations for Te Whaiti 1 and 2; and Burch's valuation of the five partitions of the Ruatahuna block in 1919.⁵⁴⁴

Claimant counsel objected most strongly to the main sets of valuations in 1910 and 1915, in which Wilson played such a prominent role; counsel for Wai 36 Tuhoe described these as no more than 'estimates of value'.⁵⁴⁵ We consider these valuations first. Both sets of valuations were characterised by calculations designed to show that a Crown settlement scheme was financially viable, given the costs of buying the land, putting in roads, and surveying the land. Wilson explained his methodology in 1910 (see the sidebar opposite).

In other words, Wilson estimated the future price per acre of the land when developed as farms, then deducted estimated development costs from this nominal value, arriving at what he called a 'prairie value' (unimproved value, but

542. See Wilson to chief surveyor, 30 June 1910 (Stephen Robertson, comp, supporting papers to 'Te Urewera Surveys, Survey Costs and Land Valuations in the Urewera Consolidation Scheme, 1921–22', various dates (doc A120(a)), p 2).

543. Stirling stated that Wilson apparently supplied the new prices without a further visit to the land: Bruce Stirling, 'Te Urewera Valuation Issues' (commissioned research report, Taneatua: Tuhoe-Waikaremoana Maori Trust Board, 2005) (doc L17), p 113.

544. Stirling, 'Te Urewera Valuation Issues' (doc L17), pp 115, 128

545. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 99

THIS COUNTRY on an average will carry two sheep to an acre, so that it is safe to say that when it is in grass it will be worth £5. per acre. I estimate the cost of getting it to that stage as follows:—grassing 40/–, roading 10/–, survey and administration 5/–, building 10/–, fencing 10/– per acre, total £3 15/–, leaving a prairie value of 25/– per acre, but to be on the safe side, I take the different blocks individually and value them according to their quality and their positions with respect to roading. Parekohe 20/– per acre, Otara 20/–, Omahuru 20/–, Paraoanui North 17/6, Paraoanui South 17/6, Tauwharemanuka 15/–, Waikarewhenua 12/– and Mangapohuta [sic] 12/– per acre.’

Andrew Wilson¹

1. Andrew Wilson to chief surveyor, 30 June 1910, MA-MLP 1 1910/28/1, pt1, Archives New Zealand, p 2 (Stephen Robertson, comp, supporting papers to ‘Te Urewera Surveys, Survey Costs and Land Valuations in the Urewera Consolidation Scheme’, various dates (doc A120(a)), p 2)

see discussion below) of 25 shillings per acre. This was not how a Government valuer would have proceeded. First, Wilson was working with estimated, rather than actual, values – an estimated capital value and estimated development costs. Secondly, he deducted the estimated costs from his estimated capital value; in other words, he used what was called a ‘residual’ method. This method of determining unimproved value had been specified in the Government Valuation of Land Act 1896, which defined the unimproved value as the difference between the total capital value of the property and the capital value of improvements (section 5). But from 1900 the law required a different approach to valuing; the residual method could no longer lawfully be used. The unimproved value was defined in section 2 of the Government Valuation of Land Act Amendment Act 1900 as the selling price of land as if it bore no improvements, and both that value and the improvements had to be valued separately.⁵⁴⁶

Thirdly, as we have said, Wilson designated his final estimated value a ‘prairie value’ – a term he used in both his reports, though he never explained why, or what he understood by it. Nor, as far as we are aware, had the term featured in his instructions. ‘Prairie value’ is in fact an obscure term in the New Zealand context. The Crown assisted us by citing a textbook definition: ‘[prairie value] means the value of the land assuming both the land itself and the surrounding environment were in their original or unimproved state.’⁵⁴⁷ In counsel’s view: ‘The lands Wilson valued at 1910 and 1915 were mainly prairie lands by virtue of their size, remote location, and distance from developed lands and supporting infrastruc-

546. Stirling, ‘Te Urewera Valuation Issues’ (doc L17), pp 13–14, 101–102

547. Crown counsel, closing submissions (doc N20), topics 14–16, p 84

ture.⁵⁴⁸ It does seem likely that Wilson adopted the term because he was trying to distinguish the value of lands in what he saw as a ‘remote’ and largely undeveloped district from the ‘unimproved value’ of lands in a rural area where development was already under way and where there was a market in land. Perhaps he used it also to underline the fact that he was not engaged in a standard valuation exercise.

But Wilson concluded by putting actual values on the individual blocks ‘to be on the safe side’, as he put it; he had, after all, to provide block values for Crown purchasers. His values were based, he said, on the quality of land and the ease of access.⁵⁴⁹ (These criteria, in fact, were among those laid down by the Valuer-General in a memorandum to his valuers, which specified that when valuing particular pieces of land in a district, they must take into account the ‘quality of soil, situation, accessibility, configuration, or other natural peculiarities.’⁵⁵⁰) We note that Wilson progressively reduced the value as the blocks became more remote from Waimana. These values averaged 15s 4d per acre. As we will see, the law provided that owners should not be paid less than the capital value of the land. This was what Wilson should have assessed, but he did not. He took no account of the improvements Maori communities had in fact made on the land at or near their kainga, such as clearing, grassing, fencing, and buildings.⁵⁵¹ The Crown suggested that Wilson assumed that the Crown, on partition, would not acquire Maori settlements and their improvements. Perhaps he did, but this strikes us as an ad hoc decision. We discuss this matter further below.⁵⁵² Wilson commented in his report that he considered the land ‘will be rushed [by settlers] at 40/- per acre, including roading.’⁵⁵³ Given that the Crown’s share of Wilson’s estimated development costs (those for roading, survey, and administration) was estimated at 15 shillings per acre – the remaining development costs would have been borne by individual settlers – the estimated total cost to the Crown (including land purchase) would have been 30 shillings an acre. There was thus a comfortable margin of 10 shillings an acre, averaged over the blocks, to cushion the Crown in case costs – possibly including the costs of paying owners for improvements – were higher than anticipated, with the possibility also of an attractive return. Wilson’s construct, as set out in the first part of his report (see the sidebar opposite), was thus basically an exercise in reassuring the Government that settlement of the reserve lands it might acquire could be achieved without financial risk to the Crown, and with the prospect of profit.

548. Crown counsel, closing submissions (doc N20), topics 14–16, p 84

549. Wilson to chief surveyor, 30 June 1910 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 2)

550. FW Flanagan, *Memorandum Explanatory of The Valuation of Land Act, 1908, and its Amendments* (Wellington: Government Printer, 1921), p 7

551. Stirling, ‘Te Urewera Valuation Issues’ (doc L17), pp 115–116

552. Crown counsel, closing submissions (doc N20), topics 14–16, p 84

553. Wilson to chief surveyor, 30 June 1910 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 2)

The 1915 Estimated Values of 31 UDNR Blocks

THIS AREA [suitable for settlement] of say, 370,000 acres would settle about 350 settlers giving them about 1,000 acres each, and it would take 200 miles of roading to serve this extent of country, taking the cost of roading at £800 per mile . . . surveying, advertising etc, will be about 5/- per acre, and we consider that the average price per acre will be about 10/- per acre, against this the average value of the land when ready for settlement will be 25/- per acre, so we have:—

370,000 acres @ 25/-, £462,500.

370,000 ac @ 10/- prairie value, 185,000.

200 miles roading @ £800 p/mile 160,000.

Expenses, Surveys, &c @ 5/- p/ac. 92,500.

Balance 25,000.

£462,500.

'A schedule is attached giving the price of each block per acre at the present prairie value which will average out at 10/- per acre. This estimate as a whole is a very fair and equitable one, but we have endeavoured to place it so that there can be no loss to the Crown, and no possibility of disaster to any settlement scheme.'

A Wilson and A B Jordan¹

1. Wilson and Jordan to chief surveyor, 1 August 1915, p3, MA 31/21 (SKL Campbell, comp, supporting papers to 'Land Alienation, Consolidation and Development in the Urewera, 1912–1950', 3 vols, various dates (doc A55(b)), p 25)

In 1915, Wilson and other Lands Department officials engaged in a second valuation exercise, this time on a much larger scale: 31 reserve blocks totalling 524,929 acres, or 80 per cent of reserve lands, were involved.⁵⁵⁴ This evidently followed the recommendation of the Attorney-General, A L Herdman, who travelled from Murupara through Te Whaiti, Ruatahuna, and Waikaremoana to Wairoa in March 1915, that 'competent judges' be sent to the district to give their opinion of the land and the timber.⁵⁵⁵ Wilson, whose instructions came from the chief surveyor, did

554. Wilson schedule attached to Wilson and Jordan to chief surveyor, 2 August 1915 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 26)

555. 'The Urewera Country: Natives Want Settlement: Good Land and Timber,' *Auckland Weekly News*, 18 March 1915 (Neumann, "'... That No Timber Whatsoever Be Removed'" (doc A10), p 36)

the valuations jointly with Crown lands ranger A B Jordan and Robert Pollock, also a ranger. (Pollock put his name only to the appended note on roading, and also, as instructed, supplied an additional report on the timber of Te Whaiti block.⁵⁵⁶) Four of the blocks (Waikaremoana, Te Whaiti, Manuoha, and Paharakeke), amounting to 182,732 acres, were deemed unfit for settlement 'at present'. The officials subtracted this amount from the overall area of the reserve (which they gave as 653,000 acres), leaving a balance of 470,420 acres; then subtracted a further 100,000 acres for reserves for 'Native owners' and 'broken patches' suitable for 'scenic and climatic purposes'. That is, Maori were to be left with less than one-sixth of the reserve. This left some 370,000 acres suitable for farming settlement. The officials calculated that the average value of this land 'when ready for settlement' would be 25 shillings per acre (see the sidebar above).⁵⁵⁷

In other words, Wilson and Jordan started with the projected income from sales of the land they expected the Crown to acquire, working on the basis of an actual settlement scheme with a specified number of potential farmers. They deducted estimated costs of acquiring the necessary lands and of servicing the estimated number of farms to be developed on those lands (including a remarkably high cost for surveying and 'expenses'),⁵⁵⁸ which left an estimated balance of £25,000, some 5.5 per cent of the total estimated cost of the scheme); that is, an allowance for contingencies – and a comfortable profit. In other words, the officials were still using the residual method, and were still not working with actual valuations. In their attached schedule, they did assign each block a 'prairie value', and then averaged them. The values put on the blocks varied widely, from a high of £10 per acre for some relatively flat and very good-quality land at Ruatoki, to five shillings an acre for a small number of blocks at the bottom end of the scale that were still deemed suitable for settlement.⁵⁵⁹ It appears that the average value was worked out only on blocks deemed suitable for settlement, despite the fact that the four blocks not deemed suitable were listed, with their values, in the schedule included with the report.⁵⁶⁰

The average value assigned to the blocks (about 10 shillings per acre) was considerably lower than the average value assigned in 1910. The average price officials had thought settlers would be prepared to pay, namely 25 shillings per acre, was

556. Robertson, 'Te Urewera Surveys' (doc A120), pp 53–54

557. Wilson and Jordan to chief surveyor, 1 August 1915 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 23–27)

558. The schedule of surveying rates adopted by the Institute of Surveyors in February 1917 (*New Zealand Gazette*, 29 May 1919, pp 1620–1621) suggests that the survey of 500- to 1,000-acre sections of forested hill country would have cost around two shillings per acre (taking into account the difference in mileage rates for flat open country (ninepence per acre) and rough hill country under forest, a factor of 2.625).

559. Wilson and Jordan to chief surveyor, 1 August 1915 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 23–27)

560. It is not possible to confirm the calculation of the average value because in the case of Ruatoki 1 and 3 blocks, two separate values were listed, obviously indicating assessment of different quality of land within them – but there is no indication of how much land in each block was valued at the higher or lower value.

also considerably lower. Accordingly, the Crown's possible profit (at about 5.5 per cent of the estimated value of the land when ready for settlement) was a great deal lower than the profit margin of 25 per cent that had been indicated by the 1910 valuation.

The generally lower 1915 values may have been the result of several factors. First, it is doubtful how careful the officials' appraisal of the land was. Though Wilson and the two rangers had travelled through Te Urewera, their viewing of the land – as they themselves pointed out – was hampered by two of 'the largest floods on record', and as they 'travelled in mist and rain' they 'could not see the outlines of the country'.⁵⁶¹ Tamaroa Nikora noted that in 1922 staff surveyor P W Barlow 'disagreed with Mr Wilson's opinion of this country', reporting:

I have been informed by the natives that Mr Wilson on his tour of inspection did no more than follow the riding track from Waimana to Maungapohatu up the Tauranga Valley so his knowledge of this country only extends to that area in view as you ride along the track.⁵⁶²

As Mr Nikora pointed out: 'Anyone who knows Te Urewera, would know that it was not possible for Wilson and Jordan to inspect Te Urewera within a short space of time or in the mist, rain and flood.'⁵⁶³ Secondly, in their 1915 valuations, the officials seem to have taken account of the fact that Maori would doubtless wish to retain the lands they were already occupying, which were 'the best portions'.⁵⁶⁴ The value of the remaining lands would therefore be lower. Finally, we have to consider the possibility that the valuations reflect the unsuitability of much UDNR land for pastoral farming on a large scale – despite the sudden and, as it turned out, rather short-lived political and settler enthusiasm for it.

Both the Crown and the claimants considered the question of the legal requirements for valuations within the UDNR. Crown counsel made submissions on the question whether in 1910 the Crown was obliged to obtain a valuation in terms of part XIX of the Native Land Act 1909. (This part dealt with purchases of Maori land by the Crown.) The Crown was not prepared to give an unequivocal answer about the position at law, though it pointed to the significance of section 13(1) of the UDNR Amendment Act 1909:

When any land subject to the principal Act is purchased by the Crown from the General Committee in pursuance of that Act, the contract of purchase shall be carried into effect by a Proclamation in the same manner as in the case of a purchase from the

561. Wilson and Jordan to chief surveyor, 1 August 1915 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 23–27)

562. Barlow to chief surveyor, 18 July 1922 (Tamaroa Nikora, 'Urewera Consolidation Scheme (1921–1926): An Analysis' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc E7), p 17)

563. Nikora, 'Urewera Consolidation Scheme' (doc E7), p 17

564. Wilson and Jordan to chief surveyor, 1 August 1915 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 23–27)

assembled owners under Part XIX of the Native Land Act 1909, and all the provisions of that Part of that Act shall apply accordingly in the same manner as if the land had been purchased by the Crown under the authority of that Part of that Act.⁵⁶⁵

Counsel suggested that the valuation provisions in part XIX (section 372) of the Native Land Act 1909 ‘may . . . have applied’, pointing also to section 13(2) of the UDNR Amendment Act 1909 which specified that no land was to be purchased except in accordance with the principal Act.⁵⁶⁶ In light of this latter provision, Crown counsel stated, the requirements should have been clarified by regulations made under the UDNR Act.⁵⁶⁷ In other words, counsel suggested that, in the absence of such regulations (for which the Crown did accept responsibility), it was unclear whether the valuation provisions of the Native Land Act 1909 applied. Relying on that uncertainty, Crown counsel submitted that while the Crown proceeded at the time on the basis that part XIX of the 1909 Act did apply (so that both the valuation requirements and those designed to protect Maori against landlessness should have been satisfied),⁵⁶⁸ it did not accept that any failure to meet those requirements would mean that the Crown had acted unlawfully. To us that argument seems unduly complicated and unconvincing. Our view is that section 13(1) extends all the possibly applicable provisions of the Native Land Act to Crown purchases from the General Committee; while section 13(2) reinforces the crucial point that, under the UDNR Act, the General Committee has to be the vendor. In any case, we consider that, had regulations been made under the UDNR Act, it is highly unlikely they would have exempted the Crown from the need to value the land in the manner prescribed by the Native Land Act, since it is clear that the valuation provisions in that Act were intended to be of universal application.

On the question of whether the 1910 and 1915 valuations complied with section 372 of the Native Land Act 1909, Crown counsel placed weight on the instructions for valuing blocks given to Wilson and his colleagues by the Native Land Purchase Board (see sidebar).

We comment on the Crown’s obligations under section 372 as follows:

- ▶ It seems that section 372(1) did not apply, since we cannot find from the evidence before us that UDNR blocks were generally recorded on district valuation rolls before 1918. We have one example: Mr Stirling noted that two portions of Paraeroa block (6,000 acres and 5,311 acres) were recorded on Whakatane County Valuation Rolls for 1918, with unimproved values of £4,500 and £3,975, respectively.⁵⁶⁹

565. Crown counsel, closing submissions (doc N20), topics 14–16, pp 79, 83

566. ‘Notwithstanding anything in part XIX of the Native Land Act, 1909, no land subject to the principal Act shall be purchased by the Crown otherwise than from the General Committee in pursuance of the principal Act’: see the Urewera District Native Reserve Amendment Act 1909, s13(2).

567. Crown counsel, closing submissions (doc N20), topics 14–16, p 80

568. *Ibid*, pp 79, 83. We have considered the Crown’s obligations in respect of protecting Maori from landlessness in an earlier section.

569. Opouriao Riding, Whakatane Valuation Rolls, 1913, 1918 (Stirling, ‘Te Urewera Valuation Issues’ (doc L17), p 118)

Section 372 of the Native Land Act 1909

372. Crown not to purchase at a price less than the value as assessed under the Valuation of Land Act, 1908—(1) No interest of a Native in Native land shall be purchased by the Crown under the authority of this Part of this Act at a price which is less than the amount at which the capital value of that interest is valued under the Valuation of Land Act, 1908, in the district roll which is in force under that Act at the time of the contract of purchase.

(2) If no such valuation is then in force, the Native Land Purchase Board shall require the Valuer-General to make a special valuation of the interest proposed to be acquired, and the interest shall not be purchased at a less price than the amount at which it is so valued.

(3) No purchase shall be invalidated by any disregard of the requirements of this section, but the deficiency in the purchase-money shall constitute a debt due by the Crown to the owner of the interest, and recoverable accordingly in proceedings instituted within two years after that interest has become legally vested in the Crown.

- ▶ It seems more likely, therefore, that section 372(2) applied, and that the Native Land Purchase Board should have required the Valuer-General to make a special valuation before embarking on purchase in the blocks. That, we note, was what the Public Trustee expected when he was approached about the purchase of minors' interests. As the final words of the subsection provide, once a special valuation was made, it set the minimum price at which the Crown could purchase the interest so valued.
- ▶ The Crown pointed in submissions to official confusion, in that purchase agent Bowler understood the 1915 valuations had been 'special' valuations, while Jordan, the Native Under-Secretary, stated in 1917 that no special valuations had been carried out because 'none of the blocks have been surveyed' (that is, they had not been surveyed to the standard required for land transfer title). Crown purchases in the reserve had therefore been carried out 'on a basis of value estimated by high officials of the Lands Department'.⁵⁷⁰
- ▶ Whatever officials believed to be the case, the fact remains that neither in 1910 nor in 1915 did the Native Land Purchase Board require the Valuer-General to make special valuations. If, in fact, the board was aware in 1915 that special valuations were a problem because surveys of reserve blocks did not meet Government valuation standards, it failed to take the further option

570. Crown counsel, closing submissions (doc N20), topics 14–16, p 83; Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 189; see also Native Under-Secretary to Public Trustee, 26 March 1917 (Webster, 'Urewera Consolidation Scheme' (doc D8), p 198)

of advising the Crown that this was the case, and that special legislative provisions were needed to suit the unique circumstances of the blocks.

- ▶ Those circumstances were unique because it had never been envisaged that the reserve would be subject to purchasing on a massive scale. Extensive, high-quality surveys had not been necessary. It will be recalled from chapter 9 that much of the force of the 1895 agreement rested on Seddon's acceptance that survey costs had been excessive, and full surveys were not required for the kind of title determination process envisaged for the reserve.
- ▶ The Crown suggested to us that, 'irrespective of the position at law', the fact that the Native Land Purchase Board included the Valuer-General as one of its members meant that its authorisation of purchases based on the valuations before it amounted to a 'review process'.⁵⁷¹ We find this submission expedient and unconvincing. One public office cannot be equated with another when their roles are different – even though the membership may overlap. The mere fact that the Valuer-General was a member of the Native Land Purchase Board could not be said to absolve the board from meeting the requirements of section 372(2). (We add that since the quorum was three members, board meetings could have proceeded in the absence of the Valuer-General.)

We therefore find that the 1910 and 1915 valuations were not lawfully made. If Crown views of what was required were so riddled with error and contradiction, how could the peoples of Te Urewera hope to understand the process?

13.7.5.2 Were land valuations, and resulting prices paid to Maori owners, fair?

Did an unlawful process mean that UDNR blocks were not fairly valued and that Maori owners did not receive fair prices? Crown counsel submitted that it could not be assumed that a Government valuer might have reached fairer, and therefore higher, valuations than Wilson and his colleagues.⁵⁷² Wilson and the officials he worked with might, in other words, have been more or less on target anyway.

Certainly, the new valuation requirements for Maori land introduced in 1905 were supposed to protect Maori. The requirement in the Maori Land Settlement Act 1905 that Maori land not be bought at less than Government valuation was seen as a major step forward, establishing a minimum price for the first time. As we have pointed out earlier, historian Don Loveridge concluded that the provisions led to a substantial increase in prices offered for Maori land (see chapter 10). During the first decade of the twentieth century, prices paid by the Crown almost doubled over pre-1900 averages – testament to the fact that prices paid before the reform were too low.

But were Government valuations still protecting Maori owners by the 1910s? Bruce Stirling suggested that the Valuer-General, during this period, was less helpful to Maori land owners than he might have been. On the one hand, he repeatedly urged on his valuers that Maori land must not be valued differently from Crown or freehold land. He was strongly critical of such practices as including the

571. Crown counsel, closing submissions (doc N20), topics 14–16, p 83

572. *Ibid*, p 82

cost of buying the land as a factor in the valuation, and discounting the value of Maori land because of what valuers still regarded as costly difficulties associated with settlers getting title – the legacy, as Stirling rightly pointed out, of the Native Land Court system and the titles created by Native Land legislation. But, as he also pointed out, the Native Land Act 1909 had greatly eased the process of alienation for private buyers.⁵⁷³

On the other hand, the Valuer-General was still anxious to hold down unimproved values, despite rising rural land prices during and particularly after the First World War (peaking in 1921).⁵⁷⁴ In Stirling's view, the Valuer-General was in fact sending mixed messages to his valuers, because ultimately he wanted to keep down the value of Maori land to ensure that settlement proceeded.⁵⁷⁵ Maori thus paid the price for the continuing Government preoccupation with speeding up settlement, even in the 1910s.

We agree that Maori were undoubtedly the losers in this time of determined Government purchase, but we do not think this can be laid primarily at the door of the Valuer-General. He was charged with overseeing the principled setting of land values across the country, and he had a raft of fiscal considerations to take into account. As he stated to the 1915 Valuation of Land commission, the Government could not accept 'boom' values for rural land; it could not pay high prices for land for settlement, because Government valuations were made for the purposes not only of taxation and revenue but also of public lending institutions.⁵⁷⁶ In other words, the Valuer-General had to strike a balance between upward and downward pressures: higher values would mean a bigger tax take but lower values would mean the level of Government lending to settlers for purchase could be reduced.

The real problem for the UDNR, in our view, was that the Crown's purchase monopoly, combined with its purchase of individual interests, deprived owners of the protection in negotiations of the General Committee or any other kind of community decision-making, such as the local committees, or a meeting of assembled owners. The Crown might not have been willing to pay top market prices for land, but it should not have denied Maori the right to seek market prices – as it did in the UDNR. Where the Crown was the monopoly purchaser, this generally had the further effect of keeping purchase prices down. By the end of the nineteenth century, there had been increasing official recognition that the Crown's exercise of such powers depressed prices paid to Maori sellers throughout the country. We have already cited (in chapter 10) Stout and Ngata's damning verdict on the re-introduction of Crown pre-emption in 1894, enabling the Crown to set its own terms without fear of competition or of robust Maori bargaining: the owners could not

573. Stirling, 'Te Urewera Valuation Issues' (doc L17), pp 35–37; see also the 25 July 1913 circular in FW Flanagan, *Special Circulars Issued by the Valuer-General for the Guidance of District and Local Valuers [1917]* (Wellington: Government Printer, 1917), p 4.

574. Stirling, 'Te Urewera Valuation Issues' (doc L17), pp162–164; Bryan Gilling, *Government Valuers: Valuation New Zealand, 1896–1996* (Wellington: Valuation New Zealand, 1996), pp 69–70

575. Stirling, 'Te Urewera Valuation Issues' (doc L17), pp 47, 53

576. Statement of the Valuer-General, minutes of evidence, Valuation of Land commission, AJHR, 1915, B-17B, p 16

bolster their case for higher payments by reference to market prices, and they had to meet the costs of securing title, and of survey, though their only source of revenue was their lands.⁵⁷⁷

The Liberal Government's Native Land Purchase and Acquisition Act 1893, designed to facilitate the disposal of 'surplus' customary land, had, as we pointed out earlier, recognised the importance of affording Maori fair prices. Seddon stressed this when he visited Te Urewera in 1894 prior to the drawing up of the UDNR legislation: under the 1893 Act, he said, the people could have their land auctioned, either for lease or for sale to the highest bidder, or – if they dealt with the Crown – their land would be valued by an independent board, on which they would be represented (see chapter 9). The Act itself never came into force (see chapter 10), and Seddon told Tuhoe that it would not affect them, because they had 'no surplus land', but we note his undertaking that Maori owners prepared to sell to the Crown might expect independent valuations and participation in the process of deciding values.

Though we have a limited basis on which to assess the fairness of the 1910 and 1915 estimates or 'valuations' – and the Crown's suggestion that they were 'possibly generous' for some blocks – we can make some comparisons.⁵⁷⁸ We can compare a Government valuation with a Lands and Survey Department estimate in the case of Ruatahuna, where Wilson and Jordan's 1915 per-acre average across the whole block was six shillings (total: £17,000).⁵⁷⁹ Heather Bassett and Richard Kay, working from district valuer Burch's unimproved values of the five Ruatahuna subdivisions in 1919, noted that the average value per acre, 6s 10d, represented only a slight increase on the 1915 average value, and considered that there was evidence Burch had been influenced by the Wilson and Jordan valuations, and by a conversation with Bowler.⁵⁸⁰ We do not think it surprising, however, that he knew of the earlier valuations, or that Bowler had talked to him. There was in any case a key difference between his valuation and the earlier one: Burch set out the unimproved value, value of improvements, and capital value, as required by law, on standard valuation forms. In Te Arohana, for instance, the unimproved value was £3,425; the value of improvements £1,150; and the capital value £4,575. In addition, Burch gave different per-acre values for different areas of each block: in Te Arohana he valued 3,700 acres at 15 shillings per acre, 350 acres at £1 per acre, and 300 acres at £4 16s 8d per acre.⁵⁸¹ Stirling, working from the capital value of the blocks, gave the total overall average as 8s 8d (total: £25,130) – a considerable

577. Stout and Ngata, 'An Interim Report on Native Lands in the Rohe-Potae (King Country) District', 4 July 1907, AJHR, 1907, G-1B, p 4 (Stirling, 'Te Urewera Valuation Issues' (doc L17), p 28)

578. Crown counsel, closing submissions (doc N20), topics 14–16, p 82

579. Bassett and Kay, 'Ruatahuna' (doc A20), p 101

580. Bowler to Native Under-Secretary, 9 September 1918 (Heather Bassett and Richard Kay, comps, supporting papers to 'Ruatahuna: Land Ownership and Administration, 1896–1990', 3 vols, various dates (doc A20(c)), vol 3, p 26)

581. J Burch, valuation forms (Bassett and Kay, supporting papers to 'Ruatahuna' (doc A20(c)), pp 43–47)

**Seddon's Explanation to Tuhoe of
the Crown's Commitment to Fair Valuations and Prices, 1894**

I WILL give you an explanation of the latest laws passed affecting the land of the Maoris [the Native Land Purchase and Acquisition Act 1893]. As you have no surplus land, it will not affect you, but I will tell you the law shortly. In the first place there is a Board established that has to decide whether the land is wanted for settlement purposes, and whether the Natives are utilising it or not. Then this impartial Board – upon which the Natives have direct representation (I think they have two representatives, the member for the district, and one appointed for minors), and a judge of the Supreme Court – these sit and decide upon the value of the surplus land which the Natives desire to dispose of. Then, when this is done, an election is held. The majority, at a meeting of all the owners of the surplus lands, elect whether or not they will hand over the land to the Government, either to sell it or lease it for them, the Natives retaining the ownership of the land, but leasing it to the Government at the price fixed by the Board. If the majority say they will not dispose of it, but want it for themselves, and decide to retain it, the law says, Very good, retain it. But if two-thirds say they do not desire to dispose of it to the Government – if they prefer to submit it to public auction and the world, so that it may fetch the highest price upon the market – the law says it shall be dealt with in that way. You will therefore see that, by the latest law passed, no advantage whatever is being taken of the Native race. All the Government desires is that the Natives should have ample land for themselves to cultivate and prosper by.'

Richard Seddon to Tuhoe¹

1. 'Pakeha and Maori: A Narrative of the Premier's Trip through the Native Districts of the North Island', 1894, AJHR, 1895, G-1, p 82

increase on 6s 10d.⁵⁸² He pointed out also that the improvements to the blocks Burch valued – clearing, grassing, and fencing – amounted to £5,080 (one-fifth of the land's value) – and this did not seem to include buildings.⁵⁸³

But the Crown did not buy interests at capital valuation, despite the legal requirement that capital valuation be its minimum purchase price. When Bowler sought instructions as to whether he should buy at capital value, he was told to buy at the unimproved value. If the Crown acquired any improved land, compensation

582. Stirling, 'Te Urewera Valuation Issues' (doc L17), p 115

583. Ibid, pp 115–116

for the improvements could be assessed later.⁵⁸⁴ Stirling stated that it is not clear whether the Crown acquired any Ruatahuna land containing improvements, but since many unsold interests were consolidated in Ruatahuna, it may not have done.⁵⁸⁵

We draw two conclusions from the Ruatahuna Government valuation. First, the capital valuation and the valuing of improvements on these blocks highlights the fact that in 1910 and 1915 improvements on the land – even if quite substantial – were simply not factored in. The improvements on very few other blocks were valued until after purchasing had ceased. (Stirling added the example of a valuation of the main kainga on Te Whaiti block, with half a dozen other kainga, including some on the road to Waikaremoana on Tarapounamu block, assessed by a Lands Department surveyor in 1921. The whare, with associated clearing and fencing, covering some 270 acres, were valued at a total of £1,185, an average of more than £4 7s per acre.⁵⁸⁶) Secondly, the more exact valuation of different parts of the blocks is a reminder that purchase of individual interests, and Crown failure to negotiate purchases with the General Committee, removed from Maori owners the right to make a collective informed choice about which parts of a block they might designate for sale and what the returns to their community might be.

Beyond this, the historical evidence before us allows us to make only piecemeal comparisons with values and prices paid for blocks adjacent to the UDNR. For instance, Crown land in the Waimana district, just outside the UDNR, was leased in perpetuity to settlers, and as early as 1913 its Government valuation for unimproved land was between £12 and £19 an acre; by 1918 it was £25 an acre. The best land in the neighbouring Ruatoki block, by contrast, was valued at just £10 an acre.⁵⁸⁷

In the absence of a market for UDNR lands, we also have to look beyond the reserve to find market prices for comparable land bordering the reserve – land that was similarly rugged and difficult to access unless roads were put in. Stirling, who carried out such a comparison, noted that the market was prepared to pay substantially more than the Crown paid within the UDNR. The Tahora block was one such example. Large parts of Tahora 2C were sold off in 1905, as the East Coast Native Trust sought to reduce its debt burden, at more than £1 per acre. In 1921, 6,711 acres of Tahora 2C3(2) were sold for more than £4 per acre, and a further 3,000 acres of the block were sold at £4 per acre by 1923 (see chapter 12). We note

584. Bassett and Kay, 'Ruatahuna' (doc A20), p 116. We assume that the Native Department, which gave this instruction, considered itself covered by section 372(3) of the Native Land Act 1909, which provided that a purchase would not be invalidated even if the requirements of the section were not met; but a Maori owner might subsequently recover an amount owing to him (see sidebar).

585. Stirling, 'Te Urewera Valuation Issues' (doc L17), p 117

586. *Ibid*, p 116

587. *Ibid*, pp 119–120. We note that Fisher, the Native Department Under-Secretary, queried the variation in values assigned in 1915 to Ruatoki 1 and 3 blocks (£10 and 7s 6d), and concluded that perhaps, owing to the partitions of the blocks, 'there are certain choice spots cut out which are worth £10. per acre': Fisher to Bowler, 2 September 1915 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), pp 34–35).

that this block, described by a surveyor at the time as ‘a fine piece of land’,⁵⁸⁸ was a success story in terms of its selling price among southern Tahora lands. The Crown’s attempt to ballot other parts of 2c blocks that it owned in 1922 was unsuccessful, and within a couple of years it withdrew the sections (downgraded from second- to third-class land) from the selection process.⁵⁸⁹ Government valuations of Tahora blocks varied considerably, as Stirling noted. Tahora 2AD(2) – a block described as ‘for the most part steep and broken’⁵⁹⁰ – was valued at just 9s 6d per acre in 1910. A special Government valuation in 1911 increased it to 12s 6d per acre. But later the same year, a private purchaser offered a price for Tahora 2AD(2) which was just on £1 per acre, and higher offers were made.⁵⁹¹ A sale was finally completed at just over £1 per acre in 1914.⁵⁹²

On the other side of the reserve, Government valuations were also eclipsed by market prices, which were ‘typically closer to double the Government valuation.’⁵⁹³ But prices could rise higher than that: about five times more than Government valuation for Waiohau 2, and three to eight times more than Government valuations for various Matahina subdivisions.⁵⁹⁴

Such examples, though indicative of how the market in land operated adjacent to reserve blocks, must remain of limited use. Ultimately, there was no market in the reserve, so, just as with many rim blocks, there is no basis for comparison of prices paid by the Crown. But, as we concluded for the rim blocks, so we conclude for the UDNR: ‘it was precisely because the Crown had banished any market that it could set its own prices’ (see chapter 10).

We note also that there was contemporary criticism of the Crown’s prices. Both UDNR owners and their member for Parliament, Ngata, thought the prices paid were inadequate. Some UDNR owners were petitioning Parliament by 1916, seeking the removal of restrictions so that they might get better prices. A 1919 Tuhoe petition urged that restrictions on private purchasing be removed so that owners might get ‘full market value . . . the best price obtainable’ for their land, and that a ‘new and revised Government valuation’ be made before any further Crown purchasing took place. They went further, and sought an inquiry into UDNR purchases to determine ‘[w]hether any purchases so made by the Crown are unjust . . . and should be cancelled upon the Crown being refunded the purchase moneys paid.’⁵⁹⁵

Ngata was prepared to state in 1921 that Maori ‘would be amply justified in urging that . . . since 1914 the Crown has purchased Urewera lands at less than fair

588. Thomas Cagney to chief surveyor, no date (Peter Boston and Steven Oliver, ‘Tahora’ (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A22), p 256)

589. Boston and Oliver, ‘Tahora’ (doc A22), pp 245–251

590. John Dillicar, declaration under the Native Land Act 1909, 25 January 1912 (Boston and Oliver, ‘Tahora’ (doc A22), p 201)

591. Stirling, ‘Te Urewera Valuation Issues’ (doc L17), pp 120–121

592. Boston and Oliver, ‘Tahora’ (doc A22), pp 204–205

593. Stirling, ‘Te Urewera Valuation Issues’ (doc L17), p 122

594. *Ibid*

595. Hori Hohua Aterea and 11 others, petition, 20 September 1919 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp 98–100)

value,' as he put it to Coates.⁵⁹⁶ He told the people themselves at a hui that the prices they were paid had been decided 'as far back as 1910' and were 'pre-war' prices that had 'not advanced to the same extent as the general advance through the Dominion'. The Crown, he said, had been 'making a very good bargain'.⁵⁹⁷ Crown counsel, in their submissions, acknowledged that unimproved values nationally 'moved markedly' in this period (as Stirling showed), but questioned whether this had 'any relevance' to reserve lands, given the absence of infrastructure there.⁵⁹⁸ Bowler himself evidently thought it relevant: in 1918 he urged that purchasing start in Ruatahuna block at once as 'it is not unlikely that values will go up in the near future'⁵⁹⁹ and in 1920 he suggested that purchasing be abandoned altogether because Maori were becoming aware of 'the recent all-round rise in values', which 'made negotiations harder'.⁶⁰⁰ Ngata's view was that the Crown had in fact served its own interests by relying on out-of-date valuations – and in our view it is not surprising that he thought this.

One thing, after all, is clear. The Crown's intentions towards UDNR owners in 1910 and in 1915, when values were assigned to the blocks, do not stand up to scrutiny. The primary concern was not that Maori should receive fair prices, but that the Crown should not be exposed to any risk as it embarked on the purchase of a very substantial quantity of Te Urewera land which was suddenly considered suitable for farmer settlement. Wilson, as the agent of that policy, had a clear conflict of interest: as a Crown official attached to a department whose prime concern was with settlement, he was not an appropriate decision-maker about prices to be paid to Maori sellers. In his official circulars addressed to district valuers, the Valuer-General had drawn attention to the importance of valuers having no conflict of interest: 'The strength and value of this Department lies in its absolute independence.'⁶⁰¹ The cautionary example he gave related to a firm of land agents and native agents, two of whose partners were also local valuers, while the third was challenging a valuation made for Maori Land Board purposes by a district valuer. Such a case, he stated, showed that land agents should not be employed as local valuers.⁶⁰² We tend to think the principle is not far removed from that of an agent of the Lands Department buying for settlement. In 1910, Wilson emphasised

596. Ngata to Coates, 19 September 1921 (Vincent O'Malley, comp, supporting papers to 'The Crown's Acquisition of the Waikaremoana Block, 1921–25', 3 vols, various dates (doc A50(b)), vol 2, p 473)

597. 'Notes of Meeting of Representatives of the Urewera Natives with the Hon DH Guthrie, Minister of Lands, and the Hon JG Coates, Native Minister, at Ruatoki, on the 22nd May, 1921', 11 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 133)

598. Crown counsel, closing submissions (doc N20), topics 14–16, p 85

599. Bowler to Native Under-Secretary, 9 September 1918 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 88–89)

600. Land Purchase Officer to Native Under-Secretary, 15 October 1920 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 111)

601. See circular of 24 November 1913 in Flanagan, *Special Circulars*, p 6.

602. *Ibid*, pp 5–6

that the Government must take care not to buy only the lands that Maori offered to sell at any given time; such a course of action would not be in its best interests:

I have an idea that if the Government acquire isolated blocks within the Rohe-potae in odd pieces here and there, and as the Natives will only sell until they acquire sufficient money for their present requirements, and also for certain, great pressure will be brought to bear on the Government to start constructing roads and organising a settlement scheme. This would be a big mistake, as they would have to construct roads through large areas of Native land enhancing its value, and later would have to pay an increased price for the same land, made more valuable by our own roads.⁶⁰³

Instead, the Government should buy large tracts of land. As he told the owners, they should sell all the land along a proposed road between Waimana and Maungapohatu: it would give them a better price. This, he told the Government, would avoid the danger of its bearing the cost of building a road to Ruā's settlement. Wilson was very anxious that Maori should not benefit from the increased value that settlement and its associated infrastructure might give their remaining lands.

Such views were reiterated in the more detailed report of Wilson and his colleagues Jordan and Pollock in 1915. The purchase and settlement of Te Urewera lands would be feasible only if costs were kept as low as possible. In particular, 'no settlement should be undertaken or road making attempted until the purchasing of the land has been completed, and an effort should be made to define the area [each] native should be allowed to retain'. Only once it was certain where new settlements would be should roads be built. Moreover, Maori should contribute to the cost of roads: 'a proper system of loading all lands for the purpose of Roothing [should] be inaugurated and carried out, so that all lands reaping benefits from roading will bear a proportionate cost of same'. Wilson and Jordan, as we have seen, were concerned above all that there should be 'no loss to the Crown, and no possibility of disaster to any settlement scheme'. In a separate section of their report, they reiterated that the Crown monopoly on purchasing in the reserve must be maintained until it had secured as much land as it wanted so as to prevent 'speculation'.⁶⁰⁴

In this context, the claimants' concerns – namely, whether the amount to be paid to Maori sellers was reduced to take account of the sums the Crown expected to pay for roads and surveys to service settlers' farms – are entirely understandable. The recorded views of the chief surveyor – both before and after the report of Wilson and his colleagues in August 1915 – certainly indicate a determination to reduce the amount to be paid to Maori sellers so that roading and survey costs for new settlement blocks would not unduly increase the Crown's overall costs. In

603. Wilson to chief surveyor, 30 June 1910 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 2)

604. Wilson, Jordan, and Pollock to chief surveyor, 1 August 1915 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), pp 145–150)

May 1915, the chief surveyor had told Native Department Under-Secretary Fisher that he thought the cost of roading and surveying should be ‘charged up to the blocks and then the purchase money should be the nett amount after deducting amount assessed.’⁶⁰⁵ And when he forwarded Wilson’s and Jordan’s report to Wellington in August, he wrote bluntly that those costs (now shown to be over quarter of a million pounds) would have to be carried either by the land or by the taxpayer. He was quite clear that the land should carry them. But, because the only kind of farming that would work would be pastoral, and holdings would have to be ‘fair-sized’, the land could only be sold to settlers at moderate prices. Thus, the price to be paid to Maori would have to be low enough that ‘all contingencies [costs] can be loaded on to the land.’⁶⁰⁶ It is probable that Wilson and Jordan had been told of the chief surveyor’s views about the cost of roading and surveying (to which we referred above) before they went to Te Urewera.

Such views were not universally held by officials. Fisher expressed a number of qualms to the Native Minister when he forwarded both the chief surveyor’s letter and the report of Wilson and his colleagues. Fisher seems to have wondered how the Government would get such a large settlement scheme off the ground; he was uncertain even that Maori owners would sell enough land for the purpose. In his view, it would be better to halve the costs of roading and general expenses proposed to be attached to the land, as this would ‘increase the net valuation’ now proposed to be fixed – that is, it would be better to increase the amount paid to Maori sellers by a sum equal to half the roading and survey costs. Most of the ‘large block’ (the reserve) would after all, if all went well, pass into settler hands – and, he implied, it would be the settlers who would benefit from the roads and surveys.⁶⁰⁷

Stirling calculated that had Fisher’s suggestion been acted on, Maori owners would have received an additional 7s 6d per acre – five shillings from the roading deduction, and 2s 6d from the survey and administration deduction. (He appears to have based this on the average price per acre, given in Wilson and Jordan’s report, of 10 shillings.) This would have increased the average price the owners received by 75 per cent.⁶⁰⁸ But Fisher’s views evidently carried no weight.

The prices paid by the Crown for the great majority of UDNR blocks were set on the basis of values assigned by Wilson in 1910, or Wilson and Jordan in 1915.⁶⁰⁹ There were a few exceptions, Edwards noted: in particular, where blocks were subdivided, valuations were then made of the various partitions before prices were set (Te Whaiti, Tauwharemanuka, Ruatahuna). In addition, the price paid per acre

605. Fisher to Native Minister, 8 May 1915 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p17)

606. Chief surveyor to Under-Secretary for Lands, 11 August 1915 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p31)

607. Under-Secretary for Lands to Native Minister, 19 August 1915 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), pp 32–33)

608. Stirling, ‘Te Urewera Valuation Issues’ (doc L17), p 110

609. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), pp183–187

for Paraoanui South was slightly higher (just over 5 per cent) than the 1910 valuation.⁶¹⁰ But in general, the 1910 and 1915 valuations – of which we have been critical – stood.

The over-riding concern evident in the officials' valuation reports was with protecting the Crown's interests, and ensuring that the settlement and farming development now envisaged within the reserve could be achieved without financial risk to the Crown. Having set out their overall calculations of the land's settlement value, officials in both 1910 and 1915 also assigned values to each of the blocks, but because the lists were embedded in reports so openly focused on the financial viability of the Crown's proposed scheme, it is difficult to be confident that block values were arrived at in isolation from such considerations. That is the result of the evident bias in favour of the Crown that characterised the valuation exercise in both those years.

And that is the bias that would have been avoided, in our view, if valuations had been lawfully made by independent valuers, and had been transparent. Government valuations would not have been set in the context of the costs of a Crown settlement scheme. That might have mitigated the claimants' concerns – even if it was not enough to overcome their justified mistrust of the Crown's purchase monopoly.

13.7.5.3 *Were valuations and prices paid for reserve standing timber fair?*

The broad issue before us here is timber valuation across the whole of the UDNR, and its impact on prices paid to owners. The more specific issue is the valuation of the Te Whaiti timber, the source of particular concern to some claimant groups, on which we had considerable evidence. This section, therefore, will primarily address Te Whaiti timber valuation.

We turn first, however, to timber valuation across all the rest of the UDNR blocks. The claimants submitted that when the Crown assessed the prices it would pay for land in the blocks in 1910, 1915, and (in the case of Ruatahuna) 1919, those prices did not include the value of standing timber. Yet, there was an abundance of merchantable timber on the blocks, as evidenced by the timber-cutting rights granted between 1913 and 1961.⁶¹¹ The Crown did not respond to these submissions.

We uphold the claimants' submissions: the timber was not valued, yet it is clear that there were substantial quantities of merchantable timber in the reserve. In the main 1915 valuations, ranger Robert Pollock was charged with valuing the timber; his valuation report dealt exclusively with the Te Whaiti block.⁶¹² He did write an additional brief report on milling timber in 'Urewera country' in which he completely dismissed the timbers (other than those on Te Whaiti) as 'so scattered and

610. Ibid, p183

611. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp179–180; counsel for Tuawhenua claimants, closing submissions (doc N9), pp168, 174

612. Pollock to commissioner of Crown lands, Auckland, 2 August 1915 (John Hutton and Klaus Neumann, comps, supporting papers to 'Ngati Whare and the Crown, 1880–1999', 2 vols, various dates (doc A28(b)), vol 2, pp 49–51)

isolated that they have no commercial value, and are not in millable quantities.⁶¹³ Though most of the blocks the officials visited contained scattered rimu and kahikatea, some matai, and the odd totara, the land was so rough that the timber would be too expensive to extract, both then and in the future. The best use for 'some of the more heavily timbered parts' would be to reserve them for the requirements of settlers, if settlement went ahead.⁶¹⁴

Andrew Wilson and his colleague AB Jordan included a section on 'the forestry and timber of the Urewera' in their main report, stating that the 'whole country' was covered in forest – with the exception of some 4,000 acres in the middle of the Te Whaiti block, a strip of 'open scrub' along the western boundary, a few thousand acres at the Ruatoki end, and 'a great number of small clearings' the people had made everywhere. They wrote generally about the timber types in the reserve, particularly from the 'Taumatamiere range and across to Parekohe and all the country south to the Rotorua-Waikare Moana Road' which they said was 'covered' with tawa, rata, rimu, and mixed bush, with 'patches of Tawai or Black Birch on the higher places'. They recommended, however, that the Crown should offer to acquire the whole Waikaremoana block for conversion to a 'forest and climatic reserve' and to preserve the beauty of the lake; the timber, which would be 'of great value some day', should be conserved. Their general conclusion – like Pollock's – was confidently stated: 'There are no milling timber areas worth considering except that on the Te Whaiti Block.'⁶¹⁵ The commercial value of the reserve's timber – with the exception of Te Whaiti – was nil.

As we will see in a later chapter, sawmillers' applications for cutting rights in Te Urewera were being rejected by the Crown by the 1930s and 1940s, though this changed by the 1950s when cutting rights were granted on part of most Ruatahuna blocks during the mid- to late-1950s.⁶¹⁶ There was millable timber in the reserve well beyond Te Whaiti, but this had been evident to the State Forest Service (established by the Forests Act 1921–22) from the time it first undertook field trips to Te Urewera. Only six years after Wilson, Jordan, and Pollock wrote their report, HA Goudie, the Conservator of Forests at Whakarewarewa, investigating land use generally in the reserve, reached a very different conclusion. After a week's trip with two other officials which took him from Te Whaiti to Ruatahuna, back to Ruatoki and Opotiki, and then up the Waioweka River, he reported that '[p]robably 95% of the total area' of the country was forested. If the land were worked 'as a national forest' it would yield an income 'far in excess of that to be procured from any other crop.'⁶¹⁷ A second trip was about to be made to blocks lying south of a

613. Pollock to commissioner of Crown lands, Auckland, 3 August 1915 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 29)

614. *Ibid*

615. Wilson and Jordan to chief surveyor, Auckland, 1 August 1915 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 24, 26)

616. Nikora, 'Te Urewera Lands' (doc G19), p 19

617. Goudie, Conservator of Forests, to Director, State Forest Service, 21 September 1921, 'Report upon the Uriwera Country' (Paula Berghan, comp, supporting papers to 'Block Research Narratives of the Urewera, 1870–1930', 18 vols, various dates (doc A86(j)), vol 10, pp 3409, 3420)

line drawn between Te Whaiti and Maungapohatu. We also note here Goudie's enthusiasm at some 'magnificent stands' of forest around Te Whaiti (mixed totara, matai, and rimu) – in contrast to Pollock's disappointment with Te Whaiti because the forest contained less totara than he had expected; Goudie was particularly impressed with its density in the evidently small area of the block he saw.⁶¹⁸ (We are aware that by the mid-1930s the Forest Service was particularly interested in the forests for their value for water conservation, but they were no less valued as a national asset.)

Twenty months later, in May 1923, the Director of Forestry urged that the national interest would best be served by dedicating the Urewera country (650,000 acres) 'as a permanent forest, to be used for timber-crop production, water conservation, stream-flow regulation, subordinate sylvo-pastoral settlement by Europeans and Maoris and for national recreational and sporting purposes'.⁶¹⁹ He described the 'dominant forest type' as tawa and rimu, with associated matai, totara, white pine, and rata; while above 2,000 feet there were beech forests which could not be considered of merchantable value. But the merchantable timber was widely distributed over the entire area. Its volumes ranged from 5,000 to 10,000 superficial feet per acre. It was estimated, he reported, that merchantable timber in Te Urewera totalled between 5,000 and 8,000 million superficial feet,⁶²⁰ and comprised approximately 60 per cent rimu, matai, totara, white pine, and miro, and 40 per cent beech, tawa, maire, and miscellaneous. He concluded:

The Urewera forest wealth indeed is one of the greatest national forest assets controlled today by the State. Its uniformity, compactness, wide distribution, health, vigour and age, combined with its favourable proximity to the centres of population should make it a most desirable entity for timber-crop production and other essential forestry uses.⁶²¹

This was a far cry from the official reports of 1915 – which were focused on the potential of Te Urewera for farming settlement. The value of standing timber, in that context (as outlined above), was completely overlooked. Prices for land other than the Te Whaiti blocks took no account of its valuable timber resource, and Maori owners who sold their interests received nothing for it. The warning sounded by the Stout–Ngata commission in their 1908 report that in focusing

618. Goudie, Conservator of Forests, to Director, State Forest Service, 21 September 1921 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(j)), p 3409)

619. L MacIntosh Ellis, Director of Forestry, to Minister for Forestry, 3 May 1923 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(j)), p 3422)

620. In cross-examination, Canning stated that superficial (or super) feet are synonymous with board feet – a board foot 'is a piece of wood that is 12 inches square plus an inch thick. Super foot is the same thing.' See James Canning, under cross-examination by counsel for Tuhoewai-karemoana Maori Trust Board, Murumurunga Marae, Te Whaiti, 14 September 2006 (transcript 4.10, p 29; transcript 4.10(a), p 10).

621. Director of Forestry to Minister for Forestry, 3 May 1923 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(j)), p 3424)

on the farming potential of land the Government had neglected to take proper account of the commercial value of timber on some Maori land had evidently not been heeded.⁶²²

13.7.6 Were valuations and prices paid for Te Whaiti land and timber fair?

The specific issue we address in this section is timber valuation in Te Whaiti 1 and 2 blocks and prices paid for those blocks. In essence, the claimants' grievance is that the Crown acted extremely unfairly by illegally purchasing individual interests in the Te Whaiti lands, then assuring itself of a monopoly to purchase the valuable standing timber, and fixing its price, but being negligent in its valuation – with the result that the price paid for the timber was substantially below its worth.⁶²³ Our analysis will focus on two issues: was the Te Whaiti timber accurately measured; and whatever measurement was used, were the prices fair?

Ngati Whare, in arguing their case, relied on the evidence of James Canning, 'an expert witness of the very highest calibre in the specialised field of valuation'. Mr Canning, we were told, has had a lifetime of involvement in surveying and forestry, and forestry resource mapping, including work with the National Forest Survey conducted by the New Zealand Forest Research Institute in the 1950s.⁶²⁴ Mr Canning's original research brief was to establish, for the Te Whaiti Nui-a-Toi Trust, whether actions of the Crown had prejudicially affected Maori owners; in particular, whether the timber resource had been fairly valued and the owners properly paid for it.⁶²⁵ Canning's conclusion was that 'the Crown grossly underestimated the volume and value of the timber on the Te Whaiti No 1 and No 2 Blocks', with the result that the Crown underpaid the owners of those blocks who sold their interests by some £339,755.⁶²⁶ Counsel for Wai 36 Tuhoe claimants also criticised the Crown's underestimation of the 'volume and value' of the timber on the two blocks, as well as its deduction of the cost of providing a tram line to extract the timber, which was never built, the timber being extracted by road. The Crown deducted the costs of survey and roading ('including a road that [it] required to access its other holdings') from the purchase price.⁶²⁷

The Crown agreed with the claimants on a number of relevant matters, as counsel for Ngati Whare recorded in his closing submissions: that the valuation of timber in Te Urewera was acknowledged 'by all parties to be a matter of concern'; that the Crown's land purchase agent refused to carry out a valuation of Te Whaiti block in 1910; that the market value of the Te Whaiti blocks could not be tested because private purchasers were excluded from them by the Crown; that

622. Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 1116–1117

623. Counsel for Ngati Whare, closing submissions (doc N16), pp 72–74; counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 177–183

624. Counsel for Ngati Whare, closing submissions (doc N16), p 93

625. The resulting report was completed in 1993: see James Canning, 'Te Whaiti Nui-a-Toi Forestry Report' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1993) (doc A114).

626. James Canning, 'Te Whaiti Block: Report on Timber and Land Resources', brief of evidence concerning 'Te Whaiti Nui-a-Toi Forestry Report', August 2004 (doc G6), p 12

627. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 179

Unknown (Whakatane District Museum and Gallery, 9619)



Te Whaiti from the eastern side of the Whirinaki River, circa 1925. The timber on the Te Whaiti block was considered some of the most valuable in the Urewera District Native Reserve. Yet, it was neither properly measured nor properly valued by Government officials, and the Crown neglected the interests of the Maori owners, whose major resource it was.

the Crown sought no contestable advice on valuation; that ‘Ngati Whare were not consulted over the Crown’s valuation of their land and timber assets’; and that the Te Whaiti forests were valued such that the Crown paid a low price for them.⁶²⁸ We welcome these important acknowledgements by the Crown. We note in particular its acknowledgement in closing submissions that it failed to give effect to the intention of the UDNR Act that Te Whaiti owners should manage and benefit from their own valuable resource: ‘Through a combination of events, owners of the Te Whaiti block, especially Ngati Whare, were actively constrained in their ability to harvest their forests under the UDNR regime. This kind of fetter was not the intention under the UDNR Act.’⁶²⁹

In closing submissions, Crown counsel also addressed Canning’s evidence about the Crown’s failure to calculate correctly the volume and value of timber on the blocks, acknowledging that the evidence ‘tends to support a view that the timber volumes may have been underestimated’, but submitting that Canning’s own estimate ‘is not conclusive and appears to be on the high side.’⁶³⁰

628. Counsel for Ngati Whare, closing submissions (doc N16), pp 88–89; Waitangi Tribunal, statement of issues, stage 2, no date (paper 1.3.6), p 125

629. Crown counsel, closing submissions (doc N20), topics 14–16, p 91

630. Ibid, topic 31, p 29

We begin with the context in which the Crown took an interest in the standing timber of Te Whaiti. By 1915, when there was considerable, but largely misguided, Government interest in the Pakeha settlement of Te Urewera, there was evident interest also in its timber resource from both private concerns and the Government. Some years before, the second Urewera commission had reported that the Te Whaiti block was ‘one of the most valuable blocks of land contained within the Urewera District Native Reserve’, containing ‘quantities of totara, rimu, kahikatea, matai, maire and other valuable timbers.’⁶³¹ By 1908, Ngati Whare rangatira Te Wharepapa Whatanui was writing to Carroll, the Native Minister, asking for advice on how to deal with Pakeha interest in the Te Whaiti timber – notably the interest of Fred Hall.⁶³² (This was at a time when appeals against title decisions of the second Urewera commission were outstanding and uncertainty about titles at Te Whaiti remained.)

Details of a 1909 agreement with private sawmillers, Messrs Hall, Morrison, and Lardelli of Gisborne, were spelt out in a 1938 petition to Parliament by Wiremu Paati and 44 others. By that agreement, timber on the Te Whaiti block was to be sold to the sawmillers at the rate of 2s 6d per 100 superficial feet for totara; 1s 6d for rimu and matai; and one shilling for white pine.⁶³³ In 1910, Matekuare and Te Wharepapa Whatanui took a proposal to the General Committee to lease 12,000 acres of Te Whaiti to Maori, and sell 6,000 acres to the Crown, but it seems not to have proceeded further. There was some friction with Ngati Manawa at this time, because the Urewera commission had not separated the interests of the two iwi in the block – and it was after this that Ngata advised Carroll to take steps to define the boundary between Ngati Whare and Ngati Manawa.⁶³⁴ In April 1912, Te Wharepapa Whatanui again wrote to the Native Minister about the visit by Pakeha to Te Whaiti ‘to buy the timber-trees on the Te Whaiti block on a 30 years lease basis’ (‘ki te hoko i nga Rakau o Te Whaiti Poraka i runga i te tikanga rihi mo nga tau e toru tekau’), and citing the prices that had been agreed between the parties per 100 board feet: namely, 1s 6d for totara, one shilling for rimu, and sixpence for ‘other timbers.’⁶³⁵ It is clear from the rest of Te Whatanui’s letter that he was aware of the provisions relating to the lease of timber in the UDNR Amendment Act 1909 (which we outline below); perhaps he had discussed this with the Pakeha he referred to – among them, very probably, Hall, who maintained his interest in the timber over a number of years, and who perhaps by this time knew of the range of

631. ‘Report of Commissioners on the Urewera District Native Reserve’, AJHR, 1907, G-4, p 24 (Hutton and Neumann, ‘Ngati Whare and the Crown’ (doc A28), p 178)

632. W Whatanui to James Carroll, 18 August 1908 (Hutton and Neumann, ‘Ngati Whare and the Crown’ (doc A28), p 181)

633. Richard Boast, ‘Ngati Whare and Te Whaiti-nui-a-Toi’ (doc A27), pp 231–232

634. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), pp 116–117, 121; see also Numia Kereru to Native Minister, 16 March 1910 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)(i)), pp 601–604)

635. W Whatanui to Native Minister, 18 April 1912 (Hutton and Neumann, supporting papers to ‘Ngati Whare and the Crown’ (doc A28(b)), pp 73–74)

royalties gazetted in Forest Regulations, which may have set lower values than he would have offered. He may also have been reconsidering his extraction costs.⁶³⁶

In August 1912, Te Wharepapa Whatanui again asked the Native Minister, Herries, to arrange for the partitioning of the Te Whaiti block so that the milling timber could be sold to timber companies.⁶³⁷ (Partitioning had stalled while title appeals were heard.) And in 1915 Ngati Whare urged on the Minister of Justice the difficulties they faced trying to work their timber because of the perceived barriers to private company involvement.⁶³⁸ Ngati Manawa were also interested in the sale of cutting rights over Te Whaiti 2 and two other blocks to the same sawmiller, as well as in the sale of land itself. Later, Te Whatanui would state that companies had offered from £4 to £5 per acre 'for the timber alone' before the Crown prohibited the alienation of timber rights.⁶³⁹ And Crown land purchase agent Bowler would inform the Native Land Purchase Board (in a rather cynical tone) that the Te Whaiti owners had 'at different times been approached by speculative syndicates and would-be purchasers, with the result that those of them whom I saw have a very exaggerated idea of the value – the Murupara owners consider the value to be anything from £5 to £10 per acre.'⁶⁴⁰ These two statements give us an idea of the sorts of values and prices being discussed or offered at the time.

But the evidence suggests that the Crown itself moved to secure the land and its timber. Crown interest in the timber emerged after the Reform Government came to power in 1912 and decided to proceed with the purchase of individual interests in UDNR blocks. As we have seen, it waited until the final appeals about UDNR titles were heard by the Native Appellate Court, and the subsequent partition of Te Whaiti block by the Native Land Court. In March 1914, after Te Whaiti 1 (45,048 acres) had been awarded to a list of owners who were largely Ngati Whare,⁶⁴¹ Ngati Whare tried again to secure a milling agreement.⁶⁴² Section 9 of the UDNR Act Amendment Act 1909 provided that the Governor, by Order in Council, might with the consent of the General Committee empower the relevant district Maori Land Board to grant licences for the removal of timber from UDNR land. Licences, which were not to exceed a term of 30 years, might be granted by public auction,

636. The regulations specified the royalty rates to be paid by licensed sawmillers on Crown land, per 100 superficial feet, as two shillings for totara and matai (though one shilling for those timbers where less than 25 feet in length); sixpence for rimu; sixpence for a number of other named timbers: 'Forest Regulations under the Land Act 1908', 15 April 1909, *New Zealand Gazette*, 1909, vol 32, p1075.

637. W Whatanui to Herries, 8 August 1912 (Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), pp 182, 190)

638. Minutes of a meeting between the Minister of Justice and 'Maories of the Urewera', 19 March 1915, and Minister of Justice to Minister of Native Affairs, 19 March 1915 (Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), pp 194–195)

639. W Whatanui to Coates, 15 October 1925 (Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p 228)

640. Bowler to Native Under-Secretary, 13 June 1915 (Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p 168)

641. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p 136

642. Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), pp 191–192

public tender, or private contract for such royalty payments as the board thought fit.⁶⁴³ Such provisions, John Hutton and Klaus Neumann argued in the report they wrote as supporting evidence for the Ngati Whare claim, would in theory have entailed ‘certain benefits’ for Ngati Whare, providing for an independent regulatory body (the district Maori land board) to protect their interests.⁶⁴⁴

But Ngati Whare were still unsuccessful in securing an agreement – despite proceeding in accordance with the Act. In March 1914, Te Wharepapa Whatanui put before the General Committee – at what effectively would be its last meeting – a motion to ‘lease or sell’ to Hall (or the Hall company, as it was referred to) the timber on some 20,000 acres of Te Whaiti 1.⁶⁴⁵ In April (when the meeting reconvened), the motion proposed was to ‘lease or sell’ the timber on some 20,000 acres ‘on a basis according to the different kinds of timber-trees’. Before the meeting ended, Te Whatanui increased the offer to the timber on 25,000 acres. After Numia Kereru explained the provisions of the Act about the sale of timber the motion was passed by a majority vote of 13.⁶⁴⁶ The General Committee thus consented to the sale (meeting the requirements of the 1909 Act), and the minutes of the meeting were sent to the Native Minister.

The matter should then have been put to the Executive Council, as was also required by the Act. Instead, Native Under-Secretary Fisher approached Judge Browne of the Waiariki District Maori Land Board, asking whether the title of the block was complete, and whether he was aware of any private parties’ interest in the timber. Judge Browne replied that an appeal against definition of relative interests remained before the court and that this would have to be disposed of before the land could be ‘dealt with’, though it would ‘not alter the position very materially’. He knew of Hall’s (but no one else’s) interests in the timber, and in his view there was ‘no objection to the issue of a license provided the necessary Order in Council was obtained’ – though he was not enthusiastic about the proposal to purchase the timber on a royalty basis.⁶⁴⁷ (He did not say why. The law provided, however, that payments to owners might be made ‘by way of royalty or otherwise’.) Fisher passed the General Committee’s resolution to the Native Minister, and added in his cover note that the Land Board ‘should recommend as to the issue of the Order in Council’.⁶⁴⁸

For reasons that are not spelt out in the evidence, no further progress was made with the General Committee’s resolution once it left Ruatoki. It does not seem

643. Hutton and Neumann, ‘Ngati Whare and the Crown’ (doc A28), pp188–189

644. *Ibid.*, p 189. As the authors note, land boards were ‘not necessarily a beneficial body for Maori’ (we add that successive Tribunals have made findings on their shortcomings); but the legislation ‘did set out certain protective mechanisms that they were supposed to follow’.

645. Minutes of General Committee meeting, 20 March 1914 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)(i)), p 509)

646. Minutes of General Committee meeting, 20 March 1914 (Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)(i)), pp 509–510)

647. Browne to Native Under-Secretary, 4 June 1914 (Hutton and Neumann, supporting papers to ‘Ngati Whare and the Crown’ (doc A28(b)), p 76)

648. Fisher to Native Minister, 8 June 1914 (Hutton and Neumann, supporting papers to ‘Ngati Whare and the Crown’ (doc A28(b)), p 75)

that the Land Board was consulted, or that the matter went before the Executive Council, meaning that the board could not proceed to grant a licence. There may have been a procedural difficulty (as Hutton and Neumann suggested), in that both the board and the Government had to be satisfied with the deal before an Order in Council was issued, or it is possible the matter lapsed through '[i]nertia'.⁶⁴⁹ But we do not accept that these are convincing explanations – or explanations which would excuse the Crown's inaction. In light of the Crown's own efforts at the time to acquire Te Whaiti land and timber, it is hard to avoid the conclusion that it did not want private interests to have cutting rights there. The Crown, in its submissions, acknowledged as much: 'the Crown saw this as an opportunity to purchase good timber land and did not provide for licensing through the agency of the Maori Land Board'.⁶⁵⁰

Instead, the Crown, as we have seen, embarked on its own valuations of UDNR timber. In March 1915, Herdman, Minister of Justice and Attorney-General, recommended that 'competent judges' be sent to the district to give their opinion of the land and the timber.⁶⁵¹ Wilson, Jordan, and Pollock visited a few months later, and wrote their report to assist the Government in determining the price it could pay Maori owners 'when acquiring the block [the UDNR]'.⁶⁵² As we have seen, he and his colleagues placed no value on the timber resource of the reserve at all – except for Te Whaiti.

The valuation of Te Whaiti seems to have been done in the following manner. First, the three officials 'agreed as to the value of land and timber' on the entire Te Whaiti block (see the section on 'initial valuation' in the sidebar 'Valuations of Te Whaiti Land and Timber, 1915'). The main component of this agreement was the valuation of the best 12,000 acres of millable timber, including the land, at £30,000, or £2 10s an acre.⁶⁵³ Next, Pollock wrote his report on the timber. Finally, an amended valuation was compiled (see sidebar), based on separate valuations of four areas that Wilson, Jordan, and Pollock distinguished within the Te Whaiti block, according to the quality of their timbers. The acreage and valuation of each area were recorded on a plan of the reserve – which also showed how many acres of each area were estimated to be in the Te Whaiti 1 and Te Whaiti 2 blocks (see the section on amended valuation in the sidebar 'Valuations of Te Whaiti Land and Timber, 1915'). The crucial milling-timber area identified was the 12,000 acres valued at £2 10s an acre (land and timber), of which 5,548 acres were estimated to be in Te Whaiti 1 and 6,452 acres in Te Whaiti 2. The largest of the areas was 28,340 acres, valued at six shillings an acre (the greater part of which was in Te Whaiti 1). The third area was of 10,000 acres, valued at five shillings an acre; and the final

649. Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), pp 193–194

650. Crown counsel, closing submissions (doc N20), topics 14–16, p 4

651. 'The Urewera Country: Natives Want Settlement: Good Land and Timber', *Auckland Weekly News*, 18 March 1915 (Neumann, "... That No Timber Whatsoever Be Removed" (doc A10), p 36)

652. Native Under-Secretary to Native Minister, 19 August 1915 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 32)

653. Pollock to commissioner of Crown lands, Auckland, 2 August 1915 (Hutton and Neumann, supporting papers to 'Ngati Whare and the Crown' (doc A28(b)), pp 49–50)

area was of 21,000 acres, valued at 2s 6d an acre. Wilson, Jordan, and Pollock gave an average value of 12s 3d an acre for the 71,340 acres of Te Whaiti 1 and 2 blocks.⁶⁵⁴

Pollock, who had described himself two years earlier as a 'Government timber-measurer',⁶⁵⁵ wrote in his report on the timber of Te Whaiti that the block contained timber of 'first-class quality', though he was disappointed that it was 'not a Totara forest' as he had been led to believe. He described it as 'mixed milling bush', with rimu, kahikatea, matai, and totara – 'rimu and totara preponderating'. He estimated the total timber volume at some 200 million feet: the area of milling timber was, in his view, approximately 12,000 acres, and the quantity from 6,000 board feet per acre to 50,000 board feet per acre. Pollock strongly urged the Crown to buy the Te Whaiti timber. Though some 50 miles of tramway, or light railway, would be needed down the Whirinaki and Rangitaiki Valleys to Te Teko to get the timber out, the cost would be worth it because the Government could also work the timber it owned on adjacent blocks (Whirinaki, Heruiwi, and Pohokura) which could be served by the same tramway. He valued the 12,000 acres of Te Whaiti 'milling bush' (land included) at 50 shillings per acre – a total of £30,000. (Thus, it is not clear exactly what value Pollock assigned to the timber alone.) His comments on the timber distinguished its present-day value ('very low') from its prospective value, assessed along with that of the other blocks ('a huge total of timber . . . a very valuable timber asset suitable for future milling requirements of the Auckland District').⁶⁵⁶

Two Government valuations were made at much the same time: the first in July 1915 for the whole Te Whaiti block, followed by a more detailed one in August which gave separate values for Te Whaiti 1 and 2 blocks. The overall valuation for the land and timber was the same, at £46,687 (see the initial valuations in table 13.3). District valuer J H Burch visited the block to view the land and timber before he made his July valuation, and reported that the land was 'very mixed in quality'; its timber was its 'most attractive feature', with 'some very fine rimu and matai and also a good deal of totara and white pine'. He 'would not like,' he wrote, 'to definitely assert that this timber has no commercial value to-day', but he had no doubt that it would be valuable in the future. He also pointed to the value of the Crown-owned timber on the Heruiwi and Whirinaki blocks, which would mean that purchase of the Te Whaiti timber 'at a fair price would undoubtedly cheapen the cost of working the adjoining country and should prove [a] profitable investment'. He cautioned the Crown not to buy interests at the average price per acre, as this might mean the Crown would ultimately 'get the useless country that has only been valued at a nominal figure'.⁶⁵⁷ Burch estimated the unimproved value of

654. See Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p172, fig 4

655. Pollock gave evidence before the royal commission on forestry: AJHR, 1913, C-12, p 52. The Department of Lands administered Crown forests at this time, and Crown lands rangers were forest rangers: 'Forestry in New Zealand', 8 September 1909, AJHR, 1909, C-4, p11.

656. Pollock to commissioner of Crown lands, Auckland, 2 August 1915 (Hutton and Neumann, supporting papers to 'Ngati Whare and the Crown' (doc A28(b)), pp 49–50)

657. Burch to Valuer-General, 5 July 1915 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(f)), p1829)

the land at £20,127, and the value of the timber at £26,560. The capital value was £46,687 – that is, just over 13 shillings an acre.⁶⁵⁸

Subsequently, after Fisher, the Native Under-Secretary, pointed out that the Native Land Purchase Board needed separate valuations of the partitions of the block,⁶⁵⁹ the Valuer-General sent valuations for Te Whaiti 1 and 2 which he stated had been ‘compiled from data supplied by Mr District Valuer Burch’⁶⁶⁰ (see the revised Government valuations in table 13.3). It is apparent from this comment that Burch had not visited the land again to meet the Board’s request for separate valuations. The total Government valuation was slightly higher than Wilson, Jordan, and Pollock’s (see table 13.3).

The Crown acknowledged in submissions that it would have been preferable that ‘the valuation exercise conducted in August 1915 was informed by the knowledge that the Te Whaiti block had been partitioned.’⁶⁶¹ This is to beg the question why the Crown did not ensure its valuers were properly instructed. The block, after all, had been partitioned in 1913. Te Whaiti 1 (45,048 acres) was awarded to owners who were ‘basically Ngati Whare’, and Te Whaiti 2 (26,292 acres) was awarded to owners who were ‘basically Ngati Manawa.’⁶⁶² It seems that the Native Department simply did not know this. In May 1915, the Under-Secretary wrote to land purchase agent Bowler that the Land Purchase Board had decided to acquire interests in the Te Whaiti block (singular), and he sought a valuation of the block from the Valuer-General at the same time.⁶⁶³

It appears the Department became aware of the partition only in June, after receiving a memorandum from the registrar of the Waiariki District Native Land Court, which listed separate lists of owners, with their shares, for the Te Whaiti 1 and 2 blocks. Fisher wrote immediately to Judge Browne, asking for a tracing showing the subdivisions, as valuations were urgently required. He stressed the importance of his being advised of all subdivisions of Urewera district blocks, given that they had to be valued and purchased separately.⁶⁶⁴ (This was because subdivisions of blocks had separate lists of owners, as identified by land court orders, who could only be paid in accordance with the valuation of the subdivision in which they had been found to have interests. Such valuations varied according to the size of the partitioned block, the quality of the land, and other resources on it.) The Crown’s failure to inform itself earlier of the Te Whaiti partition meant that the prices it paid to owners were not based on valuations of the

658. Valuer-General to Under-Secretary, Native Department, 16 July 1915 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(f)), p1828)

659. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p178

660. Valuer-General to Native Under-Secretary, 23 August 1915 (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)(i)), p1051)

661. Crown counsel, closing submissions (doc N20), topic 31, p25

662. Boast, ‘Ngati Whare and Te Whaiti-nui-a-Toi’ (doc A27), p136

663. Native Under-Secretary to Bowler, 19 May 1915 (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)(i)), p1067); Native Under-Secretary to Valuer-General, 19 May 1915, MA-MLP 1 1910/28/4, Archives New Zealand, Wellington

664. Native Under-Secretary to Judge Browne, 25 June 1915, MA-MLP 1 1910/28/4, Archives New Zealand, Wellington

two blocks which reflected an on-the-ground assessment of the timber on each, as they should have been. This failure was compounded by other factors: namely, the arbitrary nature of the partition itself, and the decision not to survey the two blocks before purchase began (which meant that the boundary between them was not clearly established on the ground).⁶⁶⁵

Table 13.3 sets out the original and revised valuations provided by Wilson, Jordan, and Pollock of the Lands Department on the one hand, and the Government valuations (based on those of district valuer Burch) on the other.

From this information, the following points emerge:

- ▶ The Government valuation of all the Te Whaiti timber (£26,560) was higher than that of the land (£20,127).
- ▶ Te Whaiti 2 had a far greater proportion of the valuable timber than did Te Whaiti 1 (75.3 per cent of the total as opposed to 24.7 per cent).
- ▶ The Government valuation of Te Whaiti 2's most valuable milling timber, together with the 7,850 acres of land on which it stood, was £3 1s per acre, totalling £23,925 of Te Whaiti 2's £28,000 valuation (that is, 85.4 per cent).
- ▶ In Te Whaiti 1, the Government valuation of the land was nearly twice the value of the timber.
- ▶ The Government valuation of land and timber (not Wilson, Jordan, and Pollock's valuation) was used as the basis for purchase in Te Whaiti 1 and 2.
- ▶ Thus, interests were purchased in Te Whaiti 2 at the average per-acre price of £1 1s 3d, and in Te Whaiti 1 at 8s 3d.⁶⁶⁶
- ▶ As between Te Whaiti 1 and Te Whaiti 2 blocks, the difference between the Government valuation of the best timber and Wilson, Jordan, and Pollock's valuation of the best timber was significant. In both cases, the Government valuation was higher, as follows:
 - The (revised) Government valuation for Te Whaiti 1 gave a figure for the best timber of £6,560, and for land and timber £18,687; whereas Pollock's figure for Te Whaiti 1 (land and timber) was £13,870. The Government valuation was thus £4,817 higher.

665. Murupara Native Land Court, minute book 1, 9 May 1913, fol 263. Canning refers to the land court minutes at the time of partition of Te Whaiti block which make it clear that a survey had not yet been completed; an estimate had been made of the amount of land on the west side of Whirinaki River (23,000 acres), and the court ordered that, once a survey established whether the actual acreage was more or less than this, the acreage of that part of Te Whaiti 2 on the west side of the river would have to be adjusted accordingly; and then the area of each division of the block would also have to be adjusted: James Canning, 'Te Whaiti Nui-a-Toi Forestry Report', August 2004 (doc A114(e)), p 13; James Canning, comp, supporting papers to 'Te Whaiti-Nui-a-Toi Forestry Report', various dates (doc A114(a)), app 2, p 13. Canning stated that boundaries were surveyed after the Crown concluded its purchasing in the Te Whaiti 1 and 2 blocks, but only as a result of the survey of adjoining blocks: Canning, 'Te Whaiti Block' (doc G6), p 6.

666. Stirling compared the valuation of Wilson and Jordan at 12s 3d per acre with the 13 shillings per acre average value given by Burch in July 1915 and stated that despite the apparently small difference between the two values, the purchase of the whole block at the higher value would have cost £32,000 more: Stirling, 'Te Urewera Valuation Issues' (doc L17), p 129. Perhaps this was a typographical error, as we calculate the difference to be less than £3,000.

- For Te Whaiti 2, the revised Government valuation attributed 7,850 acres of the best timber to the block, at £3 1s an acre, totalling £23,925 (land and timber); whereas Pollock attributed it with 6,452 acres of the best timber, valued at £2 10s an acre (a total of £16,130). This was a difference of £7,795. Thus, the Government valuation was much more advantageous to Te Whaiti 2 owners.

How fair were these valuations? The answer depends on a number of factors, including the volume, and types of timber involved, and its accessibility and proximity to markets. On the matter of timber volume, James Canning gave evidence that the area of the Te Whaiti blocks contained ‘the densest podocarp stand (excluding Kauri) to be found in the Central North Island, if not the densest in the country.’⁶⁶⁷ Canning’s research, as he described it, involved first establishing the area of Te Whaiti 1 and 2 blocks by digitising the boundaries from plans of adjoining surveys, then a ‘reconstruction of the original forest by modern computer methods’, using volumetric measurements of timber from the New Zealand Forest Service in the early 1950s.⁶⁶⁸ Those measurements, devised to assess the total volume of indigenous forest remaining in the country in the 1950s, were based on the mapping of forests, a system of forest typing based on aerial photographic interpretation,⁶⁶⁹ and ground sampling. That is, sample plots at 1,000-yard intervals across afforested areas were measured by field parties, which enabled them to establish the species and the volume of each species within the typed area.⁶⁷⁰ Since the Forest Service reports were compiled some 25 years after milling had begun, data from a number of sources was used to reconstruct logged areas.⁶⁷¹ The volume of merchantable timber was shown to be 532 million board feet.⁶⁷² The data, Canning said, was the ‘best available and infinitely better than the casual estimates made by the Crown at the time of sale.’⁶⁷³ Pollock had estimated only 200 million board feet, which was short by some 332 million board feet.⁶⁷⁴ The under-estimation of timber volume, which Canning said was the main factor affecting the price paid by the Crown, was attributable, in his view, to the ‘negligent approach’ of the Crown’s representatives.⁶⁷⁵ ‘There is no evidence that he [Pollock] traversed the

667. Canning, ‘Te Whaiti Block’ (doc G6), p 5

668. *Ibid.*, pp 6–7; Canning, ‘Te Whaiti Nui-a-Toi Forestry Report’ (doc A114(e)), p 7

669. Canning explained that forested areas were flown over and photographed with a mapping camera. ‘The resultant overlapping photographs were studied stereoscopically by interpreters who according to the grey tone, textural appearance, height, topography and location typed the vegetation depicted thereon.’ See Canning, ‘Te Whaiti Nui-a-Toi Forestry Report’ (doc A114(e)), p 18.

670. Canning, ‘Te Whaiti Block’ (doc G6), p 5

671. For instance, H Tai Mitchell’s plans of the subdivisions of Te Whaiti block immediately after the purchase showed the bush edge as it existed at that time, and provided the basis (when digitised into a computer) for reconstructing gaps created by clear felling: Canning, ‘Te Whaiti Nui-a-Toi Forestry Report’ (doc A114(e)), p 20.

672. Canning, ‘Te Whaiti Block’ (doc G6), p 7

673. *Ibid.*, p 5

674. Canning, ‘Te Whaiti Nui-a-Toi Forestry Report’ (doc A114(e)), pp 7, 21

675. *Ibid.*, p 23

Valuation type	Description	Area (acres)	
		Te Whaiti 1	Te Whaiti 2
Initial (Wilson, Jordan, and Pollock's 'prairie value' of land and timber [†])	Best timber area (land and timber)		
	Residual area (land and timber)		
Total		71,340	
Amended (Four areas, allocated between Te Whaiti 1 and 2)	Best timber area (land and timber)	5,548	6,452
	Area 2 (land and timber)	21,000	7,340
	Area 3 (land and timber)	7,000	3,000
	Area 4 (land and timber)	11,500	9,500
Total			
Government (July)	Land Timber		
Total			
Revised Government (August) (7,850 acres best timber land, plus 5,030 acres fern land, 2,350 acres light bush country, and 11,062 acres birch country)	Land	45,048	26,292 [‡]
	Timber		
	Other		
	Land		
	Timber Other		
Total			

* The valuations of the four areas give a total value for Te Whaiti 1 of £23,357 10s and for Te Whaiti 2 of £20,269 10s: see Stirling, 'Te Urewera Valuation Issues' (doc L17), p 128.

† Jordan and Wilson to chief surveyor, 1 August 1915, AADS W3562, file 22/697, pt 2, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896: Part 3'; (doc D7(b)(i)), p 149); Edwards, 'The Urewera District Native Reserve Act 1896: Part 3' (doc D7(b)), p 176

‡ We have calculated this total for the four listed acreages: see methodological note below. Stirling reached the same total. We believe that Canning erred in reaching a different total (£41,377): see Stirling, 'Te Urewera Valuation Issues' (doc L17), p 127; Canning, summary of 'Te Whaiti Nui-a-Toi Forestry Report' (doc c6), p 9.

Table 13.3: Valuations of Te Whaiti land and timber, 1915. This table is based on actual figures given by Wilson, Pollock, and Jordan, and on the details provided in the Government valuation. We have made one addition of our own. Under 'amended valuations', we have added our calculations of the total valuations of each of the four areas, based on the value per acre the officials assigned those areas.

Total	Valuation amount (£)			Price per acre		
	Te Whaiti 1	Te Whaiti 2*	Total	£	s	d
12,000			30,000	2	10	–
59,340			13,695	–	4	7
			43,695		12	3
12,000	13,870	16,130	30,000	2	10	–
28,340			8,502	–	6	–
10,000			2,500	–	5	–
21,000			2,625	–	2	6
71,340			43,627[‡]	–	12	3
			20,127			
			26,560			
71,340			46,687	–	13[§]	–
	12,127		}		8	3
	6,560		}			
		3,925**	}	1	1	3
		20,000 ^{††}	}			
		8,000	}			
71,340			46,687		13^{‡‡}	

§ Valuer-General to Native Under-Secretary, 16 July 1915, MA-MLP 1 1910/28/4, Archives New Zealand, Wellington

(Edwards, supporting papers to 'Urewera District Native Reserve Act 1896' (doc D7(b)(i)), p 1060). The total valuation given by the Valuer-General was £46,887, which is erroneous.

|| Consisting of 7,850 acres of best timber land, plus 5,030 acres of fern land, 2,350 acres of light bush country, and 11,062 acres of birch country.

†† Best area subtotal of £23,925 (£3 1 s per acre), plus other areas (land and timber): fern (six shillings per acre) = £1,500; light bush (8s 6d per acre) = £1,000; birch (2s 10d per acre) = £1,575.

** Valuer-General to Native Under-Secretary, 23 August 1915, MA-MLP 1 1915/28/4, Archives New Zealand, Wellington (Edwards, 'The Urewera District Native Reserve Act 1896: Part 3' (doc D7(b)), p 179)

Block and produced his valuation after inserting a system of sample plots.⁶⁷⁶ In fact there is no indication that he ‘seriously attempted to produce a reliable estimation of the timber.’⁶⁷⁷

Canning seems not to have been aware of the Government valuation based on Burch’s data,⁶⁷⁸ but in our view this does not detract from his criticism that the 200 million board feet estimate of Te Whaiti timber volume substantially under-estimates its true volume. Burch’s and Pollock’s valuations of the Te Whaiti millable timber are based on very similar estimates of timber volumes. To explain:

- ▶ Burch valued the timber on the entire Te Whaiti block at £26,560, subsequently providing figures of 7,850 acres of milling timber worth £20,000 for Te Whaiti 2 and an unspecified acreage of timber worth £6,560 for Te Whaiti 1.⁶⁷⁹
- ▶ If the timber in the two blocks was of comparable quality, the area of milling timber in Te Whaiti 1, on the Government valuation, would be 2616.66 acres (that is, one-third of 7,850 acres).
- ▶ The total area of milling timber, according to the Government valuation, would thus be 10,466 acres.
- ▶ Pollock did not give a separate timber valuation for the 12,000 acres of land and ‘heavy podocarps’⁶⁸⁰ that he and Wilson and Jordan valued at £30,000, but Canning assumed that the land was valued at five shillings per acre.⁶⁸¹
- ▶ Although Canning presented his figures as being based on a land value of five shillings per acre, he concluded that 12,000 acres at five shillings per acre gives a total of £7,500 when in fact it is £3,000.⁶⁸² A land value of five shillings per acre seems consistent with the values given at the time to the rest of the Te Whaiti lands (totalling 59,340 acres) by Wilson and Jordan (see the section on amended valuation in the sidebar ‘Valuations of Te Whaiti land and timber, 1915’).
- ▶ Those values ranged from a low of 2s 6d per acre (which Canning identified as the value for ‘rough country in non-merchantable bush’), to five shillings per acre for what Canning described as ‘cleared land (mostly rolling country and river flats)’, to a high of six shillings per acre for ‘steeper country in merchantable bush.’⁶⁸³

676. Canning, ‘Te Whaiti Block’ (doc G6), p 8

677. Ibid

678. Canning referred to the ‘so-called Government valuation’ as being ‘probably the value placed on the land by Pollock.’ His discussion [throughout], however, is based on Pollock’s own valuation: Canning, ‘Te Whaiti Block’ (doc G6), p 8.

679. Valuer-General to Native Under-Secretary, 23 August 1915 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)(i)), p 1051)

680. Canning, ‘Te Whaiti Nui-a-Toi Forestry Report’ (doc A114(e)), p 24

681. Ibid, p 16

682. This seems to be a simple arithmetical error. The value of 30,000 acres at five shillings an acre is £7,500.

683. Canning, ‘Te Whaiti Nui-a-Toi Forestry Report’ (doc A114(e)), p 15

- ▶ The six-shilling valuation (of 28,340 acres) included, Canning said, the amount of just one shilling an acre for merchantable timber in this area that his research showed ranged in volume from 6,000 to 46,000 board feet per acre.⁶⁸⁴
- ▶ On the basis that the land itself was valued at five shillings per acre, as Canning stated (that is, a total of £3,000), Pollock's timber valuation would be £27,000.
- ▶ The difference between Burch's and Pollock's valuation of the timber would thus be £440 – a difference of less than 2 per cent.

Given that all the officials were carrying out their valuations at about the same time, we consider it likely that Burch knew the basis, or the outcome, of the Wilson, Jordan, and Pollock valuation before the Government valuation of the Te Whaiti land and timber was completed. That might explain why Burch did not specify an estimated volume of millable Te Whaiti timber, yet was able to put a value on it which appears to be very close to Pollock's valuation. But whatever the reason for the similarity between Pollock's and Burch's timber valuations, the very fact of it indicates that Pollock's estimate of 200 million board feet is equally relevant to Burch's valuation. We conclude that Canning's criticisms of the 1915 estimate of timber volume – though they were directed at Pollock and his valuation – could equally apply to Burch's valuation. Canning estimated that Pollock valued the timber at £22,500 (although, as noted above, it seems the figure should have been £27,000)⁶⁸⁵ – an amount which was 'extremely poor' when compared with Canning's own estimate of £330,557. This amount was derived using the National Forest Survey volumes of merchantable timber, Canning's own reconstruction of the forest on Te Whaiti 1 and 2 blocks at the time of sale, and contemporary (1918) gazetted values for each timber area type.⁶⁸⁶

The Crown did not present expert evidence that contested Canning's findings, but Crown counsel took issue with his evidence on several grounds. In particular, Crown counsel criticised Canning for having unreasonable expectations of the 1915 methodology for measuring timber volumes, for relying on contemporary gazetted timber values that were specific to the West Coast, for relying on a wrong estimate of tramway costs, and for giving undue weight to the fact that the Te Whaiti block provided access to other blocks rich in timber.⁶⁸⁷ In other words, they took issue with Canning on both timber measurement and timber valuation. We consider these matters in turn.

13.7.6.1 *Timber volume measurement in 1915*

The Crown noted that though Canning was critical of Pollock's estimate of the total volume of timber on the blocks, he appeared to accept Pollock's estimate of

684. Ibid, p 24

685. Ibid, p 16

686. Canning, 'Te Whaiti Block' (doc G6), p 9

687. Crown counsel, closing submissions (doc N20), topic 31, pp 26–29

approximately 12,000 acres of millable timber, and his range of timber volumes (6,000 to 50,000 board feet per acre). Canning's estimate of total timber volume was so much higher than Pollock's because, he argued, it could be shown that timber volumes at the high end of the range extended over far more land than Pollock allowed for. The Crown's submission was that Canning's estimate relied on technology not available to officials in 1915 (aerial photographs, computers, and 'even helicopters'). Canning's suggestion that Pollock could have used a sampling method to improve his accuracy was refuted on the grounds that officials were unlikely to have had the luxury of time 'to spend weeks doing sample surveys of timber volumes at precise grid intervals'. Though it is not known what kind of method Pollock used – he says nothing about his methodology, and we infer that he made eye estimates – the Crown submitted that its procedures 'were reasonable at the time'.⁶⁸⁸

We consider the most important point to emerge from Canning's evidence is that Pollock's estimate of timber volume (200 million board feet) was just 37.6 per cent of the volume estimated by Canning (532 million board feet). It is of course incontestable that Canning relied on modern technology in his research. As a scientist, he set out (in accordance with his brief) to establish, in particular, whether the timber resource had been fairly assessed and the owners properly paid for it. His answer, as we have seen, was a resounding 'No'. And, in our view, though it may have taken modern techniques to establish with some precision the extent of the shortfall in timber volumes, Canning's answer is sound. Certainly his timber volumes are at the high end of Pollock's range of volumes (44,333 feet per acre, compared with Pollock's upper figure of 50,000 feet) – but they are within them.

We are mindful of the Crown's caution against assuming that all trees were merchantable: a proportion, it was submitted, 'are likely to have been over-mature, rotting or diseased'.⁶⁸⁹ Counsel also referred us to a 1939 case study in the vicinity of Te Whaiti, which in their view indicated that issues of valuation of timber stands were not straightforward. Stands on the Te Whaiti Residue block and adjacent smaller blocks amounting to 1,678,423 board feet of podocarps (after 10 years of milling timber for fence posts) were estimated as being worth £3,000. But the forest ranger stated at the time that 'commercial proposition[s] were limited to the flats along the stream . . . and any interference with the bush would result in severe erosion'.⁶⁹⁰ The Crown contrasted the figure of some 291 board feet per acre (over 5,764 acres) in this study with the much higher figure from the 1915 valuation of 16,700 board feet per acre on 12,000 acres of Te Whaiti block land.⁶⁹¹

We consider the Crown's example is less telling when set in the context of all the evidence on timber volumes that is before us. In particular, the 1939 assessment

688. Crown counsel, closing submissions (doc N20), topic 31, p 27

689. Crown counsel, memorandum in response to Tribunal directions, 13 October 2011 (paper 2.898), p 4

690. *Ibid.*, p 5

691. *Ibid.*, pp 4–5

was made well before the 1955 Forest Service survey, which was a state-of-the-art operation.⁶⁹² We consider that the methodology adopted in that survey, as set out in the Forest Service report, is reassuring. Merchantability, the report states, ‘was assessed in accordance with the best of current utilisation practices.’⁶⁹³ (Merchantable stands are ‘those which are of sufficient extent, of sufficiently high quality, and of sufficiently high volume per acre, having regard to topography, to permit economic exploitation either immediately or within the next several decades.’⁶⁹⁴) And podocarp species presented few difficulties to assessors: ‘these species are comparatively free from concealed defect[: and] can, therefore, be appraised to a high standard of accuracy.’⁶⁹⁵ Canning’s conclusions about the under-estimation of timber volumes in 1915 should also be understood in the context of knowledge of, and interest in, the timber resource at the time, and of Crown policies. We turn briefly to that context.

By 1915, when Pollock (of the Lands Department) and Burch (the district valuer) made their respective valuations of Te Whaiti timber, foresters had for some time been urging ‘a more responsible use of the country’s forests.’⁶⁹⁶ A handful of foresters bemoaned the general lack of concern about protecting forests and safeguarding a supply of timber for the future; the emphasis was still on the needs of rural settlement – the felling of trees and sowing of pasture. Though some optimistic guesses were made at the start of the century about how long indigenous timber would last, the 1913 royal commission on forestry warned in its landmark report that the supply was ‘very limited’: it would last 30 years at most unless a real attempt was made to conserve it.⁶⁹⁷ The commission saw no long-term future, however, for the indigenous forests – exotic plantation forests should be established instead – but strongly recommended that where land was suitable for conversion to pasture all its timber should be milled rather than burnt. ‘Year by year,’ the commission wrote, ‘timber formerly considered as far too distant from any market is being profitably milled.’⁶⁹⁸ The first Director of Forestry, LM Ellis (appointed in 1919), placed a greater importance on indigenous forests and on

692. It was noted in the national report that field work extended over a 10-year period, and the air survey over a long time. But regional timber totals had all been corrected to 31 March 1955 by subtracting known timber outputs since dates of survey or photography. The effective date of survey was therefore 1 April 1955: see SE Masters, JT Holloway, and PJ McKelvey, *The Indigenous Forest Resources of New Zealand*, vol 1 of *The National Forest Survey of New Zealand, 1955* (Wellington: Government Print, 1957), p 15.

693. Masters, Holloway, and McKelvey, *Indigenous Forest Resources of New Zealand*, p 12

694. It was stated that the term ‘merchantable’, as used in the report, referred only to the quality of the forest; availability on legal grounds was not considered in assessing merchantability: see Masters, Holloway, and McKelvey, *Indigenous Forest Resources of New Zealand*, p 16.

695. Masters, Holloway, and McKelvey, *Indigenous Forest Resources of New Zealand*, p 12

696. Klaus Neumann, ‘Maori and Forestry in the Twentieth Century: A Preliminary Report’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2000) (doc 110), p 13

697. Neumann, ‘Maori and Forestry in the Twentieth Century’ (doc 110), p 19

698. ‘Report of the Royal Commission on Forestry’, AJHR, 1913, C-12, p xx (Neumann, ‘Maori and Forestry in the Twentieth Century’ (doc 110), p 20)

controlled forest management of lands 'better suited for silviculture than for agriculture' on Maori-owned blocks.⁶⁹⁹ The value of indigenous timber was clearly spelt out to the Government during this period.

While it is not clear what kind of method Pollock used in valuing the Te Whaiti timber, the outcome, in any case, was simply a broad estimate of timber volumes. We may contrast this with evidence on measurement given before the royal commission on forestry in 1913. As a Government timber measurer, Pollock had appeared before the commission himself. His evidence related to the Auckland land district, and he was speaking to the system for measurement introduced in the northern kauri forests by HP Kavanagh, chief timber expert with the Lands Department. He described the setting of boundary lines (to partition a forest for milling purposes), clearing of vines around trees, taking the height of trees with an Abney level,⁷⁰⁰ branding them with the Government brand with an axe near the base, and use of a ready reckoner for estimating the superficial contents.⁷⁰¹ Kavanagh himself, by then retired, also gave evidence, drawing on his experience in Wairarapa as well as Auckland district. In Auckland, he said, he initiated the system of measurement (rather than estimation) which he 'now advocate[d] should be enforced in all districts'. The Government should have trees measured and the contents computed before it disposed of milling areas – and that included 'undersized' trees such as kahikatea 'and other good milling-timbers'.⁷⁰² We note that the commission adopted his suggestion in its recommendations.⁷⁰³ But Pollock did not refer to his use of any such system of measurement at Te Whaiti. We are aware that when the national forest inventory was compiled between 1920 and 1923, there was considerable reliance on eye estimates by experienced loggers; but in that case data was compiled nationally as a basis for forest policy planning. The 1955 Forest Service report stated that at the time of the 1920 to 1923 survey, 'shortcomings in method were at all times clearly recognised' and inevitably, as the forests were explored more thoroughly, errors in the 1923 estimates came to light.⁷⁰⁴ But timber measurers and millers working in well-timbered areas for commercial purposes in the years before the survey of the early 1920s approached their task differently, as we have shown, and measured trees more carefully. The Te Whaiti owners, whose sole valuable resource was their timber, were entitled to have had it properly measured.

699. LM Ellis, 'Report on Forest Conditions in New Zealand, and Proposals for a New Zealand Forest Policy', AJHR, 1920, C-3A, pp 17–18 (Neumann, 'Maori and Forestry in the Twentieth Century' (doc 110), pp 23–24)

700. An Abney level is an engineering instrument with a fixed sighting tube, a movable spirit level, and a protractor scale. It can be used to measure tree height through trigonometrical calculations. It is described as easy to use and relatively inexpensive.

701. Pollock, minutes of evidence, 24 April 1913, AJHR, 1913, C-12, p 52

702. Kavanagh, minutes of evidence, 'Report of the Royal Commission on Forestry', 24 April 1913, AJHR, 1913, C-12, p 50

703. 'Report of the Royal Commission on Forestry', AJHR, 1913, C-12, p xxi

704. Masters, Holloway, and McKelvey, *Indigenous Forest Resources of New Zealand*, pp 6, 8

13.7.6.2 Timber prices – a comparison of minimum rates for Crown-owned timber

While the Crown acknowledged that it paid a low price for the Te Whaiti timber, Crown counsel challenged Canning's assessment of a fair price for the timber. He relied on values prescribed in the 1918 *New Zealand Gazette*, setting minimum royalties for cutting State-owned timber, arguing that these represented a 'fair value at the mid-point of the sale'. The 1918 regulations Canning cited were issued under the Mining Act 1908, and the Crown submitted that they were 'for specified areas within the West Coast and up to only 400 acres'.⁷⁰⁵ Crown counsel contended that, at the time, the West Coast had a main railway line and numerous branch lines, so that timber transport there would have been easier and cheaper than from the Te Whaiti blocks. Noting Pollock's contrast between the Te Whaiti timber and 'the better positioned' King Country timber, the Crown queried Canning's reliance on West Coast, rather than King Country, timber values.⁷⁰⁶ The Crown did not, however, identify any relevant King Country values.

It is true that the 1918 regulations on which Canning relied were made under the Mining Act. We accept that those regulations were not of general application, although we have been unable to verify that their limitations were exactly as stated by the Crown. We have, however, verified that the minimum royalties prescribed by those regulations were identical to the minimum royalties prescribed by other regulations of more general application which were in force at the same time. The minimum rates to be paid by sawmill licensees for Crown-owned timber were gazetted in 1917 under the Land Act 1908 and the State Forests Act 1908: 2s 6d for 100 superficial feet of totara, two shillings for matai, one shilling for rimu, and ninepence for kahikatea (see table 13.4).⁷⁰⁷ The 1917 rates were higher than the rates set less than a decade earlier, reflecting rising prices for timber (other than kauri),⁷⁰⁸ and it seems were copied into the regulations made in 1918 under the Mining Act.

We note, too, an identical provision (regulation 31) in the regulations made under the Land Act 1908 and the State Forests Act 1908 which states that 'where the timber is easily accessible and can be procured without great difficulty the Minister may increase the amount of the royalty specified'.⁷⁰⁹ This underlines the

705. Canning, 'Te Whaiti Block' (doc G6), p 8; 'Amended Regulations in Respect of Timber-cutting Rights under the Mining Act, 1908', 11 April 1918, *New Zealand Gazette*, 1918, no 52, p 1018; Crown counsel, closing submissions (doc N20), topic 31, p 27; see also Crown counsel, cross-examination of Canning, Murumurunga Marae, Te Whaiti, 14 September 2004 (transcript 4.10(a), p 2)

706. Crown counsel, closing submissions (doc N20), topic 31, p 27

707. Forest Regulations under the Land Act 1908 were issued under section 3 and gazetted on 15 April 1909 in *New Zealand Gazette*, 1909, no 32, pp 1055–1077. Regulations under the State Forests Act, 1908 (applying to State forests or forest reserves) were also gazetted on 15 April 1909 in *New Zealand Gazette*, 1909, no 32, pp 1031–1053, and a notice amending the Timber Regulations under the Land Act 1908 was published on 22 February 1917 in the *New Zealand Gazette*, 1917, no 34, pp 724–725.

708. See, for instance, Skeet, 'Extracts from Reports of Commissioners of Crown Lands', AJHR, 1918, C-3, p 40.

709. 'Forest Regulations Under the Land Act, 1908', 15 April 1909, *New Zealand Gazette*, 1909, no 32, p 1059

Timber	Royalties, 1909 regulations		Royalties, 1917–18 regulations	
	s	d	s	d
Totara				
< 25 feet	1	0	2	6
> 25 feet	2	0	2	6
Matai				
< 25 feet	1	0	2	0
> 25 feet	2	0	2	0
Rimu	0	6	1	0
Kahikatea	0	6	0	9

Table 13.4: Minimum timber royalties prescribed by regulations per 100 superficial feet

point that the prescribed royalties were *minimum* amounts that took account of the costs of cutting and extracting timber. These facts, we consider, negate the Crown's criticisms of Canning's reliance on the Mining Act regulations and his assessment that the minimum royalty rates prescribed there represented a fair value for the Te Whaiti timber. The Crown, subsequently, appears to have accepted this point, though counsel noted that regulations under the State Forests Act 1908 provided that the Conservator might sell timber by 'appraisal' or auction, so that sums less than the specified royalties might have been involved.⁷¹⁰ This is a mere quibble, however. The point really is that identical royalty rates laid down in regulations of the mid-1910s under no fewer than three Acts mean that Canning's calculations of value of the timber – in broad terms – can be shown to be soundly based and credible.

We observe that, had Pollock's estimated 200 million board feet of Te Whaiti timber all been valued at even the lowest rate set by the regulations for any of those types of timber (ninepence per 100 superficial feet of kahikatea), it would have been worth £75,000, instead of its Government valuation of £26,560. And had the estimated volume been 532 million board feet, in line with Canning's evidence, the timber's value – even at the lowest rate prescribed in 1917 for Crown-owned timber – would have been £199,500, over seven times its Government valuation of £26,560. We are satisfied that £199,500 represents a bare minimum value

710. The Tribunal sought comment from the parties on its discovery of regulations of 'more general application' under the Land Act 1908 and the State Forests Act 1908, which prescribed royalties similar to those made under the Mining Act 1908, on which Mr Canning relied. By memorandum on 13 October 2011, the Crown agreed that amended regulations of 1917 under each of the two Acts were equivalent to those made under the Mining Act 1908; see presiding officer, memorandum and directions, 9 September 2011 (paper 2.894), p 2; Crown counsel, memorandum in response, 13 October 2011 (paper 2.898), p 3.

for the Te Whaiti timber in 1917, and that if the more valuable totara, matai, and rimu, which we know were well represented in the forest, were taken into account (Pollock stated that rimu and totara predominated), its true value at rates of the time would have been substantially higher.

We note that an under-valuation of some £173,000 in 1917 (that is, £199,500 minus £26,560) is, in today's dollars, equivalent to a shortfall of some \$20 million.⁷¹¹

13.7.6.3 Timber valuations – the impact of projected tramway costs

Pollock's valuation of the Te Whaiti timber factored in the cost of a tramway to carry the timber to Te Teko. Using Pollock's figures – of 200 million board feet of timber and £30,000 total value for 12,000 acres of land and millable timber – Canning estimated that Pollock valued the timber at 2.7 pence ('say 3d') per 100 board feet. Then, relying on the cost of other tramways at the time (in particular, the Taupo Totara Timber Company line, similar in length and terrain covered to the one needed), Canning estimated that the Te Whaiti tramway would have cost £50,000. When that amount was spread over the estimated 200 million board feet of timber, it meant that each 100 board feet cost an extra sixpence. The result, on Canning's calculation, was that the Crown paid 8.7 pence per 100 board feet for the Te Whaiti timber – which is less than the minimum rate (ninepence) set by the 1917 regulations for the cheapest of the podocarps. When calculating an estimate of the amount the Crown underpaid for the Te Whaiti timber, Canning used the figure of 532 million board feet and the rate of 8.7 pence per 100 board feet, and concluded that the Crown underpaid by £208,000.⁷¹²

The Crown challenged Canning's estimate of the tramway cost as being too low, on the grounds that it did not account for the fact – which Pollock pointed out – that three difficult gorges would have to be excavated during its construction. The Crown contended that the tramway costs may have been 50 per cent higher than Canning estimated, making the price of the timber 11.7 pence per 100 board feet. The Crown also challenged Canning's spreading of the tramway costs across just 200 million board feet when his own calculation of the Crown's underpayment for the timber used the figure of 532 million board feet. The Crown submitted that when Canning's own estimated cost of the tramway (£50,000) was spread over the larger quantity of timber, the tramway would have cost 2.25 pence per 100 board feet, not sixpence as calculated by Canning. This would reduce the amount of the

711. The Reserve Bank inflation calculator shows that £1 in 1917 is worth between \$112.08 and \$120.87 today (that is, in the first quarter of 2012).

712. Canning, 'Te Whaiti Nui-a-Toi Forestry Report' (doc A114(e)), pp8, 16–17, 24. We noted earlier that Canning miscalculated the land/timber split in Pollock's £30,000 valuation of the 12,000 acres. On the basis that Pollock valued the land at five shillings an acre, the timber was actually valued at £27,000 – rather than the £22,500 Canning used when he calculated that the Crown valued the Te Whaiti timber at 2.7 pence ('say 3d') per 100 board feet. Using the amount of £27,000, the value is nearer 3.3 pence per 100 board feet. The difference, of one-third of a penny per 100 board feet is, we consider, not large enough to be material when we are engaged in an exercise, such as the present one, that is heavily dependent on estimates.

Crown's under payment for the Te Whaiti timber from the £208,000 calculated by Canning to some £110,000.⁷¹³

We make two points about the parties' argument about the extent to which tramway costs affected the price paid by the Crown for the Te Whaiti timber. First, both Canning and the Crown did their calculations (evidently for the sake of convenience) on the basis that the tramway costs would be charged only to the Te Whaiti block. But Canning was well aware that Pollock never thought the cost of the tramway would be borne solely by Te Whaiti timber. In fact, Pollock suggested the purchase of Te Whaiti so as to reduce the cost of development works necessary for the removal of timber from adjacent blocks; a large volume of timber, he argued, would 'spread the initial tramway expenditure'.⁷¹⁴ And he was particularly enthusiastic about 'Te Papa bush', which he stated was on the Whirinaki block: 'Conversant as I am with most of the Crown timber areas in the Auckland province, I did not know the Crown possessed a bush so valuable and so little known of.'⁷¹⁵ Since both Canning and the Crown attributed their estimates of the tramway cost solely to the Te Whaiti timber, when Pollock was clear that the cost would be spread more widely, we conclude that the tramway cost must have had substantially less of an impact on the valuation of Te Whaiti timber than either Canning or the Crown calculated. We cannot, however, give a precise figure for the impact that the estimated tramway cost had on that valuation.

Secondly, we note that, ultimately, the tramway was not built and the Te Whaiti timber – as well as timber on adjacent Crown-owned blocks of Heruiwi and Whirinaki – was taken out by the Te Whaiti road.⁷¹⁶ That road, completed in 1923, was not purpose built for timber transport, but serviced the district generally. Canning's evidence was that the road's construction was funded out of 'general roading construction funds', so that the deduction of tramway costs from the timber value could not be justified.⁷¹⁷

On this point, we conclude that, to the extent that the tramway costs reduced the price the Crown paid to Maori owners for their interests in the Te Whaiti blocks, the reduction was unjustified because the tramway was never built. The Government still funded the road for timber transport, and this would be of benefit to the remaining Te Whaiti owners once they could finally make agreements for timber extraction a number of years later. But those owners who sold received no

713. Crown counsel, closing submissions (doc N20), topic 31, pp 27–28

714. Pollock to commissioner of Crown lands, Auckland, 2 August 1915 (Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), p 202)

715. Pollock to commissioner of Crown lands, Auckland, 2 August 1915 (James Canning, comp, supporting papers to 'Te Whaiti-Nui-a-Toi Forestry Report', various dates (doc A114(d), vol 1), app 16). Our reading of Pollock's report suggests that his reference to the very 'valuable' bush is to Te Papa bush. Unfortunately we have been unable to locate the report of December 1914 about the 'bush' by ranger Jordan, which Pollock refers to as his source.

716. Canning stated that the Pohokura timber was extracted by the 'Ballan route' (that is, the road through the Waipunga Valley), while the remaining timber went north to the Te Whaiti or Minginui mills: see Canning, under cross-examination by Crown counsel, Murumurunga Marae, Te Whaiti, 14 September 2004 (transcript 4.10(a), p 8).

717. Canning, 'Te Whaiti Nui-a-Toi Forestry Report' (doc A114(e)), p 26

benefit for the amount by which the price set for the blocks was reduced. Again, there is no way we can quantify the extent to which this factor contributed to the Crown's under-payment of the Maori owners for their Te Whaiti timber.

13.7.6.4 A premium for access to other Crown-owned timber?

Finally, the Crown disputed Canning's argument that Maori owners should have been paid a premium for the Te Whaiti land because Te Whaiti Valley gave access to 'huge timber reserves on the Whirinaki, Heruiwi and Pohokura blocks'. The Crown submitted that the case Canning cited to support his argument was not a 'solid point of comparison'.⁷¹⁸ This is not strictly an issue about the valuation of Te Whaiti timber, but the parties dealt with it in this context, and so we include it here. The facts of the case cited by Canning,⁷¹⁹ and involving the Runanga 1A block, are summarised in the sidebar over.

We accept that the Runanga 1A purchase involved a relatively small acreage of land, while at Te Whaiti the purchase of two large blocks was proposed. We accept, too, that whereas the Runanga land provided the only access for the proposed Pohokura homesteads, the Te Whaiti land was not the sole accessway to the adjacent Crown-owned timber lands. This is plain from the fact that some of the timber on those blocks was taken out through the Ballan route. But that does not negate the broader point – that the value of the blocks to the Crown was greater because the land provided certain access to the important timber resource of other blocks, as both Pollock and Burch emphasised. We consider that this should have been taken into account when Te Whaiti was valued.

There is no evidence that a premium was considered. Pollock, for instance, simply stated that he considered £30,000 to be the 'full value' for 12,000 acres of 'milling bush', and he 'would not recommend the Crown to pay more';⁷²⁰ while Burch commented that the 'purchase of the Te Whaiti timber at a fair price would undoubtedly cheapen the cost of working the adjoining country and should prove profitable investment', adding that he had, however, 'endeavoured to arrive at a fair valuation of the block on its merits'.⁷²¹ The principle of paying owners a premium for access had certainly been established in the district, although it seems not to have been applied evenly by the Crown. We note that whereas Russell secured a substantial premium, at £2 10s an acre, for the 1,400 acres of Runanga 1A that were needed to build the Waipunga Valley road and give run-holders access to it, the Maori owners of Runanga 1B, part of which was also used for the road, were paid just 3s 10d an acre for their land when the Crown purchased the block.⁷²² That rate

718. Crown counsel, closing submissions (doc N20), topic 31, p 28

719. Canning, 'Te Whaiti-Nui-a-Toi Forestry Report' (doc A114(e)), pp 25–26

720. Pollock to commissioner of Crown lands, Auckland, 2 August 1915 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 141)

721. Burch to Valuer-General, 5 July 1915 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(f)), p 1829)

722. Evidence of HE Walshe, 11 September 1912, AJHR, 1912, 1-5A, p 1 (Canning, supporting papers to 'Te Whaiti-Nui-a-Toi Forestry Report' (doc A114(b)), app 9)

Runanga 1A Block: An Example of Crown Payment of a Premium for Access

In 1910, Christchurch farmer Thomas Ballan owned Runanga 1A block in the headwaters of the Waipunga River, which adjoined the Pohokura block (Crown land). (Runanga and Pohokura are to the south of, and close to, the Napier to Taupo Road.) The Crown began negotiations with Ballan to buy a 1,400-acre strip of the block, but in March 1911, G W Russell, a member of Parliament, entered into an agreement to buy the block from Ballan, and it was Russell who sold the Crown the 1,400 acres.

The Crown paid Russell £3,510 10s – that is, £2 10s per acre – though the Government valuation of Runanga 1 (34,000 acres), made several years earlier, was much lower.¹ The transaction aroused political interest, and was the subject of a parliamentary inquiry. Officials stated that the Crown wanted the 1,400 acres because it was flat land, necessary for homesteads once Pohokura block was cut up into runs, and for tenant access to the main road planned for the Waipunga Valley. Within the 1,400 acres, the land for the road could have been taken under the Public Works Act, but not the land between the road and the proposed grazing runs on Pohokura block.² For this reason, officials stated – and the parliamentary committee agreed – it was desirable for the Government to acquire the property, and the price paid was not excessive ‘under the circumstances.’³ Access to the runs was stressed (‘a piece of land [for each grazing-run holder] fronting on the main road’), rather than the importance of a road to get timber out – though the committee was told that the ‘greater part of the Pohokura Block is all forest.’⁴ One official stated that had the land not been purchased, prospective Crown tenants ‘could not get out or in.’⁵ But it was clear that Crown officials recommended the payment of a high price per acre sought by the owner because they judged acquisition of the land to be crucial to opening up the Pohokura block.⁶ The Crown paid a substantial premium for part of Runanga 1A for this purpose.

1. Ballan had offered to sell his 1,400-odd acres for £4 an acre, but was turned down because the price was considered too high; £2 10s seemed more reasonable.

2. Evidence of WC Kensington, 18 September 1912, AJHR, 1912, 1-5A, p20 (James Canning, comp, supporting papers to ‘Te Whaiti-Nui-a-Toi Forestry Report’, various dates (doc A114(b)), app 9)

3. Chairman, ‘Details in Connection with the Purchase and Fencing of Part of Runanga No 1A Block’, 31 October 1912, AJHR, 1912, 1-5A, pp i–ii (Canning, supporting papers to ‘Te Whaiti-Nui-a-Toi Forestry Report’ (doc A114(b)), app 9)

4. Evidence of WC Kensington, 18 September 1912, AJHR, 1912, 1-5A, pp 19–20 (Canning, supporting papers to ‘Te Whaiti-Nui-a-Toi Forestry Report’ (doc A114(b)), app 9)

5. Evidence of John Strauchon, 12 September 1912, AJHR, 1912, 1-5A, p6 (Canning, supporting papers to ‘Te Whaiti-Nui-a-Toi Forestry Report’ (doc A114(b)), app 9)

6. Evidence of HE Walshe, 11 September 1912, AJHR, 1912, 1-5A, p2 (Canning, supporting papers to ‘Te Whaiti-Nui-a-Toi Forestry Report’ (doc A114(b)), app 9)

did not include any premium, as was noted by the parliamentary committee in its examination of the situation.

In the long run, the bulk of the timber from the Te Whaiti, Heruiwi, and Whirinaki blocks was in fact extracted by road through Te Whaiti.⁷²³ It was not taken out by the tramway, the cost of which had already been deducted from the price paid to the Te Whaiti sellers, for that was never built. Thus, Pollock's and Burch's initial advice that the Te Whaiti blocks provided access to the more valuable Crown-owned timber in adjacent blocks proved to be prophetic, although the exact means of timber extraction changed (from tramway to road) with time and technological advances. But the Te Whaiti owners did not receive any recompense for the additional value their land had to the Crown in this timber-rich area. They should have.

13.7.6.5 Conclusions

The Crown's purchasing in UDNR blocks was unlawful (and had to be retrospectively validated). It was on a scale that Te Urewera leaders could hardly have imagined in 1896 when the UDNR Act was passed, and was largely conducted through purchases from individuals (a discredited method designed in an earlier age to speed up purchasing and undermine collective resistance to it). In these circumstances, the question of whether prices paid by the Crown were fair seems of secondary importance. But it is necessarily a question at issue between the parties, and we have considered the evidence before us.

We have looked particularly at the process by which the Crown decided on prices to be paid to owners – and we have found that it was defective and unlawful. The Crown's failings in this respect compounded its failure both to conduct its purchases through the General Committee and to demonstrate an interest in the economic and social well-being of the peoples of Te Urewera once the UDNR Act had been passed. And these were the last lands of Te Urewera peoples, who had already been subject to Crown monopoly purchasing in the rim blocks – all the land purchased by the Crown in these blocks in the nineteenth century was acquired under a monopoly (with one small exception), and some was also purchased under monopoly conditions in the early twentieth century. We found that those who sold were not paid a fair price for their land in those blocks.

The question now arises as to how we should approach what we can only describe as a raft of unsatisfactory and highly questionable Crown dealings and decisions. The following factors seem to us to be important:

- ▶ The Crown decided to purchase in reserve lands at a time of intense public and political pressure, reversing its earlier stated position that the reserve was quite unsuitable for settlement; this should have alerted it to the need for care with valuations and prices.
- ▶ The Crown was acting contrary to the law (the requirements laid down in the Native Land Act 1909); Maori were entitled to independent valuations, as

⁷²³ James Canning, 'Te Whaiti-Nui-a-Toi Forestry Report', revised version, August 2004 (doc A114A), pp 24–25

the Crown itself had recognised, and the Native Land Purchase Board should have instructed the Valuer-General to make special valuations of reserve blocks.

- ▶ The Crown's valuation process was defective; it sent officials to value the land who had a clear conflict of interest, since their primary concern was to demonstrate the financial viability of proposed Crown settlement schemes which, they found, would be possible if the prices paid to Maori owners were discounted.
- ▶ The process was not transparent and Maori were not consulted, nor did they have the basis of the valuations explained to them.
- ▶ Not only did the Crown fail to consider how Maori economic interests might be advanced when settlement was being planned for, but officials were anxious to buy large tracts of land so that roads would benefit only settler properties and the value of unsold lands would not rise and cost the Crown more; Maori were not considered as farmers or producers, but only as sellers of land.
- ▶ Lands and Survey Department officials, preoccupied with farming settlement, gave a nil value to all reserve forests except those at Te Whaiti, and reserve block owners who sold received nothing for them; yet within a few years foresters of the new State Forest Service would consider the same forests a national asset, for production as well as conservation purposes.
- ▶ A Maori reserve protected by its own statute should have been considered immune from purchasing on any major scale, particularly by the Crown.
- ▶ The Crown vigorously and cynically exercised a monopoly (which it had initially secured in the UDNR Act as a protective measure) to buy the land it wanted at its own prices; monopoly purchasing had long been recognised as unfairly depressing prices.
- ▶ The Crown failed also to adjust its prices when land prices throughout the country rose after the First World War.
- ▶ By 1915, when its real purchasing push began, the Crown had destroyed or bypassed the only collective body (the General Committee) that it could have bargained with on a reasonably equal basis.
- ▶ The Crown had excluded the protective mechanisms available through the mainstream Native Land legislation.
- ▶ Communities were denied the opportunity of choosing which portions might be sold to raise funds for the benefit of their community.
- ▶ The people who sold had no basis on which to judge whether the offers made to them were fair or not.
- ▶ The Crown engaged unlawfully with individuals who were living in poverty and who had a limited capacity to withstand any offer.
- ▶ The Crown's purchase of shares from individuals rather than the General Committee meant that payments were dissipated.
- ▶ The Crown was acting in direct contravention of promises made to Te Urewera peoples by the Premier that their reserve would be protected for them and their social and economic welfare would be promoted.

These factors indicate to us that the duty of active protection upon the Crown was heightened significantly. While the Crown was not technically a fiduciary, the effect of the circumstances summarised above is akin to those in which a fiduciary's unconscionable behaviour gives rise to a constructive trust. Pursuing that analogy, we take guidance from a long line of cases that hold that a wronged beneficiary does not bear the onus to prove loss, but it is for the trustee to prove there is no loss in the sense that the price paid to acquire trust property was adequate. A recent decision of the New Zealand Supreme Court has confirmed that, when a fiduciary has affected the price at which the beneficiary's property is sold, the onus is on the fiduciary to demonstrate that the loss suffered by the beneficiary is less than the difference between the sale price and the property's market value.⁷²⁴

In all the circumstances, we do not accept that the Crown has demonstrated that it paid fair prices for reserve lands.

Our conclusions about the prices paid to Te Whaiti block owners for their land and valuable timber are similarly adverse to the Crown:

- ▶ As the monopoly purchaser in Te Whaiti, the Crown was careful of its own interests and neglected those of Maori owners.
- ▶ The Te Whaiti timber was neither properly measured nor properly valued.
- ▶ Crown officials agreed that in future the timber, along with that of Heruiwi, Whirinaki, and Pohokura, would be 'very valuable',⁷²⁵ but in 1915 it was low, and Government valuations of the timber were discounted accordingly.
- ▶ The valuation was crucial for the owners because they were impoverished and it was their major resource.
- ▶ Te Whaiti owners, like those of other reserve blocks, suffered the misfortune of having their standing timber valued just before the State Forest Service was established.
- ▶ The Crown's view that the Te Whaiti forests would be best milled in the future should not have denied Maori owners the option of entering into arrangements with private sawmillers, who had been interested in the timber for some years before the Crown.
- ▶ The Crown failed to ensure that Ngati Whare's proposed sale of timber to the Hall company, which the General Committee had consented to in 1914, was progressed through the Executive Council – despite the Minister of Justice's urgings in 1915 that the people be assisted to work their lands, and despite the provisions of the UDNR Amendment Act 1909 to facilitate such a transaction through the District Maori Land Board.
- ▶ The Crown decided instead to acquire the timber by purchasing the land itself, moving to buy up individual interests in Te Whaiti 1 and 2 blocks from August 1915, from owners who were denied the right to sell cutting rights to private buyers, or to contest the Crown's valuation, and who were in a parlous

⁷²⁴ See *Premium Real Estate Ltd v Stevens* [2009] 2 NZLR 384 (SC), 414; see also *Crampton-Smith v Crampton-Smith* [2012] 1 NZLR 5

⁷²⁵ Pollock to commissioner of Crown lands, Auckland, 2 August 1915 (Hutton and Neumann, supporting papers to 'Ngati Whare and the Crown' (doc A28(b)), p 50)

position after the destruction of their crops by frost at the beginning of 1915, and the high price of flour due to the war.⁷²⁶

- ▶ Even if private logging had led to wastage (which we accept would certainly have been the case) and to smaller royalties than anticipated (because of the cost of extraction),⁷²⁷ owners might have staved off sale of the land while receiving much-needed income at a crucial time, and a better share of profits in the future.
- ▶ The Crown did not even consider the desirability of securing the long-term benefit of the resource to the Te Whaiti owners.
- ▶ The Crown compounded its failure to allow the owners the opportunity of securing a market price for their timber by failing to measure the timber by the best possible methods of the time, to obtain reasonably accurate volumes.
- ▶ Canning's evidence, which provided us with a sound basis for estimating the extent of the shortfall in the Crown's measurement of timber volumes, showed that timber volumes were substantially under-estimated in 1915 because they were high over a much greater acreage than Pollock allowed for, though he stated that there was a margin for error even in modern estimates of timber volume (such as his own).⁷²⁸
- ▶ This caution is one reason why we cannot put an exact figure on the undervalue; nor can we put a precise figure on the cost of the tramway which had to be factored in (at the time of purchase) for timber extraction (neither the Crown nor Canning attempted to show what the impact of those costs on the valuation of the Te Whaiti timber would have been had the costs been shared among the various timber blocks the tramway was expected to serve).
- ▶ The Crown also failed to pay Te Whaiti owners a premium for the value of the block as an access way to the valuable Crown-owned timber on these blocks, though the principle of paying a premium had already been established in the district; the Crown paid a high price to Pakeha property owners to secure access to a road for runholders whom it wished to establish on Crown land in Runanga 1A block.
- ▶ We conclude that at the very least, the Te Whaiti timber must have been worth £199,500, over seven times its Government valuation of £26,560, and very probably much more than that; we base our figure on the estimated timber volumes and on royalty rates prescribed in Crown regulations (1917) to be paid by sawmill licensees for Crown-owned timber.
- ▶ The undervalue was therefore in the region of £173,000, as a minimum.
- ▶ The Crown (after consolidation of its interests) – not the owners – would mill the greater part of the Te Whaiti timber when it began operations in the Whirinaki Valley (in what was by then State Forest 58) from 1938 to 1984, more particularly from the mid-1940s – given policy changes and

726. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p 145

727. On timber wastage, see 1913 royal commission on forestry, minutes of evidence, various dates, AJHR, 1913, C-12, pp 1, 15, 28, 32-33, 35, 50, 66.

728. Canning, 'Te Whaiti Block' (doc G6), p 5

technological advances such as tractors⁷²⁹ – and would enjoy the considerable returns from the land it had purchased illegally in the 1910s.

The fate of the timber resource of Te Whaiti underlines the Crown's failure, which it acknowledged before us, to respect the guarantees of the UDNR Act that Maori owners should manage and benefit from their own resources. Maori owners had the right to expect that the Crown would assist their economic development, not foreclose their opportunities.

Again, we do not accept that the Crown has demonstrated that it paid fair prices for timber in the Te Whaiti block.

13.8 TREATY ANALYSIS AND FINDINGS

Our Treaty findings in this chapter are among the most important we will make on Te Urewera claims. The Crown engineered the collapse of the Urewera District Native Reserve, shattering the hopes of the peoples of Te Urewera and breaking its promise that they would achieve control of their own affairs. The result was a body blow to *mana motuhake* and widespread loss of ancestral lands, already gravely diminished by confiscation and relentless Crown purchasing.

We drew attention, in chapter 9, to the constitutional significance of the UDNR Act. For the first time the State recognised a Maori district which would be set aside entirely as a reserve for its people, and governed by them through a legally empowered local authority. That significance lay also in the mutual recognition and respect of the Crown, on the one hand, and Tuhoe and Ngati Whare on the other, for each other's existence and authority. It not only reflected arrangements made in 1896 but was also the fulfilment and renewal of the earlier compact which Tuhoe and Ngati Whare had entered into with McLean in 1871 – their search for such an arrangement was by then a generation old. Premier Seddon recognised that, and recognised the trust that was placed in the Government when the *taiaha Rongokarae* was gifted to him. Under the arrangements which culminated in the UDNR Act, Te Urewera leaders entered a full, reciprocal, Treaty-based relationship with the Crown. As we stated in chapter 9, the Crown sought and acquired the people's agreement to recognise the Queen, the Government, and the law. It provided for the legal recognition of their self-government. And it promised them the active protection and mutual benefit inherent in the Treaty.

Because of the constitutional significance of the UDNR Act, and because the Crown was very well informed as to the outcomes Tuhoe and Ngati Whare sought from the preceding negotiations, the onus on it to ensure that the UDNR Act was properly carried out was heavy. In fact the Crown failed, as it has conceded, to establish an effective system of local land administration and local governance. Its commitment to the success of the UDNR Act waned quickly and, it seems, irrevocably.

729. Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), pp 370–371; see also Crown counsel, cross-examination of Canning, Murumurunga Marae, Te Whaiti, 14 September 2004 (transcript 4.10(a), pp 7–8)

Tamati Kruger's Address to the Crown, Last Claimant Hearing, Maungapohatu

KUA roa ahau e noho ana i tou marae, to te karauna. Kua kite ahau i tou whare, kua roa au e ako ana, e kite ana, i au tikanga, i au mahi. . . . Ae, he roa tou marae, te marae o te karauna . . . Engari tino popoto to pae-tapu. Ko te roa o to pae-tapu he nui noa iho mou. Ko koe ano, ko koe anahe ka ahei ki te noho i to pae-korero, notemea ko ingoa o to pae-korero ko 'Matapiko'. . . . Engari ko te tara-iti a to whare, he nui ake i te tara-nui notemea kua waiho e koe te wahi nui mou, a, ko te wahi iti mo nga manuhiri, kia kikini ai, kia kopapa ai te noho a o manuhiri. . . .'

I have been sitting at your marae of the crown for a long time. I have seen your house, I have been learning for a long time, observing your rules, your work. . . . Yes your marae is long, the marae of the government. . . . But your sacred pew is very short. The length of your sacred pew is only long enough for you. Just for you and you alone. One is not allowed to sit on your pew of speeches because the name of your pew is 'selfish'. . . . the host's privilege is wider than the guest's privilege, because you have commandeered the greater place for yourself and the narrower place for your guest, so they may feel the pinch and cramp.'

Tamati Kruger¹

1. Tamati Kruger, oral evidence (Maori), Mapou Marae, Maungapohatu, 21 February 2005 (doc K34), pp 18–19; Tamati Kruger, oral evidence (English), Mapou Marae, Maungapohatu, 21 February 2005 (doc K34(a)), p 12; counsel for Nga Rauru o Nga Potiki, closing submissions, 3 June 2005 (doc N14), pp 47–48. Maori and English versions supplied by counsel for Nga Rauru o nga Potiki.

Ultimately, the Crown not only made so little effort to ensure that the key promises of the UDNR Act were upheld but also overrode the provisions that would have protected the reserve from piecemeal alienation. We have already acknowledged and welcomed the Crown's very properly made concessions on these matters, and its acknowledgement that, in the various actions it identified as being in breach of the Treaty and its principles, 'the Crown did not act reasonably and in good faith toward Urewera Maori'.⁷³⁰ In a very significant concession, the Crown also accepted ultimate responsibility for 'the parlous state of affairs that existed in the Urewera district as a result of Crown actions and omissions in implementing the local governance provisions and purchasing undivided shares'.⁷³¹ We will consider that state of affairs further in chapter 14.

730. Crown counsel, closing submissions (doc N20), topics 14–16, p 5

731. Ibid, p 9

The Treaty principle of autonomy, which we have referred to in chapter 8 of this report, arises from the Crown's guarantee to protect the tino rangatiratanga (mana motuhake) of the peoples of Te Urewera. We have noted the clear explanations of this principle given by the Taranaki and Central North Island Tribunals: autonomy is the inherent right of peoples in their native territories, and describes the right of indigenous peoples to constitutional status as first peoples and their rights to:

- ▶ manage their own policy, resources, and affairs within minimum parameters necessary for the proper operation of the State, and
- ▶ enjoy cooperation and dialogue with the Government.

We agreed with counsel for Nga Rauru (in chapter 9) that if Maori were to control their own destiny there must be substantive equality of treatment for Maori and settlers in the exercise of authority over their own affairs. The Crown had to give legal recognition and protection to institutions of Maori self-government. In the UDNR Act 1896, in a constitutional first, the Crown did exactly that. The General Committee was to have full control of all tribal affairs; Maori custom was to continue and be protected inside the reserve; Maori dialogue with – and consultation by – the Crown would continue; and the collective leadership of Te Urewera was to manage and control UDNR lands and resources.

In the case of the Urewera District Native Reserve, therefore, the Crown had both a Treaty obligation and an obligation under the law to provide for and protect mana motuhake. We find that it failed to meet that obligation. In fact, it subverted self-government in the reserve, first by its inaction but later quite deliberately.

It failed in the period immediately following the passage of the UDNR Act to engage with Te Urewera leaders as to the best means of giving effect to the legislation, despite the urgent invitations of those leaders to discuss this with them. It failed to take steps to ensure that provisional local committees were set up under the Act in a timely manner once it became evident that the process of title determination would not be a speedy one; and it failed to provide for those committees to elect a General Committee expeditiously, so that the spirit and intent of the UDNR Act could be given effect to. It thus failed to take any active steps to ensure that the General Committee was able within a reasonable time to exercise its powers of self-government, including the management and development of land and resources within the reserve, and continuing dialogue with the Government. The Crown finally, and quite cynically, intervened to ensure the establishment of the General Committee (after many years' delay) when it seemed to be needed to assist the Crown to acquire land for settlement, and to permit prospecting for gold. It then legislated to amend the basis of the membership of the Committee so that members would be appointed, rather than elected by the local committees, thus manipulating the committee's membership and abolishing a core right of self-government as recognised in 1896: the right of the peoples of Te Urewera to choose their own representatives.

The Crown acknowledged to us that – despite the efforts of Numia Kereru as chairman – the Government took no action during the first two years of the

General Committee's operations to provide for regulations that 'might have assisted the Local Committee[s] and the General Committee to begin to work as effective corporate bodies, enjoying the confidence of both the community of owners and the government's representatives'. It accepted also that this was a failure at a 'critical phase of the establishment of the local government structures'.⁷³² More than this, the Crown made no attempt to consult the General Committee as to what regulations might be required, relying instead on an official's assurance that it was no longer intended that the Committee should operate as initially envisaged.

The Crown then presided over the demise of the General Committee. It legislated in 1916 to allow purchase in reserve blocks to proceed without any role for the Committee – not even the limited role it had earlier been allowed. The Crown also failed to respond to requests from Te Urewera leaders, after the General Committee had been sidelined, that it be revived – citing possible interference with the Crown purchasing programme. Finally, the Crown legislated in 1922 to repeal the UDNR Act, formally ending the life of what had been a remarkable piece of legislation.

The Crown was therefore in breach of the Treaty principles of autonomy and active protection. It was in breach also of the principle of partnership. It failed to consult Te Urewera leaders, both before and after the work of the first Urewera commission, to ensure that the UDNR Act was implemented in accordance with Crown guarantees. It failed to consult subsequently on the law needed to enable local committees and the General Committee to function as intended. It failed to ensure that committees were properly constituted to manage the affairs, lands, and resources of the communities of Te Urewera, though this had been a central understanding of the agreement of 1895 to 1896. The Crown properly acknowledged to us that:

The UDNR Act sought to promote the retention of the links of Nga Hapu with their taonga katoa and te mana motuhake o Tuhoe through a system of local government of identified owners. It is acknowledged that the implementation of the Act over a long period of time (25 years) did not achieve that aim.⁷³³

The speed with which Crown acts and omissions breached its Treaty and legal commitments to the peoples of Te Urewera strikes us as remarkable. But the Crown's lack of respect for its Treaty partner in Te Urewera shook the trust which had finally begun to emerge, after 30 troubled years, in the mid-1890s fundamentally impairing the relationship. The Crown conceded that it failed to act reasonably and in good faith towards the peoples of Te Urewera. We find it acted unreasonably and, at times, in bad faith.

732. Crown counsel, closing submissions (doc N20), topics 14–16, p 72

733. *Ibid*, p 48

13.8.1 Land title determination

On the matter of land titles in the UDNR, we believe that the Crown, in establishing a commission with a Tuhoe majority, was to be congratulated for agreeing to an alternative to the land court which (in theory) was to provide for Maori control of a title determination process. We considered it a separate issue whether the UDNR Act provided in practice for significant owner control in the process of determining titles. A related issue is the approach of the commission to title determination, and the kind of title orders it recommended.

We find now that the Crown did not act to protect the owners' position in practice: it failed to intervene when the commission agreed at the outset that Tuhoe commissioners should take no part in proceedings regarding blocks in which they had an interest. While the commissioners' decision was a reasonable one, which was doubtless intended to reassure claimants who might fear conflict of interest (or the appearance of it) on the part of the Tuhoe commissioners, its result was that a key principle of the Act was outweighed by a narrow concern with process. Tuhoe commissioners were a majority of members in only one-third of the blocks adjudicated on; and in the crucial Ruatoki and Ruatahuna hearings, only one Tuhoe commissioner sat.⁷³⁴ Five Tuhoe commissioners never sat together. In 1900, the Crown simply endorsed the practice of the commission in respect of recusal of the native commissioners (as they were now termed), amending the UDNR Act accordingly and waiving the quorum requirements.

In doing so, the Crown failed to consider how to preserve the principle of expert local involvement in commission decision-making once it became evident that recusal of members who had interests in particular lands greatly diluted that involvement. As a result, the values, expertise, and leading role that owners should have been able to expect from the predominance of their own people on the commission was lost. This was a squandering of the opportunities the UDNR Act had offered – and which had so long been sought by Maori throughout the motu. As we see it, this could very easily have been avoided by creating a pool of alternate commissioners in 1900.

The Crown subsequently failed to provide for participation of the peoples of Te Urewera in the appellate body. It had been left open for the Minister to interpret section 10 of the UDNR Act to provide for 'expert inquiry and report' without including Tuhoe people. We note too that Ngati Kahungunu commissioners could have been appointed at this time, to sit when Kahungunu claims were heard, thus preserving the principle of owner participation. Instead, the Minister appointed two Pakeha (one a land court judge) and one Ngati Porou member (a land court assessor) to his appeal commission. The Crown's earlier failure to appoint provisional local committees, despite the fact they had all been agreed to by the owners, and by the first Urewera commission, meant that no thought was given to their

734. Urewera commission, minute book 6, 15 April 1902, fol329 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(d)), p1353); 'Commissioners' Orders under the Urewera District Native Reserve Act 1896', AJHR, 1903, G-6, p168

possible involvement in the appeal process. The expertise of such a group might have been particularly helpful to the Minister, who had the power of final decision.

We find the Crown in breach of the principles of autonomy and of active protection for failing to ensure majority owner participation in the title-determination body, as specified by the UDNR Act. It failed in this respect even in the first Urewera commission. It then unilaterally passed amendments to the UDNR Act, without consultation with Te Urewera leaders as to how further appeals should be handled, ultimately allowing them to be dealt with by the mainstream land court appeal process which Tuhoe and Ngati Whare had been so anxious to escape.

We further find the Crown in breach of the Treaty principles of active protection and good governance, in that it failed signally to ensure that appeals against the first commission's decisions were dealt with expeditiously so that owners gained the security of title which had been promised them. We can see no reason why it took until the end of 1906 for the Crown to kickstart an appeals process, other than lack of commitment to seeing the titles process brought to a conclusion. And once the second Urewera commission had made its awards, Crown ineptitude in handling legislative amendments to the UDNR Act resulted in further unnecessary delay before subsequent appeals were heard. The failure to ensure a timely appeals process contributed to the very belated establishment of the committees that were the vehicles of self-government in Te Urewera under the UDNR Act.

We find also that the Crown failed to monitor the proceedings of the commission carefully (since, as Carroll indicated, this was an experimental process) to ensure that its approach to title determination was in accordance with the requirements of the UDNR Act. In chapter 9 we pointed to a serious flaw in the design of the UDNR Act relating to its provisions about titles: namely the requirement in section 8 that individual shares be identified. We concluded that although there was no compelling reason for the section to provide for the identification of individual owners' relative shares, this defect in the Act's design was not in breach of Treaty principles. Because all owners were protected by the Crown's promise that the reserve would be preserved to them, and by the exclusive legal power of the General Committee to alienate portions of land, the definition of individual shares – which could not be alienated – did not in itself threaten the future of the reserve.

But we conclude that, though section 8 directed the commissioners to prepare title orders which specified the names of individual and family owners and their relative interests, the commission gave little weight, under the leadership of Smith and Butler, to section 6 – which directed it to investigate titles 'with due regard to Native customs and usages . . . adopting as far as possible hapu boundaries'. Had it followed this provision, it must, in our view, have considered and made decisions on hapu claims before it proceeded to lists of names: that must have been the result of investigating title in accordance with custom and usages ('i runga i nga tikanga me nga ritenga Maori').⁷³⁵

The Crown knew how important hapu titles were to Tuhoe, who had made it clear during negotiations that they did not want land court processes in the

735. Ture Rahui Maori o te Takiwa o Te Urewera, 1896, s 6

reserve. Whatever the reason for the commission focusing from the beginning on lists of names and relative shares (an importation of the land court approach to titles), the Crown should have intervened. Its failure to do so was in breach of the principle of active protection.

Finally, we note Commissioner Smith's crucial statement in 1900 that the task of the commission was 'not to investigate these lands so that they may be sold or leased but . . . to ascertain the electorate localities in this land'.⁷³⁶ We agree with this interpretation of the Act, but it was not the interpretation which prevailed in the work of the Urewera commission. The Crown amended the Act from time to time but failed to separate the electoral provisions of the Act from the slow title-determination processes of the Urewera commission, when it became apparent that these would significantly delay the implementation of self-government. The Crown's failure here was a crucial one, contributing to our finding above that the Crown breached the Treaty principles of autonomy, partnership, and active protection.

13.8.2 Crown purchase of reserve lands

We find that in 1908 Ngata, for the Crown, wrongly called on Te Urewera leaders to cede land to the Government for survey and Urewera commission hearing costs, and the Crown took no steps to explain that they were not actually liable. Though the Crown did not make any attempts to recoup the costs of title determination during the time the Act was in force,⁷³⁷ the General Committee embarked on land alienation on the basis of this misinformation.

We find also that the Crown had a particular responsibility to preserve inviolate the role of the General Committee to manage and implement any alienations of land. The Crown had promised the people that hapu titles would be at the centre of the commission's work, and it had promised to protect them from loss of their reserve. The General Committee was the basic protection the UDNR Act had accorded both communities of owners and individual owners. It was a crucial protection for communities of owners given that, as the Crown conceded, the titles that were the result of the commission's work had not located where communities held rights, and their security of tenure was not guaranteed once purchase began. But the Crown failed also to ensure that the General Committee could meet its obligations under the law, to contract with the Crown to alienate portions of land that owners might wish to lease or sell. Had it done so, leases or sales might still have been limited to selected parts of blocks. Instead, the Crown initially sought the consent of the General Committee to the sale of blocks when this suited it (but not otherwise), then made its payments to owners of individual shares – without clarifying with the Committee which parts of blocks might be intended for sale. This illegal process paved the way for dispensing with the consent of the Committee altogether.

736. Urewera commission, minute book 3A, 26 February 1900, fol 137 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(a)), p 247)

737. Crown counsel, closing submissions (doc N20), topics 14–16, p 71

In 1915, the Crown embarked on a vigorous programme of illegal purchase of undivided individual interests within reserve blocks, then legislated in August 1916 to legalise such purchases retrospectively and to provide that they might continue. Since 1910, it had acquired the equivalent of over 100,000 acres illegally. It reflects poorly on the good faith of the Crown that it suddenly empowered the individuals whose shares had been identified by the Urewera commission to alienate their shares without reference to the General Committee. And even as it removed the right of owners under the UDNR Act to the protection of the General Committee, the collective decision-making body, it retained the right it had itself secured in the Act to be the exclusive buyer. These acts reflected Crown contempt, by that time, for the principles of the UDNR Act. It breached the Treaty principles of autonomy and active protection.

The Crown also breached the principle of active protection by:

- ▶ Predatory purchasing from individuals in virtually every block in the reserve over a number of years (and in the case of Ruatahuna, ignoring the pleas of leaders to refrain from such purchase), based on the premise that its perseverance would break down owners' resistance to selling.
- ▶ Controlling both valuations and prices, valuing UDNR lands by unlawful and flawed processes, and being quite unable to justify the prices paid.
- ▶ Amending the UDNR Act to secure control of the land court partitioning process in reserve blocks in order to prevent owners who did not wish to sell from obtaining court awards of land they wanted to keep. This was an unwarranted interference with Maori owners' property rights, as the Crown acknowledged – with the sole purpose of facilitating Crown purchase; it denied reserve owners the rights that other Maori owners had to seek to partition their lands and, while purchasing continued, denied them security of tenure in respect of a given location within a block.⁷³⁸
- ▶ Failing to ensure that Maori who sold interests were not being left 'landless', even though the Crown had established protections (albeit limited) for Maori sellers in its mainstream legislation, and even though officials were aware that reserve owners, like owners elsewhere, often sold because they had no other way of raising cash for the necessities of life.
- ▶ Purchasing with complete lack of concern for the present and future well-being of the resident tribal communities. We are conscious of the irony of this finding, given that the entire reserve had been set aside for its peoples in 1896.
- ▶ Failing in all these ways in the duty identified by Crown counsel to act with 'scrupulous' fairness in the exercise of its monopoly powers of purchase.⁷³⁹

We find also that the Crown failed in its Treaty duty to protect the peoples of Te Urewera in their right to develop their properties and taonga guaranteed them by the Treaty; and to ensure that they and settlers alike received the mutual benefits envisaged by the Treaty. As soon as the Crown embarked on purchase operations

738. Crown counsel, closing submissions (doc N20), topics 14–16, pp 62, 87

739. *Ibid*, topics 8–12, p 65

in the reserve, its main concern was to ensure the success of a farming settlement scheme. It was considered axiomatic that the peoples of Te Urewera should not benefit from new roads, in case they might subsequently ask higher prices for their land. Maori economic development was not taken seriously; indeed it was hardly mentioned. Had gold been found, the peoples of Te Urewera might perhaps have benefited in some ways – but there was no gold.

The Crown thus further breached the principles of the Treaty by:

- ▶ failing (as it accepted) to implement mechanisms to assist owners to manage reserve lands once title had been determined, and thus denying reserve owners a range of management options⁷⁴⁰
- ▶ failing to assign any value at all to the timber on reserve blocks other than Te Whaiti 1 and 2, a failure that would be highlighted only a short time later in the reports of staff of the new State Forest Service which considered the forests a national asset
- ▶ failing to ensure that the very valuable timber on the Te Whaiti blocks was carefully measured and valued, and thus paying the owners unjustifiably low prices, while also denying owners the right to test the value of their timber in the market by selling cutting rights or land to private buyers
- ▶ discounting the value of the Te Whaiti timber because it intended to mill it only in the future, while failing to consider the present and future importance of the timber resource to its owners
- ▶ failing to lay out for Te Whaiti owners the long-term benefits that might flow from their resource – which must have increased in value over time – and to advise them how best to proceed in the circumstances.

We are ever mindful of the need to consider a balance between Maori and Crown interests. But in this case we struggle to find a single redeeming feature in the Crown's actions. The Crown suggested to us at the outset that it had no intention of subverting the agreed principles embodied in the Urewera District Native Reserve Act. The reasons for failure, it submitted, were complex and included delays, lack of institutional knowledge, lack of appropriate consultation, insufficient attention by Ministers and officials at key times, placing Crown interests in purchasing ahead of the needs of owners, and lack of unity within the Urewera communities.

We think this explanation is woefully inadequate. If the Crown did not set out to subvert the legislation, its acts and omissions ultimately sabotaged the principles of the Act. It was certainly guilty of neglect and of forgetting the basis of its agreement with Tuhoe and Ngati Whare. But in the end, it engineered the collapse of the reserve, deliberately pursuing its own interests without concern for the self-government and the well-being of the peoples of Te Urewera. It was prepared to change, and even to defy, the law to achieve its aim of destroying the Urewera District Native Reserve. By 1922, the repeal of the UDNR Act 1896 (by the Urewera Lands Act 1921–22, 'an Act to facilitate the Settlement of the Lands in the Urewera

740. Ibid, topics 14–16, pp 53, 63

District') had become a mere formality for the Crown; and it seemed oblivious to the damage it had done.

There is a sad irony – given the Crown's huge push to buy up reserve land and open it for mining and settlement – in the fact that no gold was found, and there was almost no land suitable for numbers of extra farmers from outside the rohe. The Crown, having cut a swathe through Te Urewera, emerged with a stock of timber for which it had not paid (except at Te Whaiti) and from which it (rather than the Maori owners) would reap the financial benefits; and with a great number of shares in multiply owned Maori land. It could not, of course, point to any particular piece of land and say 'that is mine', and soon it would separate its shares from those of its Maori co-owners, consolidating them by 1927 into a vast block of land in the heart of the former reserve. Within 30 years, it would declare the block it had wrongfully acquired a national park – public land for the benefit of all.

The Crown totally failed to give effect to its promises in the UDNR Act; failed to act fairly, reasonably, and honourably; failed to protect the mana motuhake of Tuhoe, which in the developing colonial economy required a strong economic base and failed to protect the Treaty rights of all the peoples of Te Urewera.

CHAPTER 14

**TE WHAKAMOANA WHENUA –
THE UREWERA CONSOLIDATION SCHEME**

<i>Taku rakau e</i>	<i>My walking stick</i>
<i>Tau rawa ki te whare e</i>	<i>Reaches the house</i>
<i>Ka ngaro a Takahi e</i>	<i>Takahi has gone</i>
<i>Te whare o Te Kahikatoa</i>	<i>The house of Te Kahikatoa</i>
<i>Hei ngau whakapae e</i>	<i>As the besieging attack</i>
<i>Hei whakapae ururoa e hau mai nei</i>	<i>Like the attack of the shark heard about</i>
<i>Kei waho kei te moana</i>	<i>Out there at the sea</i>
<i>Kahore aku mihi e</i>	<i>My greetings</i>
<i>Aku tangi mo koutou</i>	<i>Are not grieving for you</i>
<i>Mau puku ko te iwi e</i>	<i>But the people are held dearly</i>
<i>Ka mowai tonu te whenua</i>	<i>And the land is deserted</i>
<i>E takoto nei e.</i>	<i>That lies here.</i>

Mihikitekapua's waiata of the 19th century was one of mourning. As she says in the waiata, she was not mourning for the people. She was mourning for the loss of great strength that had once studded the fame of Ruatahuna. She was mourning too for the land, that had been left behind – 'ka mowai tonu te whenua'. Did she know that her waiata tangi, so specific it seemed to her place and time, was also a prophecy?

Tuawhenua Research Team¹

1. Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two: A History of the Mana of Ruatahuna from the Urewera District Native Reserve Act 1896 to the 1980s' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc D2), p 255

TAKAHI, father of Te Umuariki, . . . was a casualty and a huge loss for Tuhoē in the Waikaremoana conflict. His eminence is clearly stated in the rest of the line, where he is referred to as 'the house of the kahikatoa'. Here the kahikatoa is used

metaphorically. This was the prominent tree growing around the lake. It belongs to the manuka family and the lake people fashioned their weapons from it.

'The sentiments hidden in this important line rouses Tuhoe to stand firm and harden their resolve, like the kahikatoa tree. . . . They exhort Tuhoe to greater effort, like the ururoa or shark. Hau is a reference to Haumapuhia who metamorphosed into a taniwha. The ururoa and Haumapuhia are thus related.'

William Rangiuia (Pou) Temara¹

1. William Rangiuia (Pou) Temara, brief of evidence, no date (doc H19), p 4

'As my ancestors and my father fought for Ruatahuna, we now carry the mana motuhake into this time that they passed on to us.

*'Ko Ruatahuna taku papa kainga,
'Ko Ruatahuna taku turangawaewae
'Ko te ngahere te pataka kai mo te tangata
'Ko te whenua te nohanga o taku iwi*

*'My ancestors have said:
'I haere whenua atu, me hoki whenua mai
'It was taken as land, it must come back as land'*

Te Whenuanui Te Kurapa¹

1. Te Whenuanui Te Kurapa, brief of evidence, 11 May 2004 (doc D21), p 5

14.1 INTRODUCTION

The Crown's purchasing programme in the Urewera District Native Reserve lands had, by the end of the 1910s, ground to a halt in the face of increasing resistance from Maori owners. Crown purchasing – both illegal (up to 1916) and in breach of the Treaty – had reaped little tangible reward after almost a decade of concerted efforts. The Crown had failed to acquire all the interests in even a single block, and could not identify a single acre on the ground in its possession. Instead, its purchasing had yielded approximately half of the reserve in the form of undivided interests, which were spread across most of the blocks. Tuhoe, Ngati Whare, Ngati Manawa, Ngati Ruapani, and Ngati Kahungunu retained interests in ancestral lands at Ruatoki, Ruatahuna, Maungapohatu, Te Whaiti, and Waikaremoana,

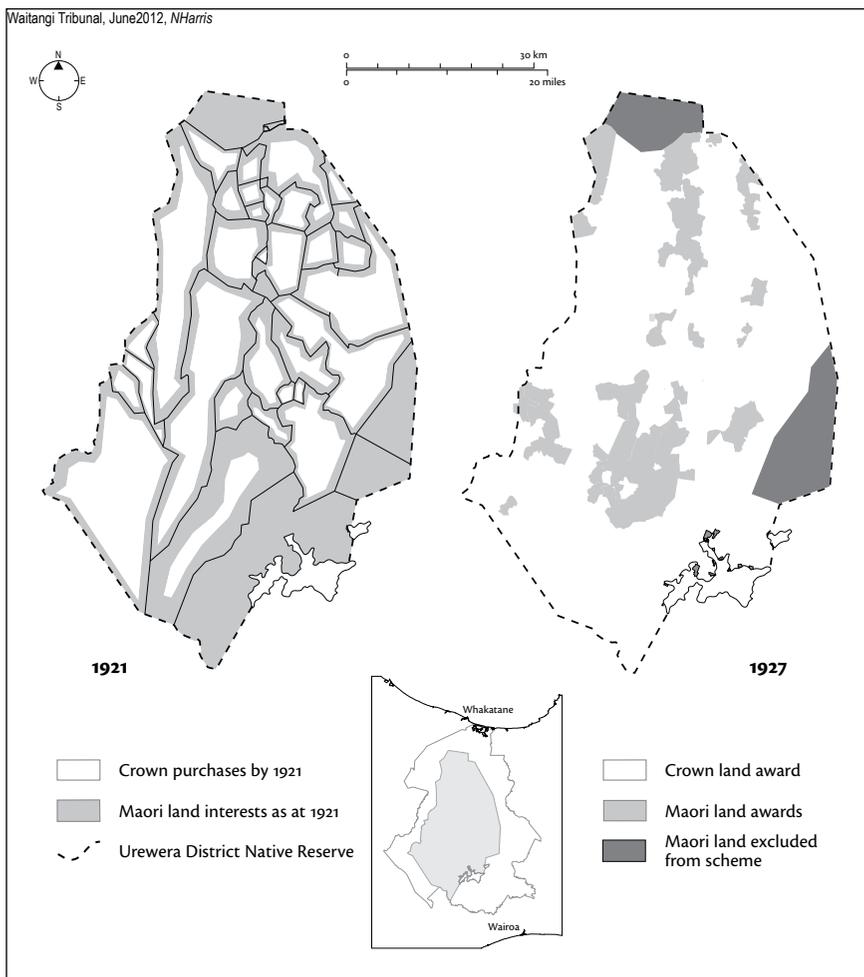
and other areas of the reserve. But these interests were held by individual owners, not hapu, and Crown purchasing – expanded in 1915 on the premise that half of the reserve was sustainable for farming on steep forest terrain – meant that most owners only had very few interests left in their possession.

Officials decided to implement a consolidation scheme in order to carve out the Crown's land on the ground. Consolidation schemes were a relatively new development in New Zealand that were designed to solve the problems arising for Maori from the individualisation of their titles to land. Essentially, interests of owners (usually scattered across a number of blocks) would be pooled or consolidated into workable pieces of land. Over the course of half a century, numerous schemes of this nature were implemented across the North Island. But the nature of the Crown's purchasing in the reserve required a substantially different kind of scheme. Not only would there be consolidation of the scattered interests of Maori owners, but there would also be a process of exchange so that the Crown could consolidate its own interests and obtain the land it had set out to acquire. Two schemes essentially needed to play out at the same time so that the single owner with by far the biggest number of interests (the Crown) could be accommodated.

The Crown maintained in our hearings that the Urewera Consolidation Scheme was, on the whole, good in both intention and execution. Significant benefits were promised to Maori owners, who accepted the Crown's proposals on the understanding that consolidation would improve the situation they were in by the end of purchasing, including the provision of secure title to lands that would finally be defined on the ground and two arterial roads. These benefits, they hoped, would enable Maori owners to finally take advantage of the economic opportunities offered by their remaining land, in the form of farming enterprises and the milling of selected portions of native timber. The Crown's major concession in our inquiry was that it failed to construct the promised arterial roads: this failure was fatal, the Crown admitted, to the integrity of the scheme and in breach of the Treaty. But Crown counsel also maintained that the Crown entered the scheme on the understanding that it would result in 'mutual benefits' for both Maori owners and the Crown, and that this had largely proved to be the case by the time the scheme was concluded in 1927. Crown counsel made these points in a lengthy submission. The Crown had commissioned no research on this major issue, instead submitting a number of document banks. Counsel suggested that while research conducted for the inquiry on issues such as survey and roading costs had not revealed information 'sufficiently accurate for the purposes of the inquiry', they were issues worthy of the Tribunal's further investigation, so that the the Crown could be confirmed in its view that it had acted fairly in respect of the scheme.¹

The claimants, however, said that the Urewera Consolidation Scheme failed to deliver any of its promised benefits, and merely constituted a fresh assault on Maori owners and their remaining interests in the reserve. In their view, the Crown insisted on having a consolidation scheme primarily for its own benefit. Maori owners were not provided with enough information to give their informed

1. Crown counsel, closing submissions, June 2005 (doc N20), topics 18–26, pp 3, 19, 51, 62



Map 14.1: Land awarded to Maori owners and the Crown between 1921 and 1927 as a result of the Urewera Consolidation Scheme. The scheme transformed the interests purchased by the Crown and those remaining in Maori ownership into land on the ground.

consent, particularly regarding the potential costs involved. The claimants told us that the Crown's intentions were reflected in the process it designed for the scheme, which placed the decision-making power in the hands of two Crown-appointed consolidation commissioners. The outcome was that the Crown secured most of the land it wanted for the purposes of settlement, timber milling, and watershed protection at the expense of Maori owners.

Through the scheme, the Crown acquired an extra 137,224 acres of the reserve, over and above the 345,076 acres it had already purchased by July 1921. A large part of this massive new acquisition was the Waikaremoana block (73,667 acres), which

claimants say they were forced to give up under a threat of compulsory acquisition. The Crown acquired the rest of its extra land without ensuring that the promised benefits of the scheme were delivered. Although approximately 30,000 acres was taken for survey costs, the promised certainty of land transfer titles was never honoured. And only a small portion of the arterial roads – paid for by approximately 40,000 acres – was ever built. In short, the claimants see the scheme as representing further Crown Treaty breaches following its failure to honour the UDNR agreement and its predatory purchasing of individual interests.

The title of this chapter – ‘Te Whakamoana Whenua’, or, land put out to sea – is derived from a record of the proceedings at Tauarau Marae, Ruatoki, in August 1921, where many of the scheme’s details were settled. In considering what the scheme might do for the titles they had obtained under the UDNR Act, the assembled Te Urewera leaders expressed their dismay that ‘the titles were to be “whakamoana-ed” (literally put out to sea).’² The Tuawhenua claimants adopted this term as descriptive of a broad theme of land loss in the twentieth century.³ The record of the Tauarau hui suggests that the leaders used the term to refer not just to the looming process of consolidation, but also to the broken promises of the UDNR. The beginning of the Urewera Consolidation Scheme saw Maori owners of the reserve facing in two directions: back, in reflection on the disappointment of the previous 20 years, and forward, to the process of consolidation that lay before them. It was six years before the consolidation scheme was completed. By the end, Maori owners were left with 106,287 acres three roods spread across 210 blocks. The Crown, in contrast, was awarded 482,300 acres of the former reserve in a single title, most of which later became the Urewera National Park.

This chapter tells the story of what happened – in the process of consolidation – to the surviving interests that Maori owners of the reserve had staunchly refused to sell for up to a decade.

14.2 ISSUES FOR TRIBUNAL DETERMINATION

The Urewera Consolidation Scheme is best examined through the five main elements at issue in the claims before us:

- ▶ the origins of and reasons for a consolidation scheme, and how far Maori owners consented to the design and implementation of the scheme;
- ▶ how the land was actually divided and interests swapped among Maori and between Maori and the Crown;
- ▶ how the Crown acquired the Waikaremoana block, and the effects of that acquisition on the peoples of Waikaremoana;

2. Balneavis to Coates, 27 August 1921 (SKL Campbell, comp, supporting papers to ‘Land Alienation, Consolidation and Development in the Urewera, 1912–1950’, 3 vols, various dates (doc A55(b)), vol 2, p188)

3. Tuawhenua Research Team, ‘Te Manawa o te Ika, Part Two: A History of the Mana of Ruatahuna from the Urewera District Native Reserve Act 1896 to the 1980s’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc D2), pp ii–iii

- ▶ the type of surveys required, the costs of those surveys and how they were met, and the promise of land transfer titles; and, finally,
- ▶ the promise to build arterial roads, and the Maori owners' contribution of land for that purpose

From these key elements in the scheme, we have asked five corresponding questions, which remain the central issues of contention between the claimants and the Crown:

- ▶ Why was a consolidation scheme chosen for the reserve lands?
- ▶ By what process were interests consolidated and the land divided between Maori owners and the Crown?
- ▶ What effect did the implementation of the scheme have on Waikaremoana peoples?
- ▶ What agreements were reached about titles and how was the cost of surveys met?
- ▶ Should Maori owners have contributed 40,000 acres toward the cost of constructing two arterial roads?

Our Treaty analysis and findings follow our discussion of these five issue questions. In the next chapter, we consider the impacts of the events from the passing of the UDNR Act through to the conclusion of the Urewera Consolidation Scheme.

We turn first, however, to an outline of the key facts underlying our analysis of the claims about the consolidation scheme.

14.3 KEY FACTS

14.3.1 The end of purchasing; towards consolidation

The first plans for a consolidation scheme in the Urewera District Native Reserve lands emerged in 1919, as the Crown's purchase of interests from Maori owners began to slow. By September 1919, the Crown had purchased the equivalent of 47 per cent of the reserve, in the form of undivided interests. Native Minister William H Herries had rejected calls from Native Land Purchase Officer William H Bowler to acquire the remaining interests by compulsion, because the 'limit of purchasing' had not yet been reached.⁴ Herries and the Native Department also agreed to delay applying to the Native Land Court for a partition of the Crown's interest in various blocks in the hope of purchasing as many interests from Maori owners as possible. At the same time, the Government prevented Maori owners from cutting out their interests by revoking the Native Land Court's jurisdiction to hear partition applications in June 1916. Only one more partition took place after the court's jurisdiction was revoked. In 1918, the Ruatahuna block was partitioned between its Maori owners on the discovery that an earlier attempt at partition had not been completed; Crown purchasing in the newly partitioned blocks then began. The Government also obtained an injunction against Maori owners in the Te Whaiti

4. Native Under-Secretary to Bowler, 14 December 1916 (Cecilia Edwards, comp, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3: Local Government and Land Alienation under the Act', 2 vols, various dates (doc D7(b)(i)), vol 2, p1365)

blocks from milling timber. Meanwhile, Bowler continued purchasing interests from Maori owners throughout the reserve.

In November 1919, the Under-Secretary for the Native Department, C B Jordan, proposed a consolidation scheme as a way of separating the interests of the Crown and Maori owners. Consolidation schemes were a new initiative in New Zealand, designed to overcome the excessive fractionation of Maori owners' interests, which had been brought about by individualisation and succession, and the fragmentation of land in the wake of Crown purchasing and partitions. The interests of individual Maori owners, often scattered across a number of blocks, would be consolidated so that each emerged with a discrete block of land that could be farmed. At this time, only one consolidation scheme had been carried out, in the Waipiro block on the East Coast between 1911 and 1917, under the provisions of the Native Land Act 1909. Jordan proposed a scheme for Te Urewera, to be implemented through the Native Land Court (as the Waipiro scheme had been), that would see Maori owners relocated into three or four large blocks. The remainder of the reserve lands would go to the Crown. Commissioner of Crown Lands (and chief surveyor) HM Skeet commented at this time that a 'comprehensive roading scheme' was required before any act to separate the interests of Maori owners and the Crown was carried out.⁵ And, before this occurred, Crown purchasing needed to be taken to its fullest extent. As we outlined in chapter 13, Bowler was instructed to continue to acquire as many interests as possible in the blocks under purchase, which coincided with the publication of a list of 'non-sellers' in the *Kahiti*, showing how many owners remained in each block, and the monetary value of each interest.

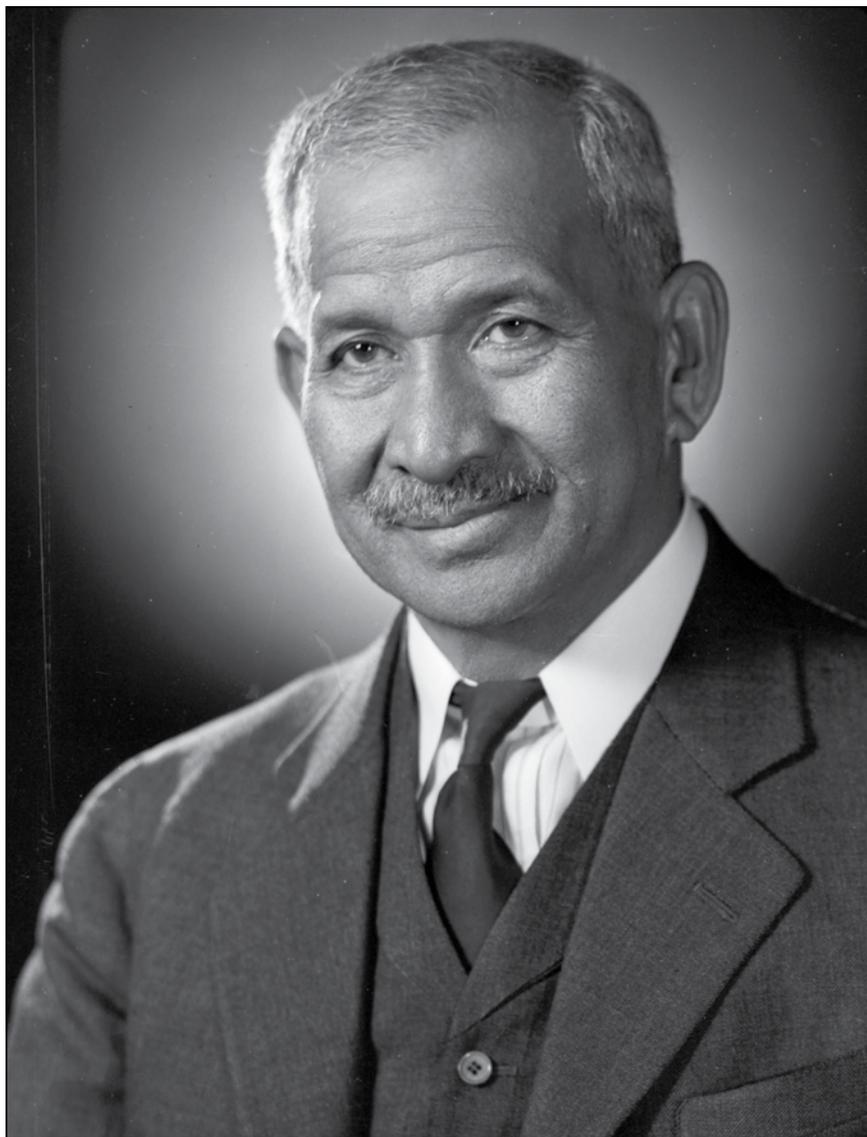
Further plans for a scheme were elaborated during 1920, when Maori owners continued to express their opposition to purchasing. David Guthrie, the Minister of Lands, met Tuhoe owners in February 1920 to discuss possible roading lines. At Ruatoki, on 20 February, 'a large deputation' of Maori asked for a road to be formed up the Whakatane Valley as far as Ruatahuna.⁶ At Ruatahuna, the Maori owners expressed a wish to have their land clearly defined; Guthrie told them that partition and land exchange were both 'sensible' ideas that the Government would pursue. At Te Whaiti, the Maori owners expressed their desire for a partition of the Te Whaiti blocks. Guthrie said that the Government aimed to partition the blocks as soon as possible; but this did not go ahead because – as Jordan informed the Under-Secretary for the Department of Lands, T N Brodrick – 'the general scheme for consolidation of interests in the Urewera blocks has been prepared.'⁷

In August 1920, on the completion of the preliminary exploration of roading lines, Skeet instructed R J Knight – a draughtsman of Maori land in the

5. Skeet to Brodrick, 18 November 1919 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p106)

6. Philip Cleaver, 'Urewera Roading' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A25), p 43

7. Jordan to Under-Secretary for Lands, 21 May 1920 (Richard Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi: A History' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1999) (doc A27), p184 n514)



Earle Andrew (ATL, 1/2-021044-F)

Apirana Ngata, the member for Eastern Maori. Ngata was the architect of consolidation schemes designed to solve the problems that Crown policies of individualisation of title had created for Maori owners, leaving many with undivided interests scattered across numerous blocks. Ngata had pioneered a scheme on the East Coast to pool such interests into workable pieces of land and played a central role in communicating the scheme's aims to Te Urewera peoples. Maori owners agreed to a scheme in the hope that it might finally allow them to derive some economic benefit from their lands, but they were to be sorely disappointed. In the Urewera Consolidation Scheme, consolidation of Crown interests (purchased from many individual Maori owners despite the provisions of the Urewera District Native Reserve Act) was prioritised. The Crown emerged with title to a single block of 482,300 acres, while Maori interests were consolidated into 210 blocks (totalling some 106,000 acres).

Department of Lands and Survey – to carry out a preliminary study on a possible consolidation scheme. Knight suggested the Crown take all its interests as one block in the north of Te Urewera, with Maori owners retaining land around Ruatahuna, Maungapohatu, and Tarapounamu–Matawhero.⁸ Brodrick continued to advocate a partition of interests in the Te Whaiti lands, but in October agreed to delay taking any action when Bowler advised that further interests could be acquired. At the same time, Bowler also reported that he had been visited by a deputation of Ruatahuna and Maungapohatu owners at Taneatua, who registered their strong opposition to ongoing Crown purchase of their interests and signalled their support for consolidation. In January 1921, Bowler reported that he anticipated purchasing very few interests on his next visit to Te Urewera. He recommended that the Native Minister organise a meeting with the remaining Maori owners to make an arrangement for ‘the ultimate settlement of the country’. The owners, Bowler said, preferred to ‘hold off pending a consolidation of interests.’⁹

Three crucial hui took place at Ruatoki during the course of 1921 that established the general outlines of the scheme. The first took place in February 1921, when Apirana Ngata led a parliamentary delegation to Ruatoki, including KS Williams (Bay of Plenty), WS Glenn (Rangitikei), WD Lysnar (Gisborne), and FF Hockley (Rotorua). Ngata was, at this time, the member for Eastern Maori but held no ministerial portfolio in the Government. He was, in fact, a member of the opposition but had a great deal of influence’ in the Reform Government, first through Maui Pomare and later as a result of his close relationship with Gordon Coates, who became Native Minister in 1921 and Prime Minister in 1925. Ngata and Coates ‘had a very high regard for each other, and Ngata was often able to initiate important measures from his side of the House.’¹⁰

As a member of the Stout–Ngata commission in 1907 and 1908, Ngata had recommended consolidation schemes as a solution to many of the problems of title fractionation and land fragmentation that were the outcome of Government policies for Maori land in the second half of the nineteenth century. Subsequently, he was heavily involved in the implementation of the Waipiro consolidation scheme (in his home lands, on the East Coast). At the Ruatoki hui, Tuhoe leaders spoke in favour of consolidating the interests of Maori owners and the Crown because they would obtain clearly defined title: ‘We wish to know where our land is.’¹¹

8. Knight to Under-Secretary for Lands, 21 June 1921 (Stephen Robertson, comp, supporting papers to ‘Te Urewera Surveys, Survey Costs and Land Valuations in the Urewera Consolidation Scheme, 1921–22’, various dates (doc A120(a)), p 70)

9. Bowler to Native Under-Secretary, 6 January 1921 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 53)

10. MPK Sorrenson, ‘Apirana Turupa Ngata,’ in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, <http://www.teara.govt.nz/en/biographies/3n5/1>, last modified 1 September 2010

11. ‘The Urewera Lands’, 19 February 1921, *Whakatane Press* (Vincent O’Malley, comp, supporting papers to ‘The Crown’s Acquisition of the Waikaremoana Block, 1921–25’, 3 vols, various dates (doc A50(b)), vol 2, pp 559–560)

In March 1921, a retired Native Land Court judge, RC Sim, wrote a letter to the *New Zealand Times*, criticising the Government for purchasing extensively in the reserve, but acquiring no actual land. Jordan, however, dismissed Sim's criticisms, and in April restated his support for consolidation in a briefing to the incoming Native Minister, Gordon Coates (Herries having resigned due to ill health). The alternative – compulsory acquisition of the remaining Maori interests – would, Jordan said, be met with 'tremendous opposition'.¹² Based on this advice, Coates and the new Minister of Lands, David Guthrie, decided to proceed with consolidation.

The second major hui took place on 22 May 1921, and once again it was well attended by politicians and Maori owners, but this time including the two Ministers, Coates and Guthrie, as well as Ngata and Williams. Knight represented the Department of Lands and Survey. Tuhoe leader Fred Biddle opened the proceedings by requesting a consolidation of Crown and Maori interests. Among other things, Biddle also asked for a road to be constructed across their lands. In his speech, Coates said that as Native Minister it was his duty to see Maori 'get full justice by the Government of the day'. Ngata said that the purpose of the hui was to agree to 'the basis upon which the consolidation should proceed'. The success of a scheme would depend on 'the binding together of the non-sellers' interests': 'The Crown has such a large area purchased that it is for the Government to concede settlement blocks to the non-sellers round their existing kaingas.' It was appropriate, he added, that Maori contribute toward the cost of roading. A 'tribunal representing the two Departments, Lands and Native, should come and carry out a scheme with them.' Finally, Ngata suggested that the owners of the Waikaremoana block should 'surrender' their land adjacent to the lake and transfer to land further north. In his speech, Guthrie said it would be difficult to consolidate interests around existing kainga as Ngata had suggested; instead Maori would be given 'a block close to their settlement', in each of the northern, southern, eastern, and western reaches of the reserve. He added that the Government planned to 'develop the whole Urewera block, and we can only do that on business lines'. Maori would only benefit from 'progress and development' if they agreed to the type of scheme he had proposed. Once they had decided upon consolidation, Guthrie said, 'we will set up a tribunal to consult with the Natives and bring forward a recommendation to the Government, which . . . the Government will carry out'.¹³

After the hui, Coates wrote that the people of Ruatoki had 'affirmed the principle of consolidation', and that another meeting would take place at Ruatoki on 18 July. An officer each from the Native Department and Lands Department would be appointed 'for the purpose of proceeding and prosecuting the scheme

12. Jordan to Native Minister, 18 April 1921 (Vincent O'Malley, 'The Crown's Acquisition of the Waikaremoana Block' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1996) (doc A50), p 82)

13. 'Disposition of Urewera Lands', 18 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 127–136)

of consolidation to its completion.¹⁴ Coates then travelled to Waikaremoana to discuss the possible acquisition of the Waikaremoana block, in which the Crown had refrained from purchasing interests in the previous decade. On 4 May 1921, the Scenery Preservation Board had recommended acquiring part of the Waikaremoana block for ‘scenic purposes.’¹⁵ This was the latest in a series of similar recommendations. In 1915, the Native Land Court had begun investigating the ownership of the lakebed of Waikaremoana. The court’s 1918 decision was appealed by Tuhoe, Ngati Ruapani, and the Crown, but ultimately not heard until 1944. By June 1921, the Attorney-General, Sir Francis Dillon Bell, had noted that the Crown’s acquisition of the foreshore of the Waikaremoana block could ‘bring to an end the litigation’ over the lakebed.¹⁶ Later, in July, Bowler again recommended opening the block for purchasing.

Upon returning to Wellington, Coates and Guthrie began plans to execute the consolidation scheme. A notice appeared in the *Gazette* and *Kahiti* notifying the Maori owners of the next hui at Ruatoki. Coates told Guthrie that, at this next meeting, Crown representatives and Maori owners would negotiate the division of the land between the respective parties. Coates said that if a spirit of ‘reasonableness and give-and-take’ was carried into the negotiations, then the process of consolidation would be swiftly concluded.¹⁷ The Ministers instructed Knight and Harold Carr – a commissioner (and later judge) of the Native Land Court, and a nephew of James Carroll – to represent the Crown at the hui. Coates also asked Ngata to attend as representative of the Maori owners in the negotiations.

At the end of June 1921, Knight wrote another brief plan outlining how the scheme could be executed. He proposed that Maori owners evacuate their settlements as far south as Tawhana, which would leave the Crown with enough land for settlement and conservation purposes. The Crown would also acquire the Te Whaiti 1 and 2 blocks, except for existing settlements. He made no proposal for the Waikaremoana block, which could be excluded from the scheme so that a portion of it could be acquired under the Scenery Preservation Act. Maori owners would make a contribution in land for the cost of constructing the arterial roads and surveying the new blocks, but he left open how much land this would amount to. The total cost of building these roads, Knight calculated, would be around £150,000.

14.3.2 Designing the scheme: Tauarau Marae hui, Ruatoki, 1–25 August 1921

The hui (delayed by two weeks) began on 1 August 1921, at Tauarau Marae in Ruatoki. Every family of ‘non-sellers’ was said to be in attendance. As the Crown’s representative, Knight opened the proceedings by presenting the Crown’s five key

14. Coates, telegram to Guthrie, 23 May 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp 139–141)

15. O’Malley, ‘Waikaremoana’ (doc A50), p 83

16. Sir Francis Bell, quoted in Knight to Under-Secretary for Lands, 21 June 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 147)

17. Coates to Guthrie, 12 July 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 145)

proposals. These proposals differed from his earlier plan in several respects. The Crown would not require a complete evacuation of Te Urewera communities as far south as Tawhana; instead, the bulk of its land would be located in the area between the Whakatane and Waimana Rivers, south of the Ruatoki settlement. The Waikaremoana block would be excluded from the scheme, as would other blocks in which the Crown had not purchased any interests. (This meant the exclusion of the Ruatoki blocks, where the Crown had commenced purchase negotiations but had not yet paid any money; Knight was aware in any case that the inclusion of these blocks would have damaged the scheme because their high land values compared with the rest of the reserve would have disproportionately favoured the Ruatoki owners in the process of consolidation. This land later became subject to a separate consolidation scheme.) Maori owners were asked to contribute £32,000 worth of land toward the cost of arterial roads, which would be constructed by the Crown. The way in which Maori owners would make this contribution (as well as the costs for surveying the new blocks) was not specified. Finally, the Crown proposed that the new titles should be registered in the land transfer system.

Maori owners formed a committee to receive these proposals and discuss their consequences, consisting of 37 to 40 tribal representatives (the reports vary as to the exact number). Ngata was 'unanimously asked to act on behalf of the non-sellers.'¹⁸ On the third day of the hui, the proposed consolidation scheme was agreed to but with two key changes: Maori owners would retain more land between the Whakatane and Waimana Rivers, and would only contribute £20,000 for the cost of constructing arterial roads.

For the next three weeks of the hui, the 2000 individual Maori owners were organised into groups of owners, known as 'consolidation groups'. Each of their individual interests was translated into 'penny shares' for the purposes of the scheme. The value of these shares was based on the valuation of each reserve block and the number of interests each individual held in the reserve blocks. Maori owners then pooled their shares (often from a number of blocks) to form the consolidation groups. Ninety-nine groups were formed during this period, each with a nominal 'leader'. Most groups included more than 10 owners. Once formed, these groups selected their preferred locations within the broad parameters set by the Crown representatives and the committee.

Throughout the following three weeks, the Crown's representatives (Knight and Carr) continued to negotiate with Maori owners about the possible location of their new blocks. A number of groups chose to locate their interests in more than one part of the reserve, which meant that by the end of the hui there were 150 proposed blocks. Individuals could locate their interests in more than one block but in no more than three. Carr completed 1061 succession orders during this period in an unofficial capacity, in an attempt to bring lists of owners up to date. Bowler updated lists of owners before the hui and recorded the results of the

18. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 4

proceedings, as well as purchasing further interests from Maori owners (equivalent to 344 acres) until Coates instructed him to stop. Coates' private secretary, HRH (Raumoa) Balneavis, acted as a key intermediary between the parties and kept in regular communication with Coates in Wellington.

During these proceedings, a decision was made to include the interests of Tuhoe owners of the Waikaremoana block in the scheme. The entire block would then be awarded to the Crown, subject to separate arrangements with Ngati Ruapani and Ngati Kahungunu owners. Balneavis reported that the original proposal to exclude the block from the scheme was met with 'great disappointment' by those Maori owners who were assembled at Ruatoki. When Coates later sent a telegram saying that the foreshore of the lake within the boundaries of the Waikaremoana block would be taken under the Scenery Preservation Act, representatives of Maori owners announced that 'they would proceed no further' with the consolidation scheme.¹⁹

Guthrie, however, told Coates that an 'exchange between Crown interests in Urewera and native interests on shores [of] Waikaremoana would receive my immediate and sympathetic consideration'. Guthrie then informed Knight that he could include the block in the scheme, and to proceed with the exchange of interests accordingly if he agreed with the proposal.²⁰ By the conclusion of the hui, almost nine-tenths of the interests of Tuhoe owners had been incorporated into certain consolidation groups at the value of six shillings per acre, to be located elsewhere in the reserve.

In early September 1921, Ngata travelled to Waikaremoana and Wairoa to make arrangements with the Ngati Ruapani and Ngati Kahungunu owners of the Waikaremoana block. Balneavis recorded that 'after considerable difficulty' Ngati Ruapani agreed to alienate their interests in exchange for reserve land that was sufficient for their needs. In addition, 'part of [the] consideration' for purchasing the block would be used to acquire alternative land around Ngati Ruapani's settlement on the southern shore of the lake; the balance would be paid in the form of debentures. The Ngati Kahungunu owners were also said to have been willing to sell their portion of the block, and Ngata made separate arrangements with them.²¹

Te Whaiti 1 and 2 blocks, together with Maraetahia, Otairi, and Tawhiauau, were dealt with separately from the main part of the negotiations at the hui, because (as Balneavis recorded) Ngati Manawa and Ngati Whare 'may be regarded as tribes apart from the Urewera'.²² Most of these tribes' interests in the reserve were confined to those five blocks. Towards the end of August 1921, Knight travelled to Te

19. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p189)

20. Guthrie, telegram to Coates, 10 August 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 509)

21. Balneavis, telegram to Coates, 13 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 526)

22. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p185)

Debentures: An Innovation in Crown Purchasing

Debentures were, in this context, an instrument acknowledging a debt whereby the debtor (the Crown) paid interest on the amount owed until a set expiry date, when the total debt is paid back in full. In paying Maori by means of debentures instead of immediate cash payments, the Crown offered a new kind of payment that effectively saw the agreed purchase money invested for a set period. Rather than a one-off payment, Maori sellers would get regular interest payments followed eventually by their share of the full sum. Certainty was guaranteed, in theory, by a set interest rate for a set period, at the expiry of which the full sum would be handed over. The Maori recipients could plan accordingly. As with other purchases, Maori were offered no collective control for the application of either the interest or the principal. Payments would still be made to individuals, in this case by the Native Trustee, who was to administer the Waikaremoana debentures free of charge. We consider the Waikaremoana debentures in section 14.5.3.

Whaiti and reached an agreement that would see the remaining Maori owners awarded a series of blocks in Te Whaiti 1 and 2, and two sections of Crown land outside the reserve (in the Whirinaki block). This differed from the Crown's initial proposal at Tauarau, which had asked for the 'complete awards of Te Whaiti 1 and 2.'²³ Bowler also purchased further interests in the blocks, which were equivalent to 1,014 acres. On 3 October, Knight wrote a further report indicating exactly where the Maori owners would be awarded land in the Te Whaiti blocks.

After the completion of the business in Wairoa and Waikaremoana, Knight, Carr, and Balneavis set about making all of these various arrangements formal by compiling an official account of the proceedings at the Tauarau hui. The purpose of their report was to make a request for special legislation empowering 'special officers' to implement the arrangements.

14.3.3 The Consolidation Scheme Report and the Urewera Lands Act 1921–22

On 31 October 1921, Knight, Carr, and Balneavis submitted their 39-page report to Coates and Guthrie. It summarised what they understood to be the outcomes of the Tauarau hui, adding their recommendations for how they thought the scheme should be implemented. Because of its importance, we refer to this document throughout this chapter as the 'Consolidation Scheme Report'. The report consisted of an overview of the events that led to consolidation, an account of the proceedings at the Tauarau hui, the outcomes of the hui presented in the form of a

23. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 4

draft 'scheme', and 'Proposed Legislation' to implement the scheme using specially empowered officers.

Two schedules contained the detailed provisions of the proposed scheme. Schedule 1 presented the process by which 'The Urewera Consolidation Scheme' would be implemented. It stated which blocks were included and which were excluded. Awards for some blocks were 'complete and definite enough for immediate execution of surveys, [while] in others further inquiries are necessary involving preliminary topographical surveys and adjudication of disputes between the Crown and Natives, or among Natives only'. This schedule listed a number of blocks which could be directly awarded to either the Crown or Maori, leaving the majority of the remaining blocks for further adjustment. 'But in most cases', the report stated, 'the data is sufficient to determine the proportions which the Crown or Natives, or the Natives *inter se*, are entitled to receive.' Schedule 1 also summarised the details of the Waikaremoana block transaction: the block would be vested in the Crown; the interests of Tuhoe owners would be included in the consolidation scheme; and Ngati Ruapani and Ngati Kahungunu would receive payment in cash and debentures and land. (The Waikaremoana debentures were set for a period of 10 years, at an interest rate of 5 per cent per annum, to be administered by the Native Trustee.)

All surveys would be 'carried out by the Crown, at the cost of those sections, to be paid for in land'. The cost of the surveys would be estimated first, and an equivalent area of land (based on existing valuations) would be 'deducted from the area of the Native section to be surveyed' and would be awarded to the Crown. Maori owners would also contribute £20,000 worth of land toward the cost of roading, the deductions to be made from each of their sections. Compensation would be awarded for any improvements the Crown obtained in its award.²⁴

Finally, schedule 1 noted that a 'tribunal' would have the authority to authorise changes to consolidation groups and to make succession orders. Schedule 2 contained full lists of consolidation groups, including each owner and their total interests, and the proposed locations of these groups.

The report noted the inclusion of several blocks from outside the scheme and the exclusion of seven reserve blocks. No figure was given, however, for the size of the scheme, which was less than the 656,000 acres of the reserve but more than the 518,329 acres of the 44 blocks that had been opened for purchase. In addition, though the report included information about the relative interests of the Crown and Maori owners in the reserve purchase blocks, there was no equivalent information showing the final relative interests after the inclusion of the Waikaremoana block and other blocks from outside the reserve.

To signal his approval of the arrangements, Ngata wrote a memorandum that was included in the report. He observed that the summary provided by Knight, Carr, and Balneavis was 'a correct statement of the scheme and proceedings in

24. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, pp 8-9

relation thereto'. He recommended that Knight and Carr be empowered to carry out the scheme, and that the 'exploration and definition of the Native areas should proceed *pari passu* [equally] with that of the Crown awards'.²⁵

Based on the report, Coates and Guthrie recommended empowering legislation to Cabinet at the beginning of November 1921. Cabinet gave its approval, and Chief Judge Browne of the Maori Land Court was instructed to draft the legislation. Coates tabled the Consolidation Scheme Report in Parliament on 14 December 1921, and gave a brief history of the events leading to the report. The consolidation scheme, he said, would allow for the opening of Te Urewera lands for settlement, as well as sufficient areas to be 'reserved for forestry purposes'. He added that a scheme of this nature would have been 'impossible' to carry out under existing legislation.²⁶ KS Williams (the member for the Bay of Plenty) noted the importance of the Government's acquisition of 'the area of bush around Lake Waikaremoana', particularly for the 'hydro-electric scheme which is in progress'.²⁷ Ngata referred to the £20,000 contribution of Maori owners for roads, saying that 'there was never any obligation upon the Urewera Natives to make a contribution of a single penny towards the cost of roading'. Yet, he said, they 'recognized that they would get these arterial roads much sooner if they assisted the Government', which threw the 'onus on the Government of opening up that country much more rapidly than otherwise would have been the case'.²⁸ At the conclusion of the debate, the House passed Coates' motion to have the report tabled and printed. Maori owners received the report in February 1922; a version in te reo was published later in the year.

The Urewera Lands Bill was introduced to Parliament on 30 January 1922, and (after having its first and second readings) was referred to the Native Affairs Select Committee. The Committee made no amendments to the Bill. It came before the House again on 2 February and was the subject of a brief debate, before its third reading. Coates noted that it was likely Knight and Carr would be appointed as the two consolidation commissioners. When the Bill came before the Legislative Council for its second and third readings on 4 February, Attorney-General Francis Bell said that the 'details as set forth here had better not be touched', because they were 'immaterial' and rather 'provide a method by which the great arrangement is to be given effect'.²⁹ The Bill was passed on 11 February.

The full title of the Urewera Lands Act 1921–22 is: 'An Act to facilitate the Settlement of the Lands in the Urewera District'. The preamble stated that the 'district referred to' had 'for a number of years been under special administration, and it is now desirable to apply the ordinary law thereto'. The purpose of the Act was to carry into effect arrangements that had been 'entered into between representatives of the Crown and of the Natives interested in such lands for the consolidation and

25. Ngata, memorandum to the Minister of Lands and Native Minister, no date, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 7

26. Coates, 14 December 1921, NZPD, vol 192, p 1111

27. Williams, 14 December 1921, NZPD, vol 192, p 1113

28. Ngata, 14 December 1921, NZPD, vol 192, pp 1115–1116

29. Bell, 4 February 1921, NZPD, vol 194, p 158

location of interests in such lands and in certain lands outside such district'. The 'district' referred to throughout the Act was defined in schedule 1 as 656,000 acres within certain Native Land Court blocks in the region. This referred to the reserve lands, but without naming them as such.

The Act consisted of 20 sections. We reproduce the Act in appendix VI.

14.3.4 Implementing the scheme: the consolidation commission, 1922–26

Knight and Carr were not formally appointed as commissioners until after the passing of the Act in February 1922. A notice appeared in the *Gazette* of 20 April 1922, announcing their appointment 'on and from the 11th day of February, 1922'.³⁰ However, they had been informally appointed by their respective departments some months earlier, in November 1921, when they were instructed to proceed to Ruatoki and begin their hearings immediately. Coates instructed that surveyor Tai Mitchell accompany Knight and Carr for the purposes of beginning the topographical surveys of the region. The commissioners held their first hearing (on successions) at Ruatoki on 7 December 1921.

The consolidation commission held its hearings in four periods from December 1921 to 15 July 1925. Generally, hearings in Te Urewera ended with the onset of winter. In 1922 and 1923, the commission finished its main business in May and resumed in October; in 1924, it finished in April. The location of sittings varied. Most were in Te Urewera, in the general vicinity of the land being considered by the commission. Some, however, were held as far away as Rotorua, Auckland, and Wellington.

The process of the consolidation commission generally began with surveyors preparing a topographical plan of an area under consideration. With that plan to hand, the commissioners would hear a request from a representative of one of the consolidation groups indicating in which part (or parts) of the former reserve blocks they wished their interests to be located. This approach was based on the broad parameters set out in the Consolidation Scheme Report, which listed consolidation groups under a former reserve block but not the specific location within that block. The commissioners would then accept or decline the request. If objections were raised, either the commissioners left it to Maori owners to arrive at a compromise or they would hear evidence and award the land to one or more groups. Requests could also be made for the transfer of all or part of an individual's shares to other groups, and also for compensation (in the form of additional shares) for improvements such as fencing and grassed land which were passing to the Crown or other groups. Changes could only be made up to the point when the location of the award had been settled, and the block surveyed.

On occasion, protests were successful in securing adjustments to shareholdings (where these had been incorrectly recorded) or to boundaries which might impede the use of the land. Before fixing the boundaries of each block, the commission visited the areas concerned, accompanied by representatives from the

30. 'Commissioners Appointed under the Urewera Lands Act, 1921–22', 20 April 1922, *New Zealand Gazette*, 1922, no 30, p 1074

No	Location	Date of first sitting
1	Ruatoki North	7 December 1921
2	Tauarau	19 January 1922
3	Tawhana	21 January 1922
4	Tauwharemanuka	21 January 1922
5	Matahii	22 January 1922
6	Tauarau	23 January 1922
7	Rotorua	January 1922
8	Waimako (Waikaremoana)	17 February 1922
9	Lake Waikaremoana	18 February 1922
10	Ruatahuna	22 February 1922
11	Te Whaiti	24 February 1922
12	Rotorua	9 March 1922
13	Te Whaiti	15 March 1922
14	Rotorua (concerning Te Whaiti)	23 March 1922
15	Matahii	5 April 1922
16	Te Whaiti	3 May 1922
17	Murupara	5 May 1922
18	Waikirikiri Pa, Ruatoki	11 May 1922
19	Raroa Pa	18 May 1922
20	Tauarau	19 May 1922
21	Taneatua	19 May 1922
22	Rotorua	6 June 1922
23	No location (concerning sales)	1 July 1922
24	No location (concerning sales)	5 July 1922
25	Ruatoki	25 October 1922
26	Waikirikiri	26 October 1922
27	Tauarau	6 November 1922
28	Waikirikiri	7 November 1922
29	Tauarau	7 November 1922
30	Ruatoki	10 November 1922
31	Rewarewa	15 November 1922
32	Ruatoki	16 November 1922
33	Rewarewa	16 November 1922
34	Ruatoki	16 November 1922
35	Rotorua (concerning Ruatahuna)	30 November 1922
36	Ruatoki	8 February 1923 (Chief Judge Jones, NLC)
37	Rotorua (concerning Te Whaiti)	13 February 1923
38	Te Whaiti	16 February 1923
39	Ruatahuna	17 February 1923
40	Heipipi	17 February 1923
41	Umukahawai	18 February 1923
42	Te Whaiti	22 February 1923
43	Murupara (concerning Te Whaiti)	24 February 1923
44	Waiohau	26 February 1923

No	Location	Date of first sitting
45	Rotorua (concerning Te Whaiti)	1 March 1923
46	Windy Point, Waikaremoana	9 March 1923
47	Wairoa (concerning Hereheretau B2)	19 March 1923
48	Rotorua (concerning Te Whaiti)	7 April 1923
49	Maungapohatu	10 April 1923
50	Ruatahuna	16 April 1923
51	Oputao, Ruatahuna	17 April 1923
52	Ohaua-te-rangi	19 April 1923
53	Ruatahuna	24 April 1923
54	Tatahoata	25 April 1923
55	Oputao, Ruatahuna	26 April 1923
56	Ruatahuna	2 May 1923
57	Oputao, Ruatahuna	3 May 1923
58	No location (Murupara) (re sale)	5 May 1923
59	Oputao	8 May 1923
60	Ruangularara	16 May 1923
61	Ruatahuna	17 May 1923
62	Rotorua	4 July 1923
63	No location (re sales)	13 July 1923
64	Wellington (re sales)	3 August 1923
65	No location (re sales)	25 September 1923
66	Te Teko (re Waiohau)	10 October 1923
67	Ruatoki	11 October 1923
68	Te Teko	20 October 1923
69	Papueru	23 October 1923
70	Te Teko (re sales)	27 October 1923
71	Rotorua (survey plans)	29 October 1923
72	Auckland (sales)	7 November 1923
73	Rotorua	26 February 1924
74	Oputao	3 March 1924
75	Te Whaiti	26 March 1924
76	Ruatoki	1 April 1924
77	Rotorua	9 April 1924
78	Auckland (re sales)	10 October 1924
79	Auckland (re Urewera reserves)	11 February 1925
80	Kuha Pa	21 February 1925
81	Lake House, Waikaremoana	22 February 1925
82	Kuha Pa	22 February 1925
83	Ruatahuna	25 February 1925
84	Rotorua	15 July 1925

Table 14.1: Sittings of the Urewera Consolidation Commission

Source: Urewera minute book 1 (doc M29); Urewera minute book 2A (doc M30)

relevant consolidation group (in some cases, with a topographic survey plan). When the boundaries were agreed upon, surveyors would cut the boundaries of the new block, usually along 'good fencing lines', so that the area roughly matched the acreage calculated by the commission.³¹ The area calculated by the commission for each new Maori-owned block took into account the cost of the surveys themselves and the contribution toward constructing arterial roads. This was taken in the form of land, and deducted from each block.

The first set of hearings occurred over a six-month period in the first half of 1922, finishing in July. The commission mainly dealt with the northern lands but proceeded round all the main communities. In mid-February, at Waimako on the southern shore of Lake Waikaremoana, Ngati Ruapani signalled their opposition to the terms of the Waikaremoana block transaction, particularly the valuation of their interests and the location of the land south of the lake that was promised to them as part of the transaction (known as 'Tapper's farm'). As a consequence, they threatened to withdraw from the scheme. At this time, the commissioners located the 14 reserves to be set aside for Ngati Ruapani in the block.

Meanwhile, in May 1922, the Department of Lands and Survey authorised Knight to purchase the interests of 'probable sellers'. Provision for continued Crown purchasing during the scheme's implementation phase had been prefigured in the Consolidation Scheme Report by means of 'suspense blocks': groups of interests that had been set aside under the assumption that they would be purchased by the Crown. Shortly after this authorisation, Knight began purchasing interests in the Te Whaiti blocks. Maori owners, however, complained, and the commissioners were instructed to seek ministerial approval before purchasing any interests, and then only to 'adjust a difficulty' that might arise in the process of consolidation (as originally intended in the Act).³² Knight also informed the people at Te Whaiti (in May) that the location of Maori-owned blocks had already been agreed and 'must be adhered to'.³³ He continued to purchase interests throughout the remainder of the scheme, primarily in the Te Whaiti blocks, the Ruatahuna blocks, the Hikurangi–Horomanga blocks, and in the Waikaremoana block.

The second set of hearings began in October 1922 and came to an end the following July. The commissioners later reported (in their August 1923 report) that 'the work of the commission has been intermittent to meet the convenience of the Natives, the actual working time being less than six months'.³⁴ At the end of 1922, the commission was told that some Ruatahuna owners would withdraw from the scheme if their concerns were not addressed. This group came to be known as 'te taha apitihana' – 'the opposition side'. When the commission returned to Ruatahuna in April 1923, these objections were repeated. Leaders of the opposition movement objected to supplying the commission with lists of owners, and asked

31. See, for example, Urewera minute book 1, 16 November 1922, fols 223–225 (doc M29, pp 253–255).

32. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 6

33. Urewera minute book 1, 3 May 1922, fol 94 (doc M29, p 126)

34. Knight and Carr to Guthrie and Coates, 6 August 1923, 'Urewera Lands: Report by the Commissioners under the Urewera Lands Act, 1921–22', AJHR, 1923, G-7, p 2

instead for the commission to supply them with lists of sellers. The commission refused, but undertook a calculation of the interests of the opposition group, finding that those in favour of consolidation made up the majority of owners. These interests were provisionally placed together in 'a block to be called Apitihana'.³⁵ Te Pakitu Wharekiri later (in June 1929) reported that the block's name was derived 'from those persons who were in opposition to Consolidation'.³⁶

In the meantime, opposition over Waikaremoana still remained to be settled. In March 1923, Ngata and Balneavis returned to Te Urewera in an attempt to negotiate an agreement with Ngati Ruapani. They met at Windy Point, Lake Waikaremoana. After the meeting, Ngata and Balneavis advised the commission that Ngati Ruapani would no longer withdraw from the scheme, but refused to accept the proposed alternative land (Tapper's farm), and instead sought their payment entirely in the form of debentures.

In April 1923, the chief surveyor and commissioner of Crown lands, H M Skeet, visited Te Urewera for the purpose of assessing the quality of the land that was earmarked for award to the Crown. This followed reports from surveyors that the land to be awarded to the Crown was not suitable for settlement. Skeet agreed that much of the land would be unsuitable for settlement but it was still useful for the Crown and should be reserved 'for climatic and forestry purposes', especially to prevent the flooding of coastal (settler) lands.³⁷ In March 1924, 18 sections (totaling 28,564 acres) were put on to the market, 12 of which were in the Waimana Valley and a further six of which were in Te Whaiti. A further three sections were offered in Waimana in May 1924, totalling 3,322 acres. Only three leases were taken up; the remaining land was withdrawn in July 1924.

The next round of the commission's hearings began in October 1923. The commission began signing off the first awards for the Raroa and Waimana series between October 1923 and February 1924. The proceedings at Ruatahuna, which had been in abeyance since the previous May, were resumed in March 1924. Wharepouri Te Amo raised further objections when the commission returned. The commissioners warned that if they did not submit their group lists and preferred location, the commission would decide matters for them. In response, Te Amo asked for Ruatahuna 1 and 2 to be set aside for te taha apitihana. Ultimately, the block known as 'Apitihana' was in three parts: two in the Tarapounamu series, and one in Ruatahuna (which itself consisted of three areas).

The commission also returned to Te Whaiti at the end of March 1924. Ngati Whare owners asked the commission to consider requests for various locations. In reply, the commissioners stated that their land had already been selected ('by the owners themselves'), and that no change could be effected.³⁸ Tari Manihera complained that this breached the Tauarau arrangements.

35. Urewera minute book 2A, 17 April 1923, fol178 (doc M29, p 215)

36. Urewera minute book 1, 13 June 1929, fol 237 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(a)), p 139)

37. Skeet to Under-Secretary for Lands, 24 May 1923 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 140)

38. Urewera minute book 2A, 26 March 1924, fol164 (doc M30, p 201)

Knight and Carr submitted their second progress report in June 1924. The report stated that, due to the protests from *te taha apitihana*, the groups in the Ruatahuna district 'as originally set up were almost entirely abandoned, and a reconsolidation of their interest [was] made to suit their wishes and requirements'. Titles to the Waimana and Raroa series blocks had been completed. The 'necessary surveys' were awaited for the remaining blocks, some of which would be completed the following summer. 'The Crown's title', the commissioners reported, 'cannot be drawn up until the surveys of the Native Blocks are completed.'³⁹

In March 1925, Ngati Ruapani leaders wrote a letter to Coates indicating again that they would withdraw from the scheme, this time because the agreement they had reached with Ngata and Balneavis in 1923 had not been followed. Another petition, from Tuhoe owners, dated May 1925, protested the 'decisions and determinations of the commissioners in regard to our lands', particularly the amount of land taken for survey costs, and the valuation of the lands.⁴⁰ Carr wrote a response dismissing the claims.

Knight and Carr's final progress report of May 1925 (unpublished) indicated that the surveys for three of the remaining series blocks had been completed. Three more – Te Whaiti, Tarapounamu, and Ruatahuna – were still progressing. They also reported that they had arranged the boundaries for the Ruatahuna blocks, and had forwarded to the Native Department orders for issuing debentures for the Waikaremoana sellers.

Throughout this process, the commission recorded its proceedings in minute books. In the Urewera minute book 2A, the commission compiled a final list comprising all the Maori-owned blocks, the 'estimated' amount of land deducted for roading and survey costs from each block, and the final 'net area' of each block. The estimated area deducted for roading costs totalled 39,355 acres (at a value of £19,975); and for survey costs, 32,368 acres (at a value of £14,246).

14.3.5 The award of blocks to Maori owners and the Crown

In total, 210 blocks were awarded to Maori owners. Of these, 183 were subject to road and survey deductions. Combined, these blocks totalled 106,287 acres 3 roods. A further 27 papakainga or urupa reserves, totalling 90 acres, were set aside at the request of Maori owners. Some requested reserves, however, became part of the Crown's award, including the Maungapohatu burial reserve, the Waikokopu springs, and the Huiarau watershed reserve.

By the end of the process, the commissioners had organised the Maori-owned blocks into groups, known as 'series'. Each series was based on the general area in which the blocks were located. In total, there were nine series: Te Whaiti, Tarapounamu, Ohaua, Maungapohatu, Ruatahuna, Ruatoki, Raroa, Waimana, and Hikurangi–Horomanga. Each series included on average 23 blocks (including

39. Knight and Carr to Guthrie and Coates, 5 June 1924, 'Report of the Commissioners as to Position of Urewera Consolidation Scheme', AJHR, 1924, G-7, pp1-2

40. W Whatanui and others, petition to Native Minister, 1 May 1925 (S K L Campbell, comp, supporting papers to 'Land Alienation, Consolidation and Development in the Urewera, 1912-1950', 3 vols, various dates (doc A55(c)), vol 3, p 279)

reserves). The series with the biggest number of blocks was Ruatoki (54); the smallest was Raroa (eight). The biggest in terms of overall acreage was the Ruatahuna series.

The orders were counter-signed by the chief judge of the Native Land Court, some of which were not completed until January 1927. In the interim period, surveyors had completed the cutting of boundary lines according to the specifications set by the commissioners. In June 1927, the Crown's award of 482,300 acres was notified in the *Gazette*. This land was taken in the form of one continuous block, known as 'Urewera A'.

14.3.6 The fate of the Waikaremoana debentures and promised arterial roads

In 1932, the debentures issued to Ngati Ruapani and Ngati Kahungunu owners matured and should have been paid. The term was unilaterally extended for 10 years, and then, in 1933, in common with all Government debt, was extended indefinitely. The debentures were eventually repaid in 1957.

Construction of the arterial roads promised under the Urewera Consolidation Scheme began in 1922. They were never completed. By 1927, one mile of road had been formed south of the Ruatoki settlement. The Waimana Valley road had commenced construction shortly after the Taurau hui, and four miles was eventually formed between Waimana and Matahi. From Matahi south, a 12-foot-wide track was formed for 17 miles. In 1927, the Government committed to building the promised road between Ruatahuna and Waikaremoana. This road (completed between 1929 and 1930 as part of an unemployment relief scheme) was the only completed section of the promised roads.

In 1937, R G Dick of the Department of Lands and Survey reported that, in order to meet the obligations made to Maori owners under the scheme, the Crown was still required to construct approximately 115 miles of roads, at the cost of £230,000. Dick proposed that Maori land should be 'reconsolidated (or purchased)', and that the remaining amount of estimated expenditure diverted instead to 'the development of these areas.'⁴¹ Following this report, the Crown formally decided to abandon its plans to construct the roads. In 1949, Maori owners sent a petition to the Government protesting the non-completion of the roads. Then, in 1957, the Crown entered into negotiations with Maori owners to provide redress. A settlement was reached in 1957, and in 1958 the Crown paid £100,000 to the newly formed Tuhoe Maori Trust Board. This settlement represented a refund of the original £19,975 plus compounding interest of 5 per cent per annum.

14.4 THE ESSENCE OF THE DIFFERENCE BETWEEN THE PARTIES

The issues covered in this chapter are complex and were the subject of detailed submissions from the parties. The Crown's closing submissions alone ran to some 110 pages on these matters. This section of our chapter provides a brief summary

41. Dick to Under-Secretary for Lands, 20 August 1937 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p163)

of the parties' arguments, focusing on the key points in contention between them. We revisit those arguments in more detail during our analysis of the claims in the section that follows this one.

14.4.1 Why was a consolidation scheme chosen for the reserve lands?

The claimants' central contention is that the Crown proceeded with a consolidation scheme primarily to advance its own interests, and that this influenced how the scheme was designed and later implemented.⁴² The scheme was designed to 'save the Government money on survey costs (passing much of the cost to Maori land owners in the process)'.⁴³ The Crown's second goal was to acquire land of sufficient quality, in specific locations, to meet its objectives for the region. 'The Crown was mainly interested in land for the settlement of Pakeha'.⁴⁴ A consolidation scheme meant that the Crown, not the Native Land Court, would control the process of land division, allowing it to acquire the best lands and timber resources.⁴⁵ These intentions, counsel suggested, were reflected in the scheme's actual outcomes, particularly the quality of the land that the Crown received.

Given the circumstances they found themselves in, claimant counsel submitted, Maori owners were not wholly opposed to the idea of consolidation, but nor were they fully in support. Indeed, there were a range of views. Tuawhenua counsel suggested that there was some support for consolidation, particularly if arterial roads were to be built as part of the scheme.⁴⁶ Others, particularly *te taha apiti-hana*, opposed the scheme for good cause. More to the point, counsel submitted, the Crown did not fully investigate the range of views of Te Urewera peoples, and nor did it seek to forge a proper consensus among the people. Instead, it imposed consolidation upon them in 1921. Counsel for Wai 36 Tuhoe suggested that instead of proceeding with consolidation the Crown 'should have been obliged to stay as just another shareholder with all attendant liabilities and subject to Tuhoe's customs and imperatives in respect of its land'.⁴⁷ Counsel for Ngati Whare argued that Ngati Whare would have been better off 'if regular procedures such as the Native Land Court had been used' because then they would have kept the valuable forests of Te Whaiti. As such, the Crown 'failed to properly consider alternatives' to the scheme.⁴⁸

Given the Crown's decision to proceed with consolidation, counsel for Wai 36 Tuhoe pointed to Tamaroa Nikora's 'principles of a sound consolidation scheme', which showed how consolidation in Te Urewera should have been carried out.

42. Counsel for Wai 36 Tuhoe, closing submissions, pt B, response to statement of issues, 30 May 2005 (doc N8(a)), p 104

43. Counsel for Ngati Whare, closing submissions, no date (doc N16), p 79

44. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 104

45. Counsel for Ngati Whare, closing submissions (doc N16), p 79

46. Counsel for Tuawhenua, closing submissions, 30 May 2005 (doc N9), p 181

47. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 104

48. Counsel for Ngati Whare, closing submissions (doc N16), pp 79, 80

A sound scheme was one that was transparent and placed the interests of Maori owners to the fore.⁴⁹

The Crown objected to most of these points, and instead maintained that consolidation was advanced because it would provide ‘mutual benefits’ for both Maori owners and the Crown. The Crown had had these ‘mutual benefits’ in mind when it proposed a consolidation scheme instead of partition and other less desirable scenarios (such as the compulsory acquisition of the remaining interests). Partition would create a patchwork of blocks, which would have been unsuitable for both Maori owners and the Crown. And, as opposed to going through the Native Land Court, a consolidation scheme allowed the Maori owners more influence over which land they would receive. Also, Maori owners would benefit from obtaining land transfer title, which would allow them to raise finance, and also from arterial roads. The Crown would benefit by acquiring the land it sought for settlement and conservation purposes.

Crown Counsel rejected the idea that the Crown alone would save on costs, and suggested that consolidation was a ‘cost-effective and practical solution to the problem of undivided interests.’ As evidence of this, counsel pointed to Minister of Lands David Guthrie’s statement that if the peoples of Te Urewera consented to the principle of consolidation, then a ‘tribunal to consult’ over the scheme should be established. In other words, a good consolidation scheme was one that benefited both the Crown and Te Urewera peoples equally. The Crown approached all aspects of the scheme according to the principles of ‘reasonableness and give-and-take’ (quoting Native Minister Coates). Counsel submitted that Maori owners were largely supportive of the idea of consolidation, thus there was significant agreement from both sides.⁵⁰

14.4.2 How were interests consolidated and land divided between Maori and the Crown?

The claimants said that the process set up to decide who would be awarded which land from the scheme was loaded in favour of the Crown. This imbalance began at Tauarau, where the key elements of the scheme were decided. The claimants said that there was inadequate representation of Maori owners at the Tauarau hui.⁵¹ It was also inappropriate, in their view, for the Crown to deal with Maori owners through Apirana Ngata, who was not impartial. It should only have negotiated through ‘properly appointed counsel.’⁵² On top of this, Maori owners were not supplied with sufficient information about the proposed scheme and its consequences,

49. Counsel for Wai 36 Tuhoe, closing submissions, pt A, overview, 31 May 2005 (doc N8), p 54

50. Crown counsel, closing submissions (doc N20), topics 18–26, pp 3, 8, 9, 13, 19, 20

51. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p105; counsel for Tuawhenua, closing submissions (doc N9), pp183, 185

52. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp105–106; counsel for Tuawhenua, closing submissions (doc N9), p183

and could not, as a result, give their informed consent to the scheme – hence the extent of subsequent protests.⁵³

Crown counsel disputed these points, suggesting that there was in fact a ‘relative lack of protest’ from Maori owners in 1921 and later, because most had ‘preferred to explore a scheme of consolidation’ over other options.⁵⁴ Every family of Maori owners was represented at the Tuarau hui and the committee appointed to receive the Crown’s proposals was ‘reasonably representative of the non-sellers.’⁵⁵ Crown counsel dismissed the suggestion that the Crown enjoyed a position of dominance in its negotiations with Maori. Counsel argued that any potential bias on the part of Crown officials at the hui was ‘checked’ by Coates: as Native Minister, Coates represented Maori interests (rather than those of the Crown), and provided a necessary balance to other Crown interests in finalising the details of the scheme.⁵⁶ In addition, Ngata did not act as an agent for the Crown in the negotiations.⁵⁷ Counsel rejected Webster’s suggestion that there was something underhand in the Crown’s ‘apparently casual approach’ to the negotiations, pointing to ‘the extent to which the Crown moved from its original proposals’ as proof of equal bargaining power. Maori owners at the hui bargained hard and won significant concessions from the Crown.⁵⁸

The parties also disputed the adequacy of some of the mechanics of the scheme, particularly in terms of the exchange of interests between Maori owners and the Crown. Claimant counsel argued that it was inappropriate to use the valuations for the reserve blocks as the basis of exchanging interests between parties in the scheme: those valuations were unlawful in the first instance and outdated by the time of the scheme. Because these valuations were made at different times, there was no consistent point for which the exchange of interests could be calculated. In an ideal scheme, a ‘single common denominator’ would establish ‘current market valuations at a common date for all land and interests and by which consolidation can then proceed on an equitable basis.’⁵⁹ Claimants also argued that the principles of a sound consolidation scheme were undermined throughout the scheme’s implementation by ongoing Crown purchasing. This was despite the Crown’s promises to cease purchasing, and despite continued complaints.⁶⁰

Crown counsel dismissed these points: the valuations were conducted in accordance with the standards of the time, and did in fact provide a sound basis on which to conduct the exchange of interests in the scheme. The Crown conceded that aspects of its continued purchasing were flawed, but only in one particular instance (Waikaremoana) where the purchase of shares from one set of owners

53. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 108–109

54. Crown counsel, closing submissions (doc N20), topics 18–26, pp 21–22

55. *Ibid*, pp 74, 31

56. *Ibid*, pp 22–23

57. *Ibid*, p 31

58. *Ibid*, pp 23–24

59. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 112–113

60. Counsel for Ngati Whare, closing submissions (doc N16), p 80

was at a price considerably less than that paid to another. This, the Crown admitted, was ‘unconscionable and inappropriate.’⁶¹

The manner in which the scheme was implemented by the consolidation commissioners was also a point of difference between the parties. The claimants said that it was inappropriate for two Crown officials to be given the sole authority to decide upon the boundaries between Crown and Maori-owned blocks: ‘no Tuhoe were appointed as Consolidation Commissioners’ and there was ‘no impartial commissioner to fairly consider the interests of Tuhoe.’⁶² The outcome, they said, was that there were a number of decisions that went against Maori owners; the Crown secured for itself much of the land that it had desired.⁶³ In contrast, Crown counsel submitted that the scheme was implemented in a fair and transparent way. Although the commissioners were Crown officials carrying out administrative functions under the Urewera Lands Act 1921–22, and as such were not ‘independent’, they were required to ascertain the needs of Maori owners. And, with ‘several possible exceptions, the commissioners implemented the scheme in accordance with its principal elements as recorded in the report dated 31 October 1921 and with the enabling legislation, and . . . by and large in a manner fair to both Maori and the Crown.’⁶⁴ The possible exception was *te taha apitihana*, who may have been prejudiced as a consequence of their unwillingness to submit lists of owners to the commissioners. But on this issue, Crown counsel did not make a concession of Treaty breach.⁶⁵

14.4.3 What effect did the implementation of the scheme have on Waikaremoana peoples?

Claimant counsel submitted that, at the very least, the Crown acquired the Waikaremoana lands without the sufficient understanding and agreement of the various owners of the block.⁶⁶ Most argued that the threat of compulsory acquisition of the Waikaremoana block under scenery preservation legislation forced Waikaremoana peoples to exchange their interests for other land or debentures.⁶⁷ For one claimant group, the Crown’s acquisition of their interests amounted to a confiscation.⁶⁸ Counsel for Wai 36 Tuhoe said that it was unclear whether such a

61. Crown counsel, closing submissions (doc N20), topics 18–26, pp 52–53, 71

62. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 106–107, 108

63. Counsel for Ngati Whare, closing submissions (doc N16), p 81; counsel for Tuawhenua, closing submissions (doc N9), p 185

64. Crown counsel, closing submissions (doc N20), topics 18–26, pp 35–36, 38

65. *Ibid*, p 4

66. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 122; counsel for Ngai Tamaterangi, closing submissions, no date (doc N2), p 49; counsel for Wai 621 Ngati Kahungunu, closing submissions, 30 May 2005 (doc N1), pp 104–105

67. Counsel for Nga Rauru o Nga Potiki, closing submissions, 3 June 2005 (doc N14), p 157; counsel for Wai 144 Ngati Ruapani, closing submissions, 3 June 2005 (doc N19), app A, para 147; counsel for Ngai Tamaterangi, closing submissions (doc N2), p 49; counsel for Wai 621 Ngati Kahungunu closing submissions (doc N1), p 102

68. Counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), app A, para 175

threat was in fact made, and stated that non-resident Tuhoe owners appeared to support an exchange; but that the claimants' issue is how little these owners were paid for their interests in comparison to what others received.⁶⁹

In response to these positions, Crown counsel submitted that there was a 'significant amount of consultation in respect of the Waikaremoana block'. Subsequent protests from Maori owners represented their attempts to alter existing agreements. In the Crown's view, there is 'no evidence of forced sale or confiscation'.⁷⁰

In addition to claims about the transaction itself, Ngati Ruapani and Ngati Kahungunu argued that the debentures issued as compensation for their interests in the block were insufficient for their needs.⁷¹ The Crown agreed with the claimants that the terms of the debentures were changed without consultation (including extending their term and reducing the interest rate payable); and that payments were irregular under the administration of the Maori Trustee.⁷² Crown counsel submitted, however, that although the hardship caused by events was lamentable, the terms of the debentures had to be changed because of the Depression, which was outside of its control, and that actions of the Maori Trustee were not those of the Crown.⁷³

Ngati Ruapani claimants also argued that the Crown failed to provide them with useable land around their existing settlements, which it had promised them as part payment for their interests in the Waikaremoana block. They also said that the 14 reserves set aside for them in the Waikaremoana block were less than what they had asked for and were inadequate for their needs.⁷⁴ The Crown submitted that Ngati Ruapani and the consolidation commissioners reached an agreement in 1925 about the amount of land that would be set aside as reserves, but that there was little evidence to demonstrate whether the location, quality, and quantity of those reserves was in fact sufficient or not.⁷⁵

Claimants also said that the Crown acquired two of the four southern block reserves (we discussed the four southern blocks in chapter 7) without paying for them and without providing alternative land.⁷⁶ Counsel for Wai 36 Tuhoe noted that rates arrears were a 'factor' in the Crown's acquisition of the reserves, but did

69. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 121–124

70. Crown counsel, closing submissions (doc N20), topics 18–26, p 75

71. Counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), para 215; counsel for Ngati Ruapani (Wai 945) and Te Heiotahoka 2B, Te Kopani 36, and Te Kopani 37 (Wai 1033), closing submissions, 30 May 2005 (doc N13), p 36

72. Counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), app A, para 216, 220, 222, 223. The Crown submitted that there was 'a large measure of agreement as to the facts pleaded': see Crown counsel, closing submissions (doc N20), topics 18–26, p 78.

73. Crown counsel, closing submissions (doc N20), topics 18–26, p 80

74. Counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), app A, para 208, 352; counsel for Ngati Ruapani (Wai 945) and Te Heiotahoka 2B, Te Kopani 36, and Te Kopani 37 (Wai 1033), closing submissions (doc N13), p 53; counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), pp 239–240; counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), app A, para 208, 352

75. Crown counsel, closing submissions (doc N20), topic 28, p 22

76. Counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), app A, para 81–87; counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 43

not explain how they were a factor.⁷⁷ Claimant Tamaroa Nikora – who investigated the history of the reserves – concluded that the Crown simply ‘confiscated’ the reserves.⁷⁸ Crown counsel submitted there was ‘no evidence’ to suggest the owners of the reserves were motivated by ‘the prospect of the unpaid rates being forgiven’; and there was no evidence that the Crown used rates as a ‘lever’ to acquire the reserves. Instead, Maori owners made a decision to include these reserves in the transaction and then ‘negotiated hard and made a bargain so that the consideration passing to them would not be diminished or abated by outstanding rates.’⁷⁹

14.4.4 What agreements were reached about titles and how was the cost of surveys met?

Maori owners were promised land transfer titles as part of the Urewera Consolidation Scheme; such titles, however, required the most accurate and the most expensive kind of surveys. Although this kind of title was actually unnecessary, in the claimants’ view, the owners paid the full costs for these surveys and therefore should have received the promised titles. However, not one single title was issued.⁸⁰ The Crown denied these points in closing submissions, stating that a lesser kind of survey was unacceptable, and that the surveys had been sufficient to generate land transfer titles. According to Crown counsel, there was no evidence to show why the Maori-owned blocks had not been registered in the land transfer system (as they could and should have been), or to show that the Crown was at fault.⁸¹

Claimant counsel also submitted that the Maori owners had not understood that surveys would cost them such a significant portion of their remaining land; they would never have agreed to such an outcome.⁸² Nor did they understand that flawed valuations would be used to calculate the amount of land taken for these costs: valuations that had already taken future survey costs into account and were in any case out of date. As a consequence, the peoples of Te Urewera had survey costs ‘loaded’ onto their lands twice.⁸³ Counsel for Ngati Whare suggested that the terms of the UDNR Act meant that the Crown should have met all the survey costs, but that it even failed to meet its share of the costs for surveying common boundaries.⁸⁴ Further, counsel submitted that much cheaper methods of surveying could have been used (magnetic surveys),⁸⁵ and that there were ways of exacting the costs other than by land or through block-by-block deductions.⁸⁶ For these

77. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 124

78. Tama Nikora, ‘Urewera Consolidation Scheme (1921–1926): An Analysis’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc E7), p 40

79. Crown counsel, closing submissions (doc N20), topics 18–26, p 75

80. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 117

81. Crown counsel, closing submissions (doc N20), topics 18–26, p 66

82. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 104, 108, 114

83. *Ibid.*, p 113; counsel for Ngati Whare, closing submissions (doc N16), pp 82, 157; counsel for Tuawhenua, closing submissions (doc N9), pp 195–196

84. Counsel for Ngati Whare, closing submissions (doc N16), pp 82, 157–158

85. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 115–116

86. Counsel for Ngati Whare, closing submissions (doc N16), pp 84–85, 157

reasons, the claimants argued, it was grossly unfair to expect non-sellers to meet almost the entire cost for surveying in the scheme.

Crown counsel submitted that it was unclear whether Maori owners of the reserve were fully aware of how much the surveys would cost. However, counsel speculated, it ‘may be reasonable to conclude’ that those who read or discussed the October 1921 Consolidation Scheme Report had a ‘general idea’ that the cost for surveying the new blocks would be taken in land, and by the implementation phase there is ‘some evidence that Maori may have been aware of the rate at which survey costs were to be paid’.⁸⁷ Crown counsel also argued that the method by which land would be taken for survey costs was made known to the owners at the August 1921 hui, and no opposition was recorded.⁸⁸ Nonetheless, the Crown accepted that there was a ‘prima facie’ case that Maori had been overcharged for the surveys – ‘significantly higher’ than the going rate – and that ‘strong suspicions’ had been roused as to whether Maori had borne more than their share of the survey costs.⁸⁹ Ultimately, however, the Crown’s view was that it is simply impossible to get to the bottom of how the survey costs were calculated, and therefore any conclusion that Maori paid excessive costs is nothing more than ‘speculation’.⁹⁰

14.4.5 Should Maori owners have contributed 40,000 acres toward the cost of constructing two arterial roads?

Claimants argued that it was unfair and unreasonable to impose roading costs on Maori owners of the reserve through the scheme. This was not only because the existing policy at the time meant that the Crown was obliged to pay for the roads, but also because roading costs were already ‘loaded’ into the original 1910 valuations of the reserve lands.⁹¹ In effect, the peoples of Te Urewera had to pay twice for roads, when they should not have paid anything in the first place. These valuations were also out of date (1910 and 1915), whereas the prospective roading costs were valued at contemporary, postwar rates (1921).⁹² In addition, Tuawhenua counsel submitted, costs were charged against owners irrespective of whether the roads would serve their communities.⁹³ Also, Te Urewera peoples were not fully aware of the extent of the costs asked of them in 1921. It was unsurprising that many protests later arose. To add insult to injury, only a quarter of the roading was ever completed; and those roads that were built merely served the Crown’s plans for the land.⁹⁴ Finally, claimants argued that the 1958 settlement, designed to compensate for the Crown’s failure to build the roads, was neither fair nor adequate.⁹⁵

87. Crown counsel, closing submissions (doc N20), topics 18–26, pp 26–27

88. Crown counsel, closing submissions (doc N20), topics 18–26, p 29

89. *Ibid*, pp 27, 60–61

90. *Ibid*, pp 61–62

91. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 56; counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 113

92. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 55

93. Counsel for Tuawhenua, closing submissions (doc N9), pp 194–195

94. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 135; counsel for Wai 36 Tuhoe, closing submissions in reply, 9 July 2005 (doc N31), p 24

95. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 139–141

The Crown conceded that its failure to construct the arterial roads was ‘fatal to the integrity of the scheme and significantly prejudiced Urewera Maori’, and was also in breach of the Treaty. However, in the Crown’s view it was also ‘understandable that the Crown should seek a contribution from Urewera Maori towards the cost of the two arterial roads’. No policy existed at the time that required the Crown to pay these costs. Although it was unclear whether Maori owners were fully informed about how high these costs might be, there was ‘little objection to the quantum that each group passed to the Crown either prior to 31 October 1921 or subsequently’. The Crown acknowledged that the Tribunal would investigate the adequacy of the 1958 settlement.⁹⁶ In its view, the settlement was ‘reasonable in all the circumstances’, having repaid Maori the original sum plus 5 per cent interest. Crown counsel accepted that the settlement did not cover the ‘flow-on effects’ for Maori in not having roads. They suggested, however, that while the Tribunal is ‘entitled to consider these matters, a damages approach is not appropriate for historical grievances.’⁹⁷

14.5 WHY WAS A CONSOLIDATION SCHEME CHOSEN FOR RESERVE LANDS?

SUMMARY ANSWER: Consolidation schemes were carried out in a number of regions in the early to mid-twentieth century as a solution to the excessive fractionation of titles and fragmentation of Maori land. This situation was widespread by the turn of the century. Individualisation of ownership (in accordance with the provisions of Native Land legislation) and the land court’s long-standing practice of ordering equal succession by all children of a deceased owner fractionated shares. The result was that people often held small and scattered interests across a number of blocks in a district. These circumstances were highlighted by the Stout–Ngata commission in its reports on the state of Maori land in regions throughout the North Island, including Te Urewera, the result of which was the first recommendations for consolidation schemes. By the early 1920s, Maori owners of reserve blocks faced similar circumstances, because the Urewera commissioners had not awarded land to hapu but had conferred shares in blocks on individual owners, who often had interests in a number of blocks in the reserve. The Crown’s determined purchasing programme subsequently meant that Maori owners generally now held only a few of their original interests, perhaps widely scattered.

Throughout the 1910s, Maori owners attempted to re-establish some of the original purposes of the UDNR Act by applying to the Native Land Court for the partition of blocks along hapu lines. Native Minister William Herries, however, opposed partition on the grounds that it was contrary to the purposes of the Crown’s purchasing programme. The early partition of blocks would only result in a ‘chequer-board’ effect, in which the reserve lands would be a mosaic of Crown and Maori-owned blocks. The Government revoked the court’s jurisdiction to grant partition applications across much of the reserve. Maori owners, however,

96. Crown counsel, closing submissions (doc N20), topics 18–26, pp 5–6, 24–30, 86–105

97. *Ibid*, p 103

were determined to retain control over their land, and submitted petitions in 1917 and 1918 calling for a halt to purchasing and sought to clarify which land was theirs (as opposed to the Crown's) so that they could advance their plans for economic development. In November 1919, with the Crown's purchases beginning to slow, Native Department Under-Secretary C B Jordan proposed a consolidation scheme for the reserve lands. Such a scheme would allow the Crown to be awarded land in one large block and would also facilitate subsequent purchasing of the remaining Maori land. Herries delayed the implementation of a scheme in the hope that the Crown might acquire yet more interests from Maori owners.

When the Minister of Lands, Guthrie, travelled through Te Urewera in February 1920, Maori owners spoke in favour of a consolidation scheme. Possibly prompted by news of the scheme recently completed in neighbouring East Coast, the owners recognised that in the difficult circumstances they now faced, consolidation was the best option: it would allow them to pool their remaining interests in the land that they wished to retain for economic development. In May 1921, at Ruatoki, Ministers Coates and Guthrie formally proposed consolidation to Maori owners, and made promises of further benefits if they agreed to proceed with the scheme: namely, secure title and the construction of two arterial roads through their lands, which they had been requesting for over a decade. Maori owners went into the scheme with some hope that they would emerge from the collapse of the UDNR Act, and 10 years of Crown purchasing, with some tangible benefits. These hopes were based in part on the specific promises made by Ministers, as well as their general understanding that consolidation schemes were designed to improve their land holdings. But Maori owners did not have enough facts before them to give their informed consent to anything more than proceeding with a scheme per se. They could not have predicted that the Crown would soon default on its two major promises made to induce them to consent to the scheme. On the basis of a bare consent in principle, Ministers and officials continued to develop plans for a consolidation scheme, the purpose and shape of which was quite different from the East Coast scheme, and from subsequent consolidation schemes. In the Urewera Consolidation Scheme, the Crown was inevitably to have the superior bargaining position because of the number of interests it had acquired and its organisational advantage. The scheme was primarily intended as the culmination of the Crown's purchasing programme.

We considered the principles of a sound consolidation scheme, as outlined by Mr Tamaroa Nikora, who was employed on a number of schemes during his career as a professional surveyor: the process of consolidating interests and selecting new land must be led by the owners, with the assistance of trained professionals; there must be a draft scheme of new sub-divisions superimposed over a topographical plan, approved by owners; current market valuations of properties at a common date; and transparent accounting of interests and exchanges. Consolidation schemes must demonstrate that the owners would emerge in a better position than at their inception, otherwise there was no point in proceeding. These basic principles can be used to assess the outcomes of the Urewera Consolidation Scheme.

We accept these principles as minimum standards for a scheme, on the basis

that the Crown and Maori were co-owners in the reserve. We also accept the Crown's standards for the scheme as expressed by Ministers at the time and as highlighted by Crown counsel: 'mutual benefit' for Maori and the Crown; ministerial protection of Maori interests; justice for Maori and equality of justice for Maori and future settler interests; decision-making by 'round-table conferences' and in a spirit of reasonableness and 'give-and-take'.

These are minimum standards for the Crown to have met. We also note there was not a level playing field such that equal treatment of the Crown and Maori co-owners was appropriate. The Crown had not come by its interests honestly but rather as a result of massive Treaty breaches. Rather than seeking to profit from those breaches, the Crown was required to put Maori interests first. This is the higher, more appropriate standard by which we judge the Crown's actions in the Urewera Consolidation Scheme.

14.5.1 Introduction

The two-and-a-half decades after the passing of the UDNR Act witnessed a complete defeat of the unique model of self-government and title determination that the Act and associated agreements had envisaged. The reserve was not governed by local committees and a central committee (which meant that there was no collective management of lands), the reserve was no longer a 'reserve' (since the Crown had purchased about half of it), and Maori were desperate to stop the Crown's purchasing and the bleeding of individual interests. As a result, a consolidation scheme of the kind adopted for the reserve lands was increasingly sought by many of the remaining Maori owners between November 1919, when Native Department Under-Secretary CB Jordan first seriously raised the possibility, and May 1921, when Ministers sought approval from Maori owners to implement an actual scheme. A consolidation scheme, in theory, provided the many Maori owners who retained their interests in the reserve blocks with the best opportunity to make strategic decisions about which land they would retain in order to pursue the type of economic development they had been seeking since at least the start of the twentieth century. It offered them the only sensible solution to rescue their remaining interests and to retain some measure of communal ownership and control.

The extent and nature of the Crown's purchases – which by September 1919 amounted to the equivalent of 308,434 acres in the form of undivided interests, or approximately 47 per cent of the reserve⁹⁸ – also meant that the Crown was more likely to pursue consolidation over other options as a means of extracting its land. Government Ministers and interested officials in the Native Department and Department of Lands and Survey came to consider consolidation as the best method to fulfil the objectives of the Crown's purchasing programme in the reserve. As we discussed in chapter 13, the purpose of this programme as it

98. Cecilia Edwards, 'The Urewera District Native Reserve Act 1896, Part 3: Local Government and Land Alienation under the Act' (commissioned research report, Wellington: Crown Law Office, 2004) (doc D7(b)), p 210

developed was to open a large expanse of the former reserve lands to Pakeha settlers, alongside obtaining sufficient areas in the watershed for conservation purposes. The Crown also wanted to profit from the timber in the Te Whaiti region. This preoccupation with ‘opening’ Te Urewera lands culminated in the 1915 proposals of Andrew Wilson and AB Jordan: the Crown would acquire the vast majority of the 470,000 acres that was considered suitable for settlement; Maori owners would retain only small portions of the land they had previously inhabited – a mere fraction of what they originally owned.⁹⁹ This was the same region that Premier Richard Seddon had described in 1895 as largely unsuitable for settlement purposes, except for areas Maori already had under cultivation. Mr Tamaroa Nikora told us that Seddon’s advice ‘echoes down the years’ in the light of what followed.¹⁰⁰ Within a generation, the Crown’s objectives had changed radically. As the 1910s drew to a close, Ministers and officials increasingly viewed a consolidation scheme as the best mechanism to meet their settlement objectives.

In this section, we trace the origins of the Urewera Consolidation Scheme up to May 1921, when the Ministers made their proposal to Maori owners. One of the claimants’ central grievances on this topic was that the Crown imposed a consolidation scheme on Maori owners of the reserve against their wishes, and only to suit the Crown’s objectives; a claim the Crown firmly rejected. As we explain here, the particular circumstances of the events that unfolded in Te Urewera after the passing of the UDNR Act meant that by November 1919, when Jordan first raised the possibility of a scheme for the reserve, Maori owners had been placed in a position where they had little choice but to support some kind of consolidation scheme. Ministers and officials were equally likely to agree with Jordan’s proposal, though for quite different reasons.

14.5.2 How did the Crown’s defeat of the UDNR Act and subsequent extensive purchasing influence the emergence of a consolidation scheme as an option for the reserve lands in 1919?

The Urewera Consolidation Scheme had a number of origins, the most important of which was the Crown’s undermining of the UDNR Act in the two decades after its passing. But in many ways the scheme originated in the recommendations of the Stout–Ngata commission, which held its hearings and reported in 1907 and 1908. The commission was not only the first to propose the implementation of a consolidation scheme in the reserve lands but also the first body to identify the need for consolidation schemes for lands throughout New Zealand. The commission’s general recommendations gave rise to legislation under which most consolidation schemes were carried out. In total, 28 schemes were completed during the twentieth century.¹⁰¹ The Urewera Consolidation Scheme was one of the

99. Wilson and Jordan to chief surveyor, 1 August 1915 (Cecilia Edwards, comp, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 3’, 2 vols, various dates (doc D7(b)(i)), vol 1, pp145–149)

100. Nikora, ‘Urewera Consolidation Scheme’ (doc E7), p 42

101. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised edition, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p 728

first: while it was unique because of its size and the nature of the Crown's involvement, it also emerged from many of the same circumstances experienced by Maori owners elsewhere in New Zealand, as identified in the commission's reports.

The Stout–Ngata commission was part of the Crown's broader response to widespread problems caused by nineteenth-century native land legislation and the individualisation of Maori land. But the commission was also born of a contradiction in Government policy in the early part of the twentieth century, which saw increasing moves on the part of the Crown to acquire remaining areas of Maori land. Reflecting these dual purposes, the commission was instructed to inquire into which areas of Maori land could be sold off for Pakeha settlement, as well as identifying which land Maori should retain for development and how it should be managed.¹⁰² These aims were reflected in the commission's recommendations for various regions of the North Island, including portions of Te Urewera lands.

In their first main report in 1907, the commissioners described the effects of the individualisation of Maori land generally. The report cited many of the findings of the 1891 royal commission into native land legislation, which heavily criticised the Native Land Act 1873 for introducing the memorial of ownership in which 'every member of the tribe or hapu interested in a particular piece or block of land' was listed. Under that Act, the alienation of Maori land 'took its very worst form and its most disastrous tendency': people became possessed of 'a marketable commodity' (that is, their individual share interest), and because of individualisation the 'strength which lies in union was taken from them.'¹⁰³ Their interests became even more marketable because they were co-owners of blocks without a means of acting either collectively or (in the sense of owning defined pieces of farmland) individually.

The Stout–Ngata commission updated these findings, noting that Maori owners continued to be caught in 'the difficulties inherent in individual ownership, which prevented organized effort as well as individual action'. By the early twentieth century, individuals could own scattered interests across numerous blocks. With each generation, succession orders resulted in the ever-increasing fractionation of these interests. Crown or private purchasing of individual interests made this situation worse, as owners then held fewer interests, often still across a number of blocks. Fragmentation – the partition or subdivision of blocks – often followed as Maori owners attempted to clarify which particular part of a block was theirs. But, as the commissioners observed, the 'minute sub-division of land' was 'impossible to carry out in a practical and effective manner, apart altogether from the enormous cost that would be entailed upon the land and its owners.'¹⁰⁴

Reflecting on how this situation had developed on the East Coast – Ngata's home territory – the commissioners noted:

102. SKL Campbell, 'National Overview on Land Consolidation Schemes, 1909–1931' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1998) (Wai 1200 R01, doc A62), p 36

103. WL Rees and J Carroll, 23 May 1891, 'Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws', AJHR, 1891, G-1, pp viii, x (Stout and Ngata to Governor, 11 July 1907, AJHR, 1907, G-1C, pp 2–3)

104. Stout and Ngata to Governor, 11 July 1907, AJHR, 1907, G-1C, pp 2–13

individualisation of title in this district, in the sense of allocating to each owner his individual area, is hopeless and absurd, and the only chance of the land being worked is by co-operation amongst the Native owners, or by arrangements that will give to some of the owners the exclusive right to farm and occupy the tribal or hapu lands under a system of leasing.¹⁰⁵

The commissioners reached similar conclusions for other areas on which they reported.

As a solution to these problems, the commissioners made a series of recommendations to fit the range of circumstances faced by Maori owners in different parts of New Zealand. Incorporation offered some Maori owners the possibility of revitalising a form of communal ownership, through the creation of a committee of management which would administer a block's affairs (not unlike what had been envisaged under the UDNR Act). 'The Maoris are a communal people,' the commissioners observed, 'and this system, which preserves a community of interest, but also allows and rewards individual exertion, may be the best means of creating a better industrial life amongst a communal people.'¹⁰⁶ But, as Ngata later explained, incorporation was only suitable for 'owners of any area or contiguous areas [or] areas not necessarily contiguous but having elements of common ownership.'¹⁰⁷ Consolidation schemes, on the other hand, offered a solution to the specific problems created by the widespread scattering of individual interests across a district. Through the process of consolidation, Maori owners would pool their interests into blocks that could then be farmed more effectively. This process would occur by calculating the total value of a person's interests across a number of blocks, based on the original valuation of each block. These interests would then be grouped, usually along the lines of whanau or small families, and the total interests would be taken up in a new block of land of equivalent value.

The recommendations of the Stout–Ngata commission formed the basis of the first provisions for consolidation schemes in the Native Land Act 1909. The exchange of interests on a small scale had already been provided for in earlier legislation, but the scale of the process recommended by the commissioners required entirely new legislation. The Central North Island Tribunal reviewed the development of laws relating to consolidation schemes. Under the 1909 Act, that Tribunal observed, the Native Minister could apply to the Native Land Court to prepare a scheme, which the court was then responsible for carrying out. These provisions survived in essence through subsequent legislation, which reached its final form in the Native Land Act 1931. The Tribunal found these statutory provisions to be 'draconian' because 'the initiatives in such schemes lay with the Native Minister or the court, not with the Maori owners'; 'there was no provision for the involvement or consent of landowners.' In practice, however, officers appointed to prepare all

105. Stout and Ngata to Governor, 18 January 1908, AJHR, 1908, G-1, p 3

106. Ibid

107. 'Native Land Development: Statement by the Hon Sir Apirana Ngata, Native Minister,' AJHR, 1931, G-10, p ii

Ngata's Description of the Purpose of Consolidation Schemes

Ngata's evidence before the National Expenditure commission, 1932: 'The idea of consolidation is to reduce everything to a valuation basis. You take the interest of an individual, 30 or 40 different blocks scattered throughout the country, and upon adjustment you get the net value of that individual. Then you seek to give him an area of equivalent value. The object of consolidation is to give the Natives compact blocks instead of scattered interests. These blocks are settleable worthwhile developing and so on.'¹

Ngata's statement on native land development to both Houses of the General Assembly, 1931: 'Briefly, this is a scheme to gather together into one location if possible, or into as few locations as possible, the interests of individuals or families scattered over counties or provinces by virtue of their genealogical relationships. The basis is the net value of the interests of an individual in the lands included in a consolidation scheme . . . The opportunity is seized to make the new holdings conform to modern requirements, practicable fencing boundaries, access, water-supply, aspect, and so forth; also to adjust the roading of the area; and, with the consent of the Crown and of private owners, to effect exchanges of mutual benefit.'²

1. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised edition, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p 728

2. 'Native Land Development: Statement by the Hon Sir Apirana T Ngata, Native Minister', AJHR, 1931, C-10, p i

the necessary details 'worked closely with owners in the preparation of a scheme'. This reflected the fundamental purpose of consolidation schemes, which was to improve the land holdings of Maori owners, 'who had to agree to the redistribution of their interests on a substantial scale'.¹⁰⁸ Under this legislation, and following the specific recommendations of the Stout–Ngata commission, the first consolidation scheme began in 1911 in the Waipiro block in the Waiapu County, covering some 35,000 acres. Ngata was heavily involved in overseeing the scheme, which was completed in 1917.¹⁰⁹ In the recommendations he made as commissioner and then as the driver of the Waipiro scheme, Ngata was the key figure in getting consolidation schemes off the ground.

The dual purposes of the Stout–Ngata commission were reflected in its specific findings for Te Urewera. As we explained in the previous chapter, the commission's

108. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 728–730

109. Campbell, 'National Overview on Land Consolidation Schemes' (Wai 1200 RO1, doc A62), pp 51–53

findings played a critical role in the commencement of Crown purchasing in the reserve. The first report, in March 1908, noted that no local committees had been elected, and that consequently there was also no General Committee to make decisions about the management of the land, including whether to alienate strategic portions of it or not. The commission recommended the immediate election of these committees, but only so that land could be made available for settlement, not for the purposes of establishing institutions of self-government as promised under the UDNR Act. Twenty-eight thousand acres had been offered for lease in Ruatoki and Te Whaiti, but 'greater areas' could be obtained for settlement because Tuhoë acknowledged their 'liability' for survey costs under the Act, despite the fact that – as we have noted in earlier chapters – the Crown had promised to pay.¹¹⁰ In August 1908, the commissioners again recommended that Parliament validate the election of the General Committee, as 80,000 acres had now been offered for lease.

Although the main focus of these reports was on opening portions of the reserve for settlement, the commissioners also recommended that 'provision be made enabling exchanges to be effected as between individuals or families with a view to consolidating their interests as far as possible.'¹¹¹ The reasoning for this recommendation was not spelt out, but there were obvious connections for the commissioners to draw between the situation faced by the Maori owners of the reserve blocks – as a consequence of the failure to implement the Act properly – and the effects of individualisation elsewhere in the country. The failure to see blocks awarded to specific hapu communities, coupled with the failure to establish the committees, had left Maori owners unable to exercise any collective power over their various blocks, and over the reserve as a whole.

As a consequence, the reserve could not develop throughout the 1910s under the firm control of tribal leadership. Without institutions of self-government properly in place, tribal leaders had no mechanism to make decisions about economic development, or to protect the land once the Crown's purchasing programme commenced. As individual owners often had whakapapa affiliations to numerous hapu – which themselves could have rights recognised in several blocks – many had interests spread across the reserve; not unlike other Maori owners. Ngata later observed that some Maori owners of the reserve held interests in 'twenty, or thirty, or even forty blocks.'¹¹² As ownership rights existed in the form of undivided interests, the land was held by multiple co-owners and no one individual had exclusive rights to any portion of the block. To make the land economically viable, owners would have to pool their scattered interests into useable blocks of land. Thus, even before the Crown began purchasing in the reserve, the commission had observed the necessity for providing some means for owners to pool their scattered interests.

The Crown's decision to begin sustained purchasing of individual interests in the reserve in 1914 hardly reflected an even-handed implementation of the commission's recommendations; Maori retention and management of land was

110. Stout and Ngata to Governor, 13 March 1908, AJHR, 1908, G-1A, p 2

111. Stout and Ngata to Governor, 12 August 1908, AJHR, 1908, G-1Q, p 4

112. Ngata, 16 March 1921, NZPD, vol 190, p 155

further marginalised as their hopes of the UDNR Act became a more distant memory. Instead, as the Crown purchased interests on an ever-increasing scale, the necessity for a consolidation scheme became greater. As we explained in the last chapter, Maori owners sold their interests for a variety of reasons, but mainly so that they could satisfy everyday needs. As purchasing progressed, many began to sell strategically; selling in some blocks and not in others. As Steven Webster has shown, by the end of the decade, the vast majority of the original owners in the reserve retained at least some shares. This ranged from those who sold most of their interests to the more staunch pupuri whenua (land holders). The result was that a large number of owners remained who may have held only a few interests, but often across a number of blocks.¹¹³ The high mortality rate in Te Urewera during the first two decades of the twentieth century meant that individual interests would be succeeded to by multiple heirs and so there were more owners in the reserve at the end of Crown purchasing than at the beginning. As a consequence, by the end of the 1910s there were many owners, some of whom held few interests, but across many blocks. This mix of factors made a consolidation scheme an attractive option for Maori owners.

The origins of what developed as a cautious enthusiasm on the part of some Maori owners for a consolidation scheme can be seen in their attempts to revitalise the original purpose of the UDNR Act – tribal control of land – through the Native Land Court. While it might seem odd that owners turned to the court, it is telling that they came to view it as an institution that could complete the unfinished business of the UDNR Act. As we have seen, they applied to the court, which had been granted special jurisdiction in 16 blocks between 1910 and 1913, for the partition of blocks along hapu lines.¹¹⁴ Although the Crown initially authorised the Native Land Court's jurisdiction with an eye to future purchasing, Maori owners made the first applications in an attempt to reassert the hapu-based title that had been promised them in the UDNR Act. Numia Kereru secured a division of the Ruatoki 1 block between hapu, though objections to earlier decisions over the blocks meant that some owners continued to submit petitions requesting a title reinvestigation up to 1916.¹¹⁵ Faced with a situation in which the Ruatoki blocks were owned by individual owners with relative shares, Kereru had hoped to assert firmer tribal control over the Ruatoki blocks and their many individual owners, but ultimately he could not achieve this when the establishment of the local committees and General Committee had been so long delayed. Fractionation of interests and further partition of the Ruatoki blocks continued, and the General Committee, as we have seen, never really got off the ground as a land management body.

113. Steven Webster, 'The Urewera Consolidation Scheme: Confrontations between Tuhoe and the Crown, 1915–1925' (commissioned research report, Wellington: Waitangi Tribunal, 2004) (doc D8), p 233

114. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp 194–195

115. Steven Oliver, 'Ruatoki Block Report' (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A6), pp 82–113

Kereru made similar attempts in the Ruatahuna block, which owners had expected the Urewera commission would divide into three blocks, but was instead awarded in its entirety to seven hapu. In a demonstration of owner control during the appeals process, Kereru led a process outside the Native Appellate Court where owners agreed to a division between the different hapu. Disputes between owners emerged, particularly about names on the various owner lists, which often proved to be the main sticking point. Eventually these disputes were resolved, some by the court and others outside the court, and separate orders were made for the five Ruatahuna blocks on 15 February 1913.¹¹⁶ The owners had achieved a partial success in securing hapu title, but – as with the Ruatoki blocks – without formal management structures, this success was a mere illusion. And at Te Whaiti, Ngati Manawa, though seeking to remove their interests from the reserve, applied for partition of the block in 1912 in an attempt to preserve the same kind of tribal control as envisaged under the Act.¹¹⁷

The immediate origins of the Crown's proposal for a consolidation scheme can be seen in its reaction to these kinds of initiatives by Maori owners, in which the Crown sought to protect its purchasing of undivided interests. The expansive nature of the Crown's purchasing programme – particularly the targeting of individuals and their interests in a range of blocks – meant that partition at the initiative of the owners came to be viewed as undesirable, in a way that had not been contemplated when the Government earlier granted the court's jurisdiction. On the resumption of purchasing in June 1915, William Bowler – the Crown's land purchase officer – warned of the inherent dangers in purchasing undivided interests and foreshadowed the need for some kind of process for the Crown to obtain sizeable portions of land:

What appears to me to be the worst feature of the Urewera area, from a purchase and ultimate settlement view, is the fact that it comprises so many individual blocks. The same families and groups of families appear in block after block. Obviously some of the Natives will never sell, and the most that can ultimately be hoped for is, after the geographical location of the Crown and Native-owned areas has been determined by the Court, a kind of chequer-board district owned alternately by the Crown and by Natives. Many of the Natives will own scattered interests in many blocks, without any reasonable possibility of consolidation, and the Crown will be faced with the necessity of roading, at the expense of its own areas and of the ultimate settler, the whole district.¹¹⁸

There were thus two risks for the Crown's purchase programme: partitioning of blocks at the initiative of the owners could put a stop to the Crown's purchasing of

116. Richard Bassett and Heather Kay, 'Ruatahuna: Land Ownership and Administration, c 1896–1990' (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A20), pp 66, 82–90

117. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), pp 133–139

118. Bowler to Native Under-Secretary, 13 June 1915 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 19–21)

interests before it had wrung every last saleable share out of the owners; and partitioning the Crown's interests in each of the reserve blocks could result in Bowler's predicted 'chequer-board', in which the Crown's interests might not be concentrated enough for a sensible and affordable scheme of European settlement.

Blocks that had been partitioned before the beginning of purchasing posed a particular obstacle to the Crown because it would make any pieces it secured in court even smaller and more numerous, unless it acquired every single interest in every subdivision. The Ruatoki blocks, Bowler observed, had many owners, and 'doubtless a large number of them will be unwilling to sell. If the Crown acquired 'interests indiscriminately in all the subdivisions the ultimate result will be that small areas of Crown and Native lands will alternate after the location of the Crown areas'.¹¹⁹ The efforts of some Maori owners of the Tauwharemanuka block to protect a portion of their land from Crown purchasing by partitioning, which were ultimately unsuccessful,¹²⁰ prompted the Crown to revoke the court's jurisdiction (which had been granted in 16 blocks across the reserve) in June 1916.¹²¹ From this point on, Ministers and Crown officials delayed any moves to extract the Crown's interests in land so that as many interests of Maori owners could be acquired as possible. Herries was firm that the Crown should avoid creating a 'chequer-board' of the district; and equally rejected Bowler's calls for the compulsory acquisition of the remaining interests of Maori owners.¹²² Herries' central focus was on the Crown's future use of the land. Apart from the Ruatoki and Ruatahuna blocks (where exceptions were granted to complete a process of partitioning that had already begun), no other partitions followed.

In fact, the story of the Ruatoki blocks only proved to Maori owners that seeking partitions through the Native Land Court was no solution to the failures of the UDNR; instead, partition only resulted in excessively divided blocks. By September 1917, Ruatoki 1 had become 112 subdivisions; Ruatoki 2 and 3 had become 32 subdivisions.¹²³ In his study, *Maori Land Tenure*, Sir Hugh Kawharu commented on how individualisation in the Ruatoki blocks inevitably led to further partitions and the subsequent fractionation of interests. 'As the surveying of subdivisions within the block went on, so both the interests of individuals and the scale of litigation were continually narrowed down. The course, once mapped out, was pursued inexorably.'¹²⁴ What had been a well intentioned attempt to regain communal hapu ownership of land, in line with what owners had expected under the UDNR Act, instead began a process of accelerating fragmentation and fractionation. By 1917, owners also faced the prospect of Crown purchasing in their various subdivisions.

119. Ibid

120. The Crown had purchased interests in all nine subdivisions by 1919: see Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 249.

121. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 194

122. Anita Miles, *Te Urewera*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1999) (doc A11), p 364

123. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), pp 200–203

124. IH Kawharu, *Maori Land Tenure: Studies of a Changing Institution* (Oxford: Oxford University Press, 1977), p 101

In these circumstances, it was no surprise that the first attempts by Maori owners to look beyond the court for a way to define and secure their remaining land originated in Ruatoki. Steven Webster identified four petitions to the Government between March 1917 and November 1918, all of which outline a common goal of economic development, or *ahuhenua*.¹²⁵ These petitions all sought to limit the effects of individualisation, and to prevent any further alienation of interests. Some made reference to reviving the institutions of self-government that had been promised in the UDNR Act. As the Crown became increasingly frustrated at its ability to purchase the remaining interests, Maori owners demanded certainty about which land was theirs. They identified the activities they wished to pursue, some of which they had already begun: namely, farming in the valley lands that ran alongside the Ohinemataroa (Whakatane) and Tauranga (Waimana) Rivers, up to Ruatahuna and Maungapohatu. Ngati Whare and Ngati Manawa owners of the Te Whaiti blocks also made repeated calls to be able to utilise the resources on their land, particularly the millable timber. Opportunities to develop these resources had stalled due first to delays in the process of title determination and hearing of appeals and then to the Crown's purchasing programme. As purchasing continued, and as the end of the decade approached, Maori owners were unwilling to wait any longer.

The first petition came in March 1917 from Akuhata Te Kaha and nine others of Te Mahurehure hapu, and expressed 'the wish of this tribe known as Mahurehure that the Ruatoki Nos. 2 and 3 be incorporated and be worked by us in accordance with its provisions'.¹²⁶ Part XVII of the Native Land Act 1909, Cecilia Edwards notes, allowed for the incorporation of owners and the election of a committee of management. And although the provisions for incorporation under the 1909 Act did not apply in the reserve lands (as Bowler argued when asked to comment on Te Kaha's petition), Edwards observes that it was understandable Maori owners expected their land could be administered under ordinary native land legislation, because the UDNR Act had been undermined to such an extent by this time.¹²⁷

These owners knew of the possible benefits of incorporation, particularly in light of the reports of the Stout–Ngata commission and its recommendations in favour of incorporation in the Tuararangaia block (see chapter 10) and in areas such as the East Coast. Akuhata Te Kaha, for example, was one of the leaders elected to the Tuararangaia 1B incorporation's committee of management in 1911.¹²⁸ Ngata, as we have seen, hoped to use incorporations to revitalise a form of communal ownership and enable Maori owners to develop their land under the direction of a single co-ordinating committee, which had echoes of the self-governing institutions promised under the UDNR Act.

125. Webster, 'Urewera Consolidation Scheme' (doc D8), pp 136–137

126. Akuhata Te Kaha to Native Minister, 10 March 1917 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 1126)

127. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 203

128. Peter Clayworth, 'A History of the Tuararangaia Blocks' (commissioned research report, Wellington: Waitangi Tribunal, 2001) (doc A3), p 97

Te Kaha's petition typified the approach of owners who were seeking to expand their economic activities at the turn of the century. Many initiatives had been led from Ruatoki, especially in the wake of the second Urewera commission's awards and the inquiries of the Stout–Ngata commission. Unsurprisingly, owners had differing views on how economic development should proceed. In 1908 and 1909, Kereru and Rua Kenana made separate offers of lease and sale respectively. In April 1908, Erueti Peene (Fred Biddle) and 37 others submitted a petition objecting to the proposed lease of Ruatoki land to non-Tuhoe, and suggested instead that they 'wanted to farm the land in individualised holdings'.¹²⁹ But, as we have explained in chapter 13, the self-governing institutions that were intended to mediate such differing views were never sufficiently established; and the Crown instead seized upon Rua's offers of sale and adjusted the constitution of the General Committee to meet these aims.

At that time, however, Numia Kereru was also considering other development opportunities. In July 1908, he led a deputation to Wellington, where he asked for the Government's assistance in constructing two arterial roads through the reserve lands: one from Ruatoki to Ruatahuna, and one from Waimana to Maungapohatu. Kereru and Te Amo Kokouri followed this with separate petitions in 1909, both requesting a road to be constructed up the Whakatane Valley. Rua had made a similar request on behalf of the Maungapohatu community in 1908, but all such approaches were rejected by the Department of Public Works. As we explain later in the chapter, Kereru made further modified requests, but these were rejected because the Government would not consider making funds available unless the reserve land was opened for European settlement.¹³⁰ Further efforts were made after Kereru died in 1916 by Te Pouwhare, who revived Kereru's original proposal. He asked the Government to refrain from purchasing in the Ruatoki blocks, and instead to assist the owners in leasing the land.¹³¹ Like Te Kaha, Kereru and Te Pouwhare sought ways to retain and develop the land, though they differed in their methods (incorporation, as opposed to leasing). But after 20 years of fraught title investigations and an inability to engage in any meaningful development, it was also understandable that some owners in the Ruatoki blocks wanted to sell their interests. Based on a number of requests from owners who asked the Government to acquire their interests, Herries was unsympathetic to the Te Mahurehure proposal for incorporation and instructed Jordan that any applications for the incorporation of the blocks should be 'resisted'.¹³²

Although the owners of Te Whaiti 1 and 2 were not among the petitioners identified by Webster, their attempts to engage in economic development and to resist the Crown's purchasing programme mirror the efforts initiated in Te Kaha's petition, which were later pursued by owners in other parts of the reserve. These

129. Bassett and Kay, 'Ruatahuna' (doc A20), p 95

130. Cleaver, 'Urewera Roding' (doc A25), pp 28–42

131. Te Pouwhare and Tupaea Pika Peeti to Native Minister, 26 June 1916 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 1146)

132. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 203

attempts occurred in the face of a series of actions taken by the Crown: first, in using its monopoly powers to take advantage of Maori offers to sell timber at Te Whaiti; then, after purchasing commenced, in obtaining an injunction against the Maori owners from using the resources of the block; and, finally, in preventing the owners from partitioning out their remaining land in order to purchase as many interests as possible. In 1915, owners of the Te Whaiti blocks asked the Government to lift restrictions so that they could sell milling rights to private companies, thereby obtaining employment for their people at the mills.¹³³ Instead, Bowler was authorised to commence purchasing in the blocks. With few options available, Te Matahaere Whatanui made an offer to the Crown to sell some of the totara timber on behalf of the two tribes. Crown purchasing in the blocks, which commenced in September 1915,¹³⁴ thus began on the back of attempts by Ngati Whare and Ngati Manawa owners to utilise their timber resource, which they found they simply could not do. The seeds for their economic demise were sown in their attempts to utilise their resources: once purchasing began, they had no ability to control which individuals would sell their interests, and ultimately what land they would retain.

As purchasing continued, frustrated Ngati Whare and Ngati Manawa owners tried to mill timber for their own use and to on-sell to sawmillers.¹³⁵ The Crown acted to prevent them from doing so by obtaining an injunction on the grounds it was now a co-owner of the blocks. But CB Jordan, the Under-Secretary for the Native Department, also considered it too early for the Crown to partition out its interests, as further interests could still be acquired. Despite strong opposition from the blocks' Maori owners (registered by Bowler at the court hearing in 1917), the injunction was issued. According to Bowler, Judge Wilson made this decision reluctantly, because those Maori owners who had not sold should not be interfered with as they 'could not alienate privately and could not get a partition cutting out their own shares.'¹³⁶

This was an accurate summary of the position faced by most Maori owners across the reserve following the defeat of the UDNR Act and the beginning of Crown purchasing. Boast observes that, in the Te Whaiti blocks, Crown purchasing coupled with the injunction and the inability to partition forced owners 'into an economic limbo until the Crown completed its purchasing programme in its own good time.'¹³⁷ Maori owners wished to make use of their resources, as they had expected under the UDNR Act, but they could only do so as individuals by selling

133. SKL Campbell, 'Land Alienation, Consolidation and Development in the Urewera, 1912-1950' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1997) (doc A55), p 38

134. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), pp 166-167

135. Crown lands ranger to commissioner of Crown lands, 25 September 1915 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 1040; commissioner of Crown lands to Under-Secretary for Lands, 1 October 1917 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 1039)

136. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p 180

137. *Ibid*, p 181

to the Crown; tribal leaders and communities had little power to chart the path of development themselves. The result was that, by 1921, Ngati Whare and Ngati Manawa only retained the equivalent of approximately 12,437 acres, or 17 per cent of the two blocks (see appendix v11).

Calls for the retention of land and economic development emerged most forcefully in Ruatahuna as the Crown contemplated purchasing there for the first time. These calls emerged in the context of another application to partition the Ruatahuna block in 1918, which was made on the back of ongoing tensions between hapu who sought to have their respective rights in the block defined. This new action became necessary when it was discovered that the 1913 partition had never been completed. The application from Te Amo Kokouri restated the original objectives of title-determination under the UDNR Act: 'kia wawahia a hapu tia a Ruatahuna poraka'¹³⁸ ('let the Ruatahuna block be partitioned between the hapu'). But the hopes of the Maori owners were set to one side as the Crown began purchasing in the block, despite the advice from James Carroll that the 'Government should leave this block for the natives.'¹³⁹ In reaction to planned purchasing, Maori owners voiced their opposition in a series of petitions that reflected their concerns not only about the future of Ruatahuna but about the wider situation in the reserve at this time.

The first petition came from Te Wao Ihimaera and 16 others on 12 August 1918, asking that 'the Waikaremoana and Ruatahuna Blocks be not allowed to be purchased as these lands are being reserved for other purposes.'¹⁴⁰ Rawaho Winitana and 99 others followed with another petition in September, which stated their opposition to Crown purchasing in the Ruatahuna, Waikaremoana, and Ruatoki blocks because all three blocks were being used for sheep and cattle farming. For the Ruatoki blocks, they said: 'We can assure you that we are able to farm these lands. We have stock on them and are supplying butter and cheese in the Auckland district.'¹⁴¹ The petitioners asked for the blocks to be incorporated under the provisions of the 1909 Act, which repeated the call made by Te Kaha.¹⁴² Tied to these initiatives, the petitioners also asked for the General Committee and the provisional local committee for the Ruatahuna block to be reconstituted.¹⁴³

Further petitions followed from a group led by Te Amo Kokouri, who had submitted the application for partition in February 1918. In October, and with the partition still up in the air from the owners' perspective, Kokouri with 121 others sent a petition to the Government that closely followed the wording of the

138. Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two' (doc D2), p140

139. Bassett and Kay, 'Ruatahuna' (doc A20), pp109–111

140. Te Wao Ihimaera and 16 others to Native Minister, 12 August 1918 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p1171)

141. Rawaho Winitana and 99 others to Native Minister, 23 September 1918 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p1159)

142. Webster, 'Urewera Consolidation Scheme' (doc D8), p133

143. Rawaho Winitana and 99 others to Native Minister, 23 September 1918 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p1159)

Winitana petition. They asked the Government to refrain from purchasing in the Waikaremoana, Ruatahuna, and Ruatoki blocks and to re-establish the committees as required under the UDNR Act. The petition added: 'We have sheep and cattle and other stock depasturing on this land [the Ruatahuna block] to assist the freezing works at Whakatane.'¹⁴⁴ The following month, Kokouri made a further request to the Government for the court to carry through the partition of the blocks, so as to properly put to bed the disputes that persisted between the owners. In December, Judge Wilson took action and communicated with the commissioner of Crown lands to authorise a survey of the five blocks. The survey and valuation were conducted in the early part of 1919.¹⁴⁵ With that confirmed, Kokouri submitted a final petition, once again requesting the re-establishment of the General Committee and provisional committees to administer blocks.¹⁴⁶ With this series of petitions in hand, Jordan nevertheless instructed Bowler to begin purchasing in the Ruatahuna blocks in June 1919.¹⁴⁷

The final petition that originated from Ruatahuna was submitted by Te Pouwhare in August 1919, repeating calls to re-establish the General Committee for the purpose of administering the people's affairs. It also repeated the message signalled by many others that the original purpose of the reserve held great weight. But circumstances had changed considerably since 1896, brought about by the Act's failure and the commencement of purchasing. Te Pouwhare's message retained a belief in that original purpose while insisting on an end to purchasing and seeking a process to divide the interests of the Crown from the remaining Maori owners: 'Some of the non-sellers of Tuhoe are desirous of effecting exchanges of their interests with those of the Crown.'¹⁴⁸

Yet, from the Crown's perspective, all of Te Pouwhare's requests ran counter to the purpose of purchasing in the reserve. The Crown had set out to acquire land for settlement, and could only do so by undermining the institutions of self-government envisaged in the UDNR Act: it was not about to assist owners to put those institutions in place. From the Crown's perspective, any exchange of interests would only occur after the Crown had purchased as many interests as it could. This is all summed up in Herries' comments on Te Pouwhare's petition: 'I think the existence of the committee might be at present a hindrance to purchasing interests. When consolidation of interests is wanted, the Committee might be called into existence.'¹⁴⁹ By September 1919, the Crown had acquired the equivalent of

144. Te Amo Kokouri and 121 others to Native Minister, 16 October 1918 (Richard Bassett and Heather Kay, comps, supporting papers to 'Ruatahuna: Land Ownership and Administration, c 1896–1990'; 3 vols, various dates (doc A20(c)), vol 3, p 29)

145. Bassett and Kay, 'Ruatahuna' (doc A20), pp 107, 112–113

146. Te Amo Kokouri and 121 others to Native Minister, May 1919 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 1110)

147. Bassett and Kay, 'Ruatahuna' (doc A20), p 116

148. Te Pouwhare to Native Minister, 1 August 1919 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 577)

149. Native Minister to Native Under-Secretary, 23 September 1919 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 576)

7,308 acres of the Ruatahuna blocks, as part of its 47 per cent of the reserve as a whole.¹⁵⁰

By the end of the 1910s, the owners with surviving interests had become caught in a bind that was not of their making. Given their need to expand their economic activities, it was understandable that some owners wanted to see restrictions on the reserve lifted. As an example of this position, Hori Atarea petitioned the Government in September 1919 to allow Maori owners to sell to private buyers.¹⁵¹ Others, however, were wary of the consequences of such an action and signalled their opposition accordingly, including Akuhata Te Kaha, who likely continued to hope that the blocks could be incorporated.¹⁵² Not only were the Maori communities of Te Urewera confronted with Crown monopoly purchasing, but they had also gone a whole generation without any real focus on economic development. How could it be otherwise, when they had no formal management structures, and no Government interest at all in their development? Tukuaterangi Tutakangahau addressed this point in a letter to the Native Minister in 1919, asking for an exchange of land: ‘The reason is that I find it very difficult to get our produce out (to the markets), and it is equally difficult to get our supplies to this place.’¹⁵³ Tukuaterangi was one of many leaders during this period, including Numia Kereru and Rua Kenana, who was anxious to advance their peoples’ economic circumstances. The Crown’s purchasing programme was not merely a distraction; it actively undermined the attempts of the reserve’s owners to seek economic advancement.

In every case, the Crown ignored or actively set out to undermine the attempts of Maori owners to revitalise the original purposes of the UDNR Act and to resist its purchasing programme. It took swift action to remove the partition option but bought into partitioned blocks anyway. The Crown’s purchasing of undivided interests, high mortality rates during the influenza epidemic,¹⁵⁴ and succession to fractionated interests meant that owners held fewer and smaller interests by the end of the decade. These interests were often spread across a number of blocks; most owners retained interests in at least one block. The nature and extent of the undivided interests held by the Crown and Maori by this time also meant that owner incorporation was a remote possibility, even if it had been possible under the law. In the end, those who continued to seek an immediate end to Crown purchasing, and who sought ways to develop their remaining land, only had one option left to them: pooling their scattered interests into consolidated blocks. But the Crown had embarked on full-scale purchasing in 1915 to obtain large areas of land for settlement, timber milling, and watershed conservation. From its point

150. Bassett and Kay, ‘Ruatahuna’ (doc A20), p 118; Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 210

151. Bassett and Kay, ‘Ruatahuna’ (doc A20), pp 117–118

152. Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)), p 224

153. Tutakangahau to Native Department, 1 April 1919 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp 121–122)

154. Campbell, ‘Land Alienation, Consolidation and Development’ (doc A55), p 30

of view, any consolidation of interests would have to achieve those objectives or else it would be a backward step. So, it was with these objectives in mind that C B Jordan, the Under-Secretary for the Native Department, developed the first proposal for a consolidation scheme in the reserve.

14.5.3 November 1919 – May 1921: why Crown and Maori views on consolidation diverged

Jordan made his proposal in the context of the first serious deliberations within Government circles, since Herries had decided to pursue purchasing to its limit, about how the Crown would extract its land from the reserve. In September 1919, Jordan asked Bowler for a summary of all the Crown's purchases because the Government now aimed to partition out its interests. Bowler once again advised to delay any action, as further interests could be acquired over the summer months.¹⁵⁵

Jordan had been mulling over his options for some time. In December the previous year, he told the Under-Secretary for Lands that 'partition will be necessary before any portion of these blocks can be proclaimed Crown Land', though such partitions would be some time off.¹⁵⁶ This was a position he had maintained since Crown purchasing had resumed in 1915. But during 1919, the possibility of a consolidation scheme was placed on the table, which might have been prompted by the recent completion of the Waipiro scheme on the East Coast. Herries had clearly been contemplating this option, since he had noted that the General Committee might be required to assist in implementing consolidation when he commented on Te Pouwhare's petition in August 1919. Ngata also later maintained that Herries 'always favoured consolidation.'¹⁵⁷ But what prompted Jordan's response was the information provided by Bowler. There were, Bowler said, 'a large number of blocks in which a comparatively small proportion of the interests is still outstanding.'¹⁵⁸ The much-unfavoured 'chequer-board' district was still a likely prospect if a partition of interests was pursued through the court: the Crown had not acquired all of the interests in even a single block, as Bowler had accurately predicted in 1915. Jordan understood that the only way to turn the interests acquired by the Crown into a large block or blocks was by consolidating its interests, an approach that up to this time had only been considered as a solution to the problems that individualisation posed for Maori owners.

Jordan set out his thinking in a four-page memorandum to Bowler. The primary objective of pursuing consolidation, Jordan revealed, was for the Crown to obtain its land: 'it is proposed to proceed with a consolidation of the Crown's interests in the Urewera before the partitions take place'. As further evidence of this intention, Jordan described the purpose of a consolidation scheme as both a culmination of the Crown's purchasing programme and a possibility of extending it further.

155. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 224

156. Native Under-Secretary to Under-Secretary for Lands, 6 December 1918 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), pp 964–965)

157. Ngata, 16 March 1921, NZPD, vol 190, p 155

158. Jordan to Bowler, 6 November 1919 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 102)

Jordan set out these dual purposes in stark terms: 'It is hoped that a consolidation of the Crown and Native interests in the Urewera will not only permit a large area to be proclaimed Crown land, but will greatly reduce the volume of further purchases by the Crown in that District.' The consolidation of the interests of Maori owners was primarily considered in terms of the second objective: individuals with interests across a number of blocks would be encouraged to consolidate these interests into one block so as to 'greatly simplify future purchases or future partitions'.¹⁵⁹ This was a fundamental reconsideration of the original purpose of consolidation schemes as envisaged by the Stout–Ngata commission, brought about by the introduction of the Crown into the equation. Jordan repeatedly returned to the dual objectives of pursuing consolidation: first, for the Crown to extract its interests in large blocks in the land it wanted and, second, to combine Maori owners into new consolidated blocks in order to facilitate future purchases in the district.

Jordan expanded on these purposes by explaining how the scheme would be designed and implemented. In accordance with existing statutory provisions, the Native Minister would make an application to the Native Land Court to carry out a scheme. But whereas the Stout–Ngata commission had envisaged that schemes would be carried out by the owners with the assistance of special officers,¹⁶⁰ Jordan proposed that most of the work would be carried out by the Native Land Purchase Office in consultation with the commissioner of Crown lands, Auckland. This was so that the land chosen for Maori owners would not prejudice the Crown's plans for its award. Jordan envisaged that Maori owners would be placed in one of either three or four blocks that would be selected from a range of different types of land: low-value land in the watershed, middle-value land, and high-value land (where owners would receive less but they 'would be much nearer to roads and existing settlement, and would have a chance of settling on the land [themselves]'). After the 'trial' scheme had been submitted to the court, 'the Purchase Officer should have a conference with the remaining non-sellers and endeavour to have a friendly arrangement with them as to which blocks their interests shall be put into.' Individual owners would be given the choice of going into one of the three or four blocks.¹⁶¹

It was unclear, however, whether the law allowed for this kind of consolidation scheme, in which interests would be arranged as between the Crown and Maori owners rather than just among Maori owners. The Government had just passed the Native Land Amendment and Native Land Claims Adjustment Act 1919, which made provision (in section 3) for the inclusion of 'any land owned by a European' in a consolidation scheme.¹⁶² Nothing was said of Crown land, or of undivided,

159. Jordan to Bowler, 6 November 1919 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp102–105)

160. Stout and Ngata to Governor, 18 January 1908, AJHR, 1908, G-1, p 5

161. Jordan to Bowler, 6 November 1919 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp102–103)

162. 'European' is defined in the Native Land Act 1909 to mean 'any person other than a Native, and includes a body corporate' (section 2). A further amendment in 1923 allowed for the inclusion of 'any land owned by the Crown or by any European' (section 6).

unpartitioned Crown interests in Maori land; but Crown counsel suggested that the Government ‘contemplated that such powers might be required by this time’, especially given the Act was passed the day before Jordan wrote his memorandum.¹⁶³ It is possible that Jordan believed the 1919 Act allowed the Crown to carry out a scheme along his proposed lines because the reserve was still Maori land in which the Crown held undivided interests. If this was the case, it was not until much later that he and other officials realised neither this amendment nor any other legislation was sufficient, and that special legislation was required.

Jordan’s proposal received broad support from other Crown officials concerned at the situation in the reserve. Bowler responded with cautious optimism, describing the plan as ‘practicable to a limited extent’. In his view, the biggest obstacle would be those owners who had ‘hitherto refused to sell on any consideration’: ‘great care will have to be taken if no injustice is to be inadvertently done to them’. But Bowler recommended delaying the implementation of the scheme until the end of the summer period, by which time he expected to have acquired the remaining interests of those willing to sell. Then, in April or May, he could work with ‘a couple of the Urewera chiefs’ in Auckland or Whakatane to arrange which land they would take up.¹⁶⁴

But for Bowler, consolidation should only be an option for absolute non-sellers. He had never shrunk from proposing compulsory acquisition of Maori interests in UDNR blocks and he now came up with a new idea for reducing the number of remaining Maori owners. He suggested that those owners who had already sold some of their interests should be given a period of time to make a ‘formal objection’, after which ‘their interests would automatically revert to the Crown’. In particular, this would ‘clean up’ the interests of owners who could not be located by purchase agents. These involuntary sellers would only get paid for their interests if they came forward and approached ‘some Government official’ for payment. In Bowler’s opinion, this would require some ‘highly contentious legislation’ but was ‘not without precedent’.¹⁶⁵ The point, of course, is that more punitive options than seeking agreement to a consolidation scheme were proposed but not acted upon by the Crown.

Yet, Bowler also conceded that Jordan’s scheme,

complicated though it is likely to prove, may be the only practical way of consolidating the blocks, and may, to some extent, overcome a position which should never have been created. – I refer to the inclusion of all the owners in blocks scattered through the whole district.¹⁶⁶

163. Crown counsel, closing submissions (doc N20), topics 18–26, p 9

164. Bowler to Jordan, 11 November 1919 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)(i)), pp 938–939)

165. Ibid

166. Ibid, p 939

This scattering of individual interests, of course, was the product of the work of the Urewera commissions and the Native Appellate Court, although subsequent Crown purchasing had greatly exacerbated the situation. While it reflected the distribution of customary rights in the broadest sense, the customary arrangements (as we said in chapter 2 and again in chapter 10) were never intended to reflect individual interests independent of hapu collectives and traditional forms of authority.

Jordan also received advice from Skeet, who agreed that the Crown should proceed with a consolidation scheme rather than seeking a partition of its interests through the court. But Skeet recommended that the Crown delay action until a 'comprehensive roading scheme' had been prepared, which in turn should wait until Bowler had completed his final push over summer to acquire the last interests. As commissioner of Crown lands, Skeet referred to roads that would service the Crown's award: 'The divisions of the land should be made on proper settlement lines; and not with the usual Land Court method of drawing an arbitrary line from point to point to enclose a certain area.' His planned investigation of possible road lines was for the purpose of the Crown's settlement objectives.¹⁶⁷

Bowler's final purchasing drive took place following the publication in the *Kahiti* of the last in a series of 'non-seller' lists in November 1919. He began at Whakatane during a land court hearing in December. In February 1920, he reported that he had attended a large hui, but it had yielded disappointing results. Yet, he still aimed to 'comb out the district pretty thoroughly with the view to, later on, submitting a consolidation scheme'.¹⁶⁸

Maori owner resistance reflected their increasing insistence on their own objectives being met. They still sought an end to purchasing and the immediate clarification of which land was in their ownership so that economic development could proceed. By early 1920, however, what had changed was their awareness that the Crown was contemplating a consolidation scheme to separate their interests in the reserve from its own. At this time, Maori owners latched on to the idea of a scheme because it seemed to fulfil the range of objectives for which they had been agitating since 1917. It is likely they were influenced by the recommendations of the Stout–Ngata commission and news of the scheme that was recently completed on the East Coast. Based on this evidence, consolidation schemes seemed to offer the best means to secure their remaining land, and thus chart a path to development, both of which the Stout–Ngata commission had tied to the revitalisation of Maori communities.

These views were strongly expressed during a tour of Te Urewera communities by the Minister of Lands, David Guthrie, in February 1920. Guthrie's visit was made in connection with plans to open the reserve for settlement, rather than as

167. Skeet to Brodrick, 18 November 1919 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 106–107)

168. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p166

an initial test of the people's support for a consolidation scheme. Maori owners seized the opportunity to tell the Minister that it was time to have their remaining lands confirmed to them. The summary notes of the first hui at Ruatahuna, on 18 February 1920, contain the same mix of ideas as the earlier petitions from 1918 and 1919. Owners were still concerned that the partition of the Ruatahuna block had not been completed, and said as much to the Minister. They also wanted the cost of the survey of the blocks to be remitted. Reflecting the bind that the defeat of the UDNR Act had left them in, they asked for the restrictions on the alienation of land to be lifted so they could 'deal with individuals or companies interested'; but they also wanted committees to be established to manage the Ruatahuna lands. Finally, they expressed their support for an exchange of land 'so as to enable them to consolidate their interests'.¹⁶⁹

At Ruatoki, on 20 February 1920, Te Pouwhare discussed consolidation in the context of the needs of soldiers who had returned from the First World War, possibly because of the recent attention given to returned soldier settlement in the press. He said the people wanted to set aside some land for 'our returned soldiers'. In addition, 'we would like their interests in the block consolidated so as to give them one piece'. At both hui, Guthrie said that the idea of consolidating the people's interests was 'a sensible one'.¹⁷⁰ Guthrie also later reported on a request made by the Maori owners at Ruatahuna to improve a 'bad track' between there and Maungapohatu, as it had proved difficult to carry food supplies across the track. At Ruatoki, owners repeated earlier requests for an arterial road to be constructed up the Whakatane Valley to Ruatahuna.¹⁷¹ Maori owners clearly had growing expectations about how consolidation might lead to economic development and knew that it would need to be accompanied by roads.

Te Whaiti, however, was once again an exception. Maori owners of the Te Whaiti blocks requested a partition rather than a consolidation scheme, and the Crown also had sought a partition in 1917 (and its application had not been dealt with). Wharepapa Whatanui told Guthrie that his people wanted their land to be partitioned out from the Crown's. 'At one time', he said, they 'used to earn money by splitting posts and selling them, but since the sale of the native lands had started, the Government had stopped the selling of the timber.' An immediate partition of interests would allow them to 'carry on with their industry'. Whatever mechanism was chosen, it is clear that the Te Whaiti owners wanted to escape from being co-owners with the Crown as soon as possible. Guthrie said it was the Government's aim to have the land partitioned 'as early as possible with a view to opening up the Urewera lands'.¹⁷²

169. Notes of native deputation at Ruatahuna, 23 March 1920 (Bassett and Kay, supporting papers to 'Ruatahuna' (doc A20(c)), pp 53-55)

170. Notes on native deputation to Minister of Lands at Ruatoki, 25 March 1920 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), pp 931-933)

171. Cleaver, 'Te Urewera Roads' (doc A25), p 43

172. Notes on native deputation to Minister of Lands at Te Whaiti, 23 March 1920 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 1019)

But partition was no longer on the Crown's agenda, and this proved to be the case when the Government's 1917 application came before the court in July 1920 at Whakatane. Both Bowler and Jordan continued to oppose partition, although for different reasons: Bowler wished to continue purchasing, whereas Jordan had consolidation in mind. In May 1920, Jordan told the Department of Lands and Survey that a 'general scheme for consolidation of interests in the Urewera blocks has been prepared'.¹⁷³ As Boast observed, 'the last thing the Native Department wanted was a partition'. No Crown representative was present when the application came before the court. Upon discovering this fact, Herries asked why the Crown had made the application in the first place. The Native Department advised him that the court had no jurisdiction to hear a partition application because its jurisdiction had been revoked in 1916 (though in fact the application had not been made until after that, in 1917). T N Brodrick, Under-Secretary for the Department of Lands and Survey, advised that the Government should restore the court's jurisdiction, but Bowler continued to assert that more interests could be purchased and that any court action should be delayed further. From this point, both departments appear to have abandoned the idea of a partition for the Te Whaiti lands, which were instead included in plans for a general scheme of consolidation.¹⁷⁴

Guthrie's visit to the region focused greater attention on the reserve from the wider New Zealand public, which began to place added pressure on the Crown to obtain useable land in return for its investment. The *New Zealand Herald* at first criticised the Department of Lands and Survey for commencing plans for a scheme of settlement and roading too quickly (having apparently 'grown tired of waiting for the Native Department to purchase the Maori interests in the Urewera'). Such early action – which in fact remained in the planning stages – would only serve to increase the prices paid to Maori for their remaining interests. But the editorial reflected extravagant understandings of the potential uses for the land, particularly for settlement. Te Urewera was 'primarily pastoral country', and should be

developed on a bold and comprehensive plan which envisages far more than the native reserve which is the Urewera Country of the politician. . . . If it were economically developed and opened for settlement on fair terms it would offer something more than a competence to thousands of returned soldiers and civilians.¹⁷⁵

Even in their wildest dreams, officials had never expected to settle thousands of farmers in Te Urewera.

By April 1920, the *Herald* was criticising the Government because none of the reserve had yet been 'made available for European settlement'. Following his visit, Guthrie was asked in Parliament what action was being taken to rectify the

173. Jordan to Under-Secretary for Lands, 21 May 1920 (Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), pp184–185)

174. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), pp184–185

175. 'Opening the Urewera', *New Zealand Herald*, 23 February 1920 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p108)

situation. He said that the Crown's interests would not be located until the preliminary road-line surveys had been completed, and these would not take place until 1921.¹⁷⁶

Bowler soon reported that this increased focus on the reserve was affecting his ability to purchase interests from Maori owners: 'The recent visit to the district of the Hon Minister of Lands, and the great amount of publicity which it received, are, I am afraid, responsible to a very large extent for the increased reluctance to sell which the natives are now displaying.' Bowler's response was certainly an attempt to justify his growing failure to purchase remaining interests. But while he had given up on the idea that the Crown could acquire these interests through compulsion, he was not yet prepared to advise his superiors to proceed with a consolidation scheme. He remained stubbornly wedded to the idea that he could overcome owner resistance: 'it only remains to induce them to sell'.¹⁷⁷

But by mid-1920 – with public criticism growing – Department of Lands and Survey officials were increasingly nervous about the position in the reserve. At the end of August, Skeet instructed RJ Knight – a 'Native Land Draughtsman' in the Department of Lands and Survey – to suggest the shape of a plan for consolidating Crown and Maori interests. Skeet told Knight he was 'afraid the Urewera may be bungled unless we can save the position'. He added: 'The consolidation of native interests in one or more blocks would be a good thing if the natives would agree'.¹⁷⁸ Within a few days, Knight had developed a series of preliminary proposals, which he presented to Jordan and Brodrick on 1 September in Wellington. Knight's plan involved the remarkable suggestion that legislation be introduced allowing the Native Land Court to cancel title orders in all blocks except Maungapohatu, Ruatahuna, Tarapounamu–Matawhero, and Te Whaiti, where the original blocks could be awarded in part or whole to the Maori owners. All the other blocks in the north of the reserve would be combined 'to enable the Crown to obtain an award of all the interests acquired in one composite area'. Brodrick agreed that this was the best approach, because 'the old magnetic surveys of the said blocks are useless for title purposes'.¹⁷⁹ Knight's plan was a significant development: from this starting point he soon became the central figure in the Urewera Consolidation Scheme.

Although the increased public attention to the reserve prompted Lands and Survey in their planning for a consolidation scheme, Maori owners simply strengthened their existing calls for a halt to purchasing and for a process that would define their respective lands. In May 1920, Te Pouwhare asked Herries to allow the court to partition interests in the Parekohe and Whaitiripapa blocks, so as to 'end the present bickerings and disputes'. The owners of the Parekohe block alone were 'disputing amongst themselves most seriously'. He spoke to his repeated

176. Campbell, 'Land Alienation, Consolidation and Development' (doc A55), p 34

177. Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 166

178. Skeet to Knight, 28 August 1920 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 48)

179. Brodrick to Native Under-Secretary, 1 September 1920 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 49)

efforts over the previous years: 'For my own part, I feel that I have kept you posted up about the position; and as I have exhausted my strength, I look to you for light.'¹⁸⁰ In October, Bowler was visited at Taneatua by what he described as a 'very representative deputation' of leaders from a range of Te Urewera communities, including Ruatahuna and Maungapohatu. 'It is quite evident', he said, 'that there is a lot of opposition to further sales'. Bowler once again blamed opposition on recent reports in the press, which suggested that the prices paid to Maori were too low: 'The natives asked that the Government should now abandon further operations in the direction of the purchase of interests, and that the Crown should move to have its own interest, and the interests of the non-sellers, consolidated.'¹⁸¹

Bowler spoke of the deputation's approach as a new development, though, as we have seen, Maori owners had been expressing their opposition to Crown purchasing in a clear and consistent manner since 1917. Bowler told the deputation, however, that 'there were a number of scattered interests still outstanding, and that it would be to the advantage of all parties if these could be dealt with by purchase'. Then he introduced the possibility that if there were a consolidation scheme, the owners would have to meet substantial costs: 'all land would probably have to bear its proportion of costs in regard to surveys and road formation.'¹⁸² This was a new proposition that must have given the deputation pause for thought, and its introduction by Bowler at this point is surely significant for what happened later (if he was understood and believed).

Bowler was by now fighting a rearguard action. He indicated he was still only willing to go along with a partial consolidation scheme: the northern blocks should be dealt with in 'a limited consolidation' first, 'leaving the more remote blocks to still be dealt with by purchase as opportunity offers.'¹⁸³ In early 1921, he prepared to return to Te Urewera to conduct his final push to acquire interests. Although he did not anticipate much in the way of results, he thought it was 'very necessary that the whole district should be "combed-out" as thoroughly as possible during the next couple of months'. This would be difficult, however, because 'at the present time the non-sellers seem to be pretty well united in refusing to sell at the prices offered'. He was now very aware that Maori wanted a consolidation scheme and he attributed this to a wish for greater concentrations of interests which they could then sell at higher prices; there is no evidence for this interpretation, which reflects Bowler's hopes rather than Maori intentions. It also reflects, however, Bowler's understanding that consolidation (or, for that matter, court partitions) should result in greater certainty of title for both seller and buyer, more clarity as to what areas of land were being sold, and a fresh valuation of the new title, all of which was likely to increase the prices he had to pay. In any case, Bowler now saw

180. Te Pouwhare to Native Minister, 10 May 1920 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 1173)

181. Bowler to Jordan, 15 October 1920 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), pp 50-51)

182. *Ibid*, p 51

183. *Ibid*

a stalemate emerging and he finally recommended that the Native Minister organise a meeting with the ‘principal natives’, the purpose of which would be to arrive at an arrangement over ‘the ultimate settlement of this country.’¹⁸⁴

In February 1921, even as Bowler was beginning to give way, Apirana Ngata led a parliamentary delegation on a visit to Ruatoki. The delegation consisted of Ngata, KS Williams (Bay of Plenty), WS Glenn (Rangitikei), WD Lysnar (Gisborne), and FF Hockley (Rotorua). By this time, Ngata was no longer a Minister in the Government, but he remained in Parliament as the member for Eastern Maori. The *Whakatane Press* reported that Ngata ‘had arranged the meeting so that some of the members of Parliament should be familiar with the views of the Maoris of the Tuhoe.’¹⁸⁵ The account of the hui at Ruatoki suggests that Ngata and Maori leaders had previously conducted discussions about a consolidation scheme, and they had arranged this hui to develop the concept.

The hui took place at Ruatoki South, where the wharenuī had been ‘beflagged with streamers bearing the names of the sections of the tribes represented’. After an opening address from Rakuraku Rehua, Te Pouwhare spoke to the main purpose of the meeting, summarising his recent efforts to bring about an end to Crown purchasing: ‘We desire that the interests of the Government and those of the Maori be consolidated and defined, that each may know what is theirs.’ Ngata then introduced Fred Biddle (Erueti Peene) to the delegation as a representative of ‘the younger people’. Biddle addressed the delegation on the subjects of economic development and modernisation. His speech also emphasised the same ideas that Tuhoe petitioners had been expressing for several years. Alluding to Crown purchasing and the defeat of the UDNR Act, Biddle noted that it would have been better if the parliamentary delegation had visited earlier, when their lands were still their own. He emphasised the need for the Crown to proceed quickly with a consolidation scheme, because the people had been unable to develop their land. They were ‘not the acknowledged owners of any piece of land’, and had no access to development finance. ‘We wish,’ he said, ‘to know where our land is.’¹⁸⁶

The parliamentary delegation’s visit to Ruatoki encouraged further discussions among officials about ending the Crown’s purchasing programme and proceeding with a consolidation scheme. KS Williams – who was among the delegation – discussed the outcomes of the recent hui in his maiden speech to Parliament in March 1921. Williams argued that the stalemate could only be resolved by sending a high-powered delegation of Ministers to negotiate the division of land between Maori owners and the Crown, and by the consolidation of Maori interests. Further consideration, he said, was also required for the Waikaremoana block: the bush around the lake needed to be preserved so that a hydro-power scheme could go ahead, and for scenic purposes.¹⁸⁷ Ngata agreed: such a delegation was required

184. Bowler to Jordan, 6 January 1921 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), pp 52–53)

185. ‘The Urewera Lands’, 19 February 1921, *Whakatane Press* (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(b)), p 559)

186. *Ibid*

187. KS Williams, 14 March 1921, NZPD, vol 190, pp 44–46

Fred Biddle's Speech to the Parliamentary Delegation, February 1921

OUR elders have greeted you, in accordance with the custom of our race, in befitting language. I, on behalf of the younger generation, greet you also and express their gladness that you were able, as a representative body, to come to the Urewera. I am sorry your visit is so belated. Our fathers have passed or are passing away; it were better if you had visited us ten or fifteen years ago, when our tribe was as yet compact and our lands our own. It would have been of more benefit to the Tuhoë. Even now, much as we hope for from your visit, it will have been in vain if a Commission is not quickly set up to enquire into our grievances and to consider the request for consolidation of the respective interests of the Crown and the Natives. We wish to know where our land is. That is important. The young people want to see some document evidencing their titles, to have something tangible to indicate their ownership of a defined piece of land. I am sorry you have come now when you see the nakedness of our land; we regret that it is not cultivated. There is a twofold reason. (1) We are not the acknowledged owners of any piece of land – we have no title in the pakeha sense. (2) Even if we had a title we have no money and the banks and other lending institutions will not lend to Maoris. We are able to do great things for other people in the country, when we have had the opportunity we have done great things for ourselves. Greater progress would be visible in the Urewera if the young men could be entrusted with the work.'

Fred Biddle¹

1. 'The Urewera Lands', 19 February 1921, *Whakatane Press* (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 559)

to negotiate both the exchange of land in the blocks in which the Crown had purchased and the acquisition of the Waikaremoana block from its owners, who Ngata said were in favour of exchange. Ngata explained that a scheme of this nature was necessary because Maori owners had their interests 'spread over twenty, or thirty, or even forty blocks', and the owners were themselves 'scattered all over the Dominion – at Auckland, Wellington, Gisborne, or wherever subsequent migrations have led them'. They were in a worse position than the Crown, because they were in no position to use the land: 'It is a feasible proposition to consolidate these scattered interests. It may take time.'¹⁸⁸

Facing increasing public scrutiny, the Crown was compelled to act on Williams' proposal, especially when a scathing criticism by retired Native Land Court Judge RC Sim was published in the *New Zealand Times*. Sim pointed out what should have been evident to any official or politician by now (if it had not been before):

188. Ngata, 16 March 1921, NZPD, vol 190, pp 152–156

the Crown's purchasing programme in the reserve was deeply flawed. The Crown had now incurred interest charges of £55,000 on the funds it borrowed for land purchase, that it had no hope of recouping until this land was placed on the market, which could still be two years away. Moreover, the Crown's method of purchasing and its objectives 'is an outrage on the elementary rules of successful business':

Yet the Government had to its hand a system which, with slightly extended operation and business-like application, would have met all demands. The difference would have been that negotiations and arrangements would precede and not follow expenditure; interest would not be lost on the money, expenses would be greatly reduced, and much time would be saved. There would have been avoided this shameful delay in opening up the land for settlement . . . It seems absurd in these days that in order to acquire this land for State purposes the Government should be obliged to get 10,000 signatures and make 10,000 payments, only to find in the end that much more is required to be done before the Crown areas can even be located and defined.¹⁸⁹

Jordan responded to Sim's criticisms in a briefing to the new Native Minister, Gordon Coates, who had recently taken up the portfolio after Herries had resigned for health reasons. 'The system that he condemns, Jordan said, 'is the system that has been in operation since the purchasing of Native land first began, and all Governments have been equally responsible in the matter.' The reserve, he said, was the example 'least suited for his purpose.' Purchasing in the reserve had been 'the most difficult undertaking' because owners were 'keenly averse to selling', and it had been impossible to 'purchase by Assembled Owners Meetings.'¹⁹⁰ This statement was remarkable both for its acknowledgment that Maori did not wish to sell and for its complete failure to acknowledge that the Government had deliberately decided to purchase from individuals, sidestepping the General Committee, the self-governing institution which by law it should have purchased from. The Crown could not of course purchase from 'assembled owners' because the reserve was subject to its own legislation, and its own Committee to represent owners in any dealings over land or other matters. But Jordan did acknowledge the necessity of ending the stalemate. As the Government did not contemplate the compulsory acquisition of the remaining interests, the only solution was to proceed with a consolidation scheme: Jordan advised Coates to prepare for a scheme by conducting a high-level ministerial visit to the region.¹⁹¹

Coates and Guthrie were prepared to travel to Ruatoki to make a formal proposal to Maori owners. By this time, Maori leaders had maintained a constant refrain for several years, seeking an immediate resolution to the unsatisfactory

189. 'Native Land Purchase – Strong Condemnation', 16 March 1921, *New Zealand Times* (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 431)

190. Jordan to Coates, 23 March 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), pp 432–433)

191. O'Malley, 'Waikaremoana' (doc A50), p 82

situation in Te Urewera. By May 1921, the Government was finally prepared to respond. Its own priorities had changed: in that period, the number of interests Bowler was able to acquire slowed to a mere trickle, the survey of road lines had commenced, and – perhaps most significantly – public pressure was being applied to the Government to show something for all the money that had been spent purchasing interests.

14.5.4 What understandings were reached between Maori owners and the Crown about the proposed consolidation scheme at the Ruatoki hui, May 1921?

By the time of the May 1921 hui at which Maori owners were finally asked to consent to a consolidation scheme, we have established that the position was as follows:

- ▶ Consolidation of Crown and Maori interests had been proposed by officials as early as 1919, but had been put off (in accordance with Bowler's recommendation) to enable the purchase of as many more undivided individual interests as possible.
- ▶ Officials' support of consolidation was based on the belief that it would enable the Crown to concentrate its interests in large blocks suitable for settlement, while also enabling it to obtain the timber lands it wanted for milling and for watershed conservation. In other words, consolidation was seen as the means of finally securing the Crown's objectives in purchasing; any benefits to Maori owners would be only incidental.
- ▶ Maori owners in the reserve had literally no other choice but to agree to consolidation, because all other options were closed to them: they could not get the Government's agreement to revive the UDNR committees but nor did the law allow them to incorporate; they were forbidden to partition out their interests in the Native Land Court, and denied any hope that the court would secure their kainga and most valuable possessions for them; they could not stop the bleeding of individual interests unless the Crown had sufficient incentive to refrain from purchasing; and they could do nothing with their undivided interests other than sell them to the Crown. When the Crown proposed a consolidation scheme, therefore, it was literally the only game in town.
- ▶ Having said that, the Maori communities of Te Urewera had from the outset exhibited some enthusiasm for the idea of a consolidation scheme in the hope that it might stop the endless Crown purchase of individual interests, locate their surviving interests on the ground, restore some community control, and promote their economic development (not least through settlement and roading). The exception was Te Whaiti, where the communities of owners preferred a partition of their interests in the Te Whaiti blocks, hoping to keep the Crown's designs on the valuable timber at bay, and secure their kainga and as much of the timber as possible.
- ▶ Officials, on the other hand, did not expect that consolidation would mark the end of the Crown's purchase of individual interests. Rather, they expected that consolidation would facilitate fresh purchasing by concentrating Maori

interests in fewer blocks, making them easier to buy and making it more worthwhile for Maori to start selling again.

This quite marked divergence of views and interests was not a promising basis for the seeking of agreement, because no consolidation scheme could provide for all these different and conflicting objectives. Much depended on the extent to which Ministers were willing to compromise, the degree of bargaining power available to the Maori owners, the influence and objectives of the honest broker (Ngata), and the possibility that the Ministers would not automatically accept their officials' agenda. The replacement of Herries by Coates was particularly significant in all these respects.

Coates and Guthrie arrived at Ruatoki on 22 May 1921. For this hui, which lasted a day, they were accompanied by parliamentarians Ngata, Williams, and Hockly; Lands Department officials Skeet and Knight; and Raumoa Balneavis (Coates' Private Secretary) who acted as interpreter. With increasing pressure to obtain land to meet its objectives (European settlement, timber, and watershed conservation), the Ministers were required to set out these objectives to Maori owners and to obtain a general agreement from them that a consolidation scheme would in fact take place. But as Native Minister, Coates also presented himself as a protector of the interests of Maori owners and a guarantor of justice for them. During the hui, he told the people of the standards by which he expected a consolidation scheme would proceed:

May I say that it is my aim and object to keep up the high standard set by the Native Ministers of the past? I want you to feel and believe that I am keenly interested in the native people of New Zealand. I want you to have confidence in me, feeling that I am a man who will try to do the right thing to the best of his ability, and hold the balance of justice equally between the native and the pakeha. As Native Minister my first duty must be to see that my people, the native people of New Zealand, get full justice by the Government of the day.¹⁹²

Coates was tasked with convincing people who had resisted the Crown's purchasing programme that they should agree to its proposed consolidation scheme; they were undoubtedly suspicious of the Crown's intentions, so it was necessary to emphasise the benefits that Maori owners might derive from such a scheme. But many of these benefits conflicted with the plans developed by Jordan and Knight, which had prioritised the Crown's objectives over those of Maori owners. Even so, we do not think that Coates' sentiments were merely rhetorical. He rightly characterised the responsibilities of a Native Minister towards the Maori people, and it is important that the Crown's actions (and the scheme) be measured by the standards that he acknowledged at this hui.

Those Maori owners who were present at the hui maintained a consistent line: a consolidation scheme was needed immediately to bring an end to Crown

192. 'Disposition of Urewera Lands', minutes, 18 June 1921, pp 4–5 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 126–127)

Unknown (ATL, 1/2-036287-F)



Joseph Gordon Coates. After being appointed Native Minister in 1921, Coates worked to obtain Maori consent to the Urewera Consolidation Scheme. He assured Maori owners at a key hui at Ruatoki that his first duty as Native Minister was to ensure that Maori received full justice from the Government. But the Government had its own objectives. From its point of view, while it would be beneficial to Maori to achieve new titles to small farm holdings and to be severed from ancestral ties to the land, it would also serve Crown interests if it secured as much land as possible for settler sheep farms, timber milling, and watershed conservation.

purchasing so they could begin developing their remaining land unhindered. Although the records are slight, it does not appear that the hui was publicly notified, and it is likely that it was attended mainly by Tuhoe leaders. The Ngati Whare and Ngati Manawa owners of the Te Whaiti blocks, and Ngati Ruapani and Ngati Kahungunu owners of the Waikaremoana block, may have been there but it is impossible to know.

Tuhoe leader Fred Biddle opened the proceedings, repeating many of the requests Maori owners had made in recent years: the Crown's purchase of interests in the Ruatoki blocks should be finalised; the interests of Maori owners and the Crown should be consolidated; 'a road should be laid out through these lands'; the exchange of Maori and Crown interests in different blocks should be enabled; up-to-date valuations should be made; and land should be set aside for those Maori who had been made landless. But Hori Hohua also quickly reminded the Ministers that Maori owners found themselves in their current circumstances because of the acts of successive Governments. Significantly, Hohua did not begin with the UDNR Act, but rather with the Treaty of Waitangi, which he believed had enabled the peoples of Te Urewera and the Crown to forge a relationship. The promise of both the Treaty and the UDNR Act, however, had been undermined during Herries' term as Native Minister, through Crown purchasing and the targeting of individuals. Hohua admitted his own responsibility for having sold some of his interests. But he also described the protections that were originally in place, when land sales were 'undertaken under the mana of the general committee', which had since

Hori Hohua's Speech to Coates and Guthrie at Ruatoki, May 1921

OUR people have been living for the last eighty years under an arrangement made between Queen Victoria and the chiefs of the old days. I know that word is still alive, and that is the reason I stand before you, the successor to the Hon Sir William Herries, today. In 1895, the Native Reserves [UDNR] Act was passed for the Tuhoe people. That special act was granted to the Tuhoe people by the Right Hon Mr Seddon in 1896. It gave the land absolutely to the Tuhoe people to do what they liked with. The matter was left to Sir James Carroll in the Government of Sir Joseph Ward. He adhered to the principle that the Tuhoe people should look after their lands in the Tuhoe territory. Four hundred acres were set aside as an accommodation reserve. He stated then that no other persons would be able to take land except by permission of the committee under that Act. Sir James Carroll, Mr Ngata and the Right Hon Sir Joseph Ward went out of power. Then came the Massey Government, with the Hon Sir William Herries as Native Minister, and now you hold that office. During the term of Sir William Herries that power was taken from us and hence the taking of the land at Ruatahuna, where our ancestors are buried. During the Ward Government Sir James Carroll was Native Minister. They valued the land here at £1 per acre. That was the

been removed. He was now willing to refund the purchase money: 'You give me my ten acres back, and I will give you £1 for it.'¹⁹³

Ngata played a crucial part at the hui by speaking to Maori owners about what they might expect to receive from a consolidation scheme. The outcome of the hui, he said, should be an agreement about 'the basis upon which the consolidation should proceed'. Maori owners, he proposed, should 'concentrate their interests round about the settlements they now occupy': for example, 'the Ruatahuna natives will endeavour to consolidate their interests which are scattered as far as Waikaremoana'. And because of the nature and extent of Crown purchasing, the scheme should prioritise the interests of Maori owners: 'The Crown has such a large area purchased that it is for the Government to concede settlement blocks to the non-sellers around their existing kaingas.' He also said that the surveys and valuations of the existing reserve blocks could be used as part of the scheme. Yet it would be 'quite fair', he said, if the Maori owners made a contribution toward the cost of constructing the roads, 'because I don't think any community will benefit to the same extent as they will'. Finally, he proposed that 'a tribunal representing the two Departments, Lands and Native, should come and carry out a scheme with

193. 'Disposition of Urewera Lands', minutes, 18 June 1921, pp 1–3 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b), pp 123–125)

first purchase. It was undertaken under the mana of the general committee. At that time it was generally decided what land should be purchased. But today it is the desire of each person that he should sell. I had ten shares in the Taneatua block, and Herries gave me £1 for it. I sent in an objection, and this letter I hold in my hand is the reply. I asked that the land should be revalued, and they replied that it was too late. I still adhere to the statement made in the petition. It was stated that it was too late, but supposing I (Hori) killed a person, and it was not found out for two or three years. Would it be considered too late? Sir William Herries has gone away and left me by myself, and therefore I plead with you. Ten shares were taken away from me, and I got £1 for them. It was partly my own fault because I sold my own land. So far as the application by the other speaker for land for landless natives is concerned, don't you give it to them. They themselves sold their land. You give me my ten acres back, and I will give you £1 for it.'

Hori Hohua¹

1. 'Disposition of Urewera Lands', minutes, 18 June 1921, pp 2–3 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 124–125)

them.¹⁹⁴ These statements were in keeping with the general process and objectives of consolidation as earlier proposed by the Stout–Ngata commission.

But if Maori owners thought Ngata had outlined 'the basis upon which the consolidation should proceed', Guthrie's speech that followed would only have left them confused. Guthrie voiced his disagreement with a number of Ngata's proposals. Although the Government was 'quite prepared to do what is fair', it had 'great difficulty' with the idea of consolidating the interests of Maori owners around their existing kainga. Instead, it was more 'sensible' for Maori owners to have their interests consolidated in four blocks, one each to the north, east, west and south – essentially the same solution that Jordan had outlined in November 1919. The Crown's main objective remained the opening of land for settlement, and the interests of Maori owners were essentially ancillary to this: 'We are out to develop the whole Urewera block, and we can only do that on business lines.' Guthrie agreed with Ngata that it was 'only fair' that Maori owners make a contribution toward the cost of road construction, but that they would have to wait to 'have some idea where the roads are going'. Guthrie did not reveal that the roads were planned primarily to service European settlers. He also suggested that the scheme would not be implemented by officers working with Maori owners: rather,

194. Ibid, pp 9–12 (pp 131–134)

‘we will set up a tribunal to consult with the Natives and bring forward a recommendation to the Government, which . . . the Government will carry out.’¹⁹⁵

In concluding the proceedings of the hui, Guthrie asked the assembled owners to give their assent to the proposed scheme. Coates cabled Guthrie (who had travelled to Rotorua) the following day, informing him that the people assembled at Ruatoki ‘affirmed [the] principle of consolidation’. The ‘initial steps’ for the scheme would occur at another hui at Ruatoki, which they had asked to be held immediately; it was set down to take place on 18 July.¹⁹⁶

Admittedly, the May hui had been very much been a preliminary one. Coates was a new Native Minister, and Ngata doubtless thought it important that he should meet Maori owners in an attempt to break the stalemate that had developed between them and the Crown. But the Ministers also set out to obtain the owners’ agreement, which Coates claimed to have achieved. It is difficult to conclude, however, that Maori owners were in a position to agree to any more than the ‘principle of consolidation’ as they already understood it. Ngata and Guthrie gave markedly differing perspectives on a number of crucial issues. Maori owners might have thought that Ngata was representing their position, but at the hui he was not their representative in any official capacity (as he admitted himself); he offered his services to this end in any future negotiations. The speeches contained a range of views; there was no meeting of minds that could have provided what Ngata had described as the ‘basis upon which the consolidation should proceed’. This would have been less significant had the Crown not taken the owners’ agreement as a licence to develop its own plans for a scheme (which, not unnaturally, prioritised its own objectives), and had the next hui been confined to establishing the ‘initial steps’ for a consolidation scheme. But it was not, as we explain below.

Maori owners would have come away from the May hui unenlightened as to how their interests would be pooled, how their land would be chosen, or what the potential costs involved were; all they knew was that another hui had been planned. Ngata said that they would retain their current settlements; Guthrie disagreed. Ngata said the Tribunal would be set up to ‘carry out a scheme with them’; Guthrie said it would be a tribunal to ‘consult with’ them, after which it would make recommendations that the Government would carry out. And while the owners were told that roads would be built, and that they would be expected to make some kind of contribution toward the cost of their construction, they were not informed of the likely costs. Nor did they know where the roads would go, and would have had little indication that the road lines being surveyed at that time (conducted by the Department of Lands and Survey) were planned primarily to assist in opening the Crown’s award for settlement. They would not have known what kind of titles they would receive at the end of the scheme, other than what they might have heard about consolidation elsewhere. Nor were they informed about the potential costs of surveying these new blocks, which required surveys

195. ‘Disposition of Urewera Lands’, minutes, 18 June 1921, pp 12–15 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b), pp 134–137)

196. *Ibid*, p16 (p138)

because those conducted for the UNDR blocks were considered ‘useless for title purposes’. Indeed, Ngata had said that the old reserve surveys would suffice, a point on which he had not been contradicted. Finally, the Maori leaders who were present would have come away from the hui under the impression that their remaining land would be secure to them, given Coates’ assurances; despite this, the plans of Jordan and Knight contemplated further purchases. Although Maori owners may have affirmed the principle of a certain kind of consolidation scheme that they already had in mind, they certainly did not have enough facts to give their informed consent to anything more than proceeding with a scheme per se.

On the other hand, the speeches from the Ministers did include weighty commitments to the Maori owners present, whose requests to the Crown for a solution to their dilemmas had gone unanswered during previous years. The interests of the Crown and Maori owners would soon be defined and separated, and those owners would have certainty about which of their lands they would retain. The long sought-after arterial roads would finally be constructed through their lands, mainly by the Crown but with assistance from them. The way events had unfolded up to May 1921 meant that a large number of Maori owners were already committed to the idea of consolidation before the hui even began. Those owners who had gathered to hear the speeches at Ruatoki would have been right to interpret these ministerial commitments as representing a new beginning. Yet, it is equally clear that a wide gulf had developed between the expectations of those owners and the assumptions brought to the table by the Crown. The hui at Ruatoki in May 1921 did little to dispel those expectations: divergent views were presented and no consensus was achieved. Yet, the Crown proceeded on the basis that it had received consent for the type of consolidation scheme its officials were developing.

14.5.5 How did the Crown’s plans for a consolidation scheme by May 1921 differ from an ordinary consolidation scheme?

Crown counsel submitted that the Crown proposed a consolidation scheme to Maori owners as a ‘cost-effective and practical solution for both Crown and Maori to the pepper-potting of interests within blocks’. At the time, the Crown recognised the ‘mutual benefits’ that would arise from such a scheme for both the Crown and Maori owners, as seen in Coates’s speech at the May 1921 hui, where he told the people that the Crown was ‘out for the good of both the Natives and the pakeha.’¹⁹⁷ Counsel considered that it was appropriate for the Crown to derive ‘mutual benefits’ from the consolidation scheme equally with Maori owners, who understood the benefits they would receive and gave their consent accordingly.

But the idea that a consolidation scheme could result in ‘mutual benefits’ needs to be assessed on a wider canvas encompassing the defeat of the UNDR Act and massive and illegal Crown purchasing. Ministers and officials only decided to proceed with a consolidation scheme when it suited the Crown’s objectives; they had not responded earlier to Maori owners’ calls for a halt to purchasing and a guarantee of their remaining land. Guthrie’s speech at the hui also made it clear that the

197. Crown counsel, closing submissions (doc N20), topics 18–26, pp 8, 19–20

Tamaroa Nikora's 'Principles of a Sound Consolidation Scheme'

Objective: The objective of a Consolidation Scheme is to assist the owners to realise the economic potential of their properties by regrouping and resubdivision, respecting as far as possible their existing occupations and improvements. A scheme must demonstrate that it will better the owners' circumstances or else it should not proceed.

Consultation consolidation schemes: Consultation consolidation schemes deal with private property and proper consultation is essential. Once a representative group of the owners expresses the desire for their properties to be consolidated, a study is carried out to assess the economics involved. This is then referred for the owners' discussion and general approval to proceed.

Topographical plan: A topographical plan is produced in order to describe the land and all existing occupations and improvements. This is checked by further meetings. Owners express their wishes as to relocation for consideration in the formulation of plans.

Draft scheme: A draft scheme of new subdivisions superimposed over the topographical plan is produced and referred for discussion and approval by the owners.

Valuations: Current market valuations at a common date are produced for all existing properties [and] then referred for discussion and approval of the owners. This is an absolute[ly] fundamental requirement of consolidation in order to enable the fluid and equitable transfer and exchange of interests. Major inequities

Government regarded the consolidation scheme primarily as the culmination of the Crown's purchasing programme. This was the basis of the planning that had already been conducted by the Native Department and the Department of Lands and Survey. At this stage, the main purpose of consolidation – from the Crown's perspective – was to ensure that it got full return on the money it had expended towards what turned out to be an illusory settlement programme. Thus, its plan differed substantially from the Waipiro scheme, and others that followed it, which were carried out solely with the needs of Maori co-owners in mind.

Tamaroa Nikora brought the principles of ordinary consolidation schemes to our attention in his evidence. As a professional surveyor in his younger years, Mr Nikora worked on a number of consolidation schemes, and therefore spoke with authority, providing us with both a general overview of his experience and a simplified account of the basic characteristics of most schemes. The consolidation schemes he described were essentially those developed in accordance with Ngata's principles, designed solely with the re-organisation of title to Maori land in mind. The circumstances in the reserve by 1921 were different, in that a non-Maori was

arise if this is not done. If there are any liabilities of existing properties, valuations need to be adjusted to determine their entry value into the Scheme. Valuations are then produced for the new lots created by the Scheme. This enables the circumstances of any owner to be reconciled at the conclusion of the scheme.

Accounting: A proper accounting of interests and exchanges is needed. Adjustments should be made where required (such as where the final survey of the land differs from the estimate). Where a scheme intends particular improvements to be implemented (such as roading), the cost (if it is not to be met by the Crown) needs to be carefully distributed so as to reflect the interests of the owners equally, and whether they would benefit from such improvements. In principle, the value of the overall property should be higher at the end of the scheme as compared to the beginning because of the improved title situation.

Implementation: The consolidation is then implemented and finally audited to ensure that the value of the interests of all owners at the start of the Scheme has been accounted for by relocation or other transaction at the end of the Scheme. Every effort should be made to respect existing occupation and ownership in respect of the location of interests. Where economics demonstrate that some existing owners should cede their properties, they need to be properly compensated from benefits accruing to other properties.¹

1. Tamaroa Nikora, 'The Urewera Consolidation Scheme' (doc E7), pp 4–6; Tamaroa Nikora, brief of evidence, 18 June 2004 (doc E8), pp 3–4

now co-owner in most of the reserve blocks, and the interests of Maori owners had to be both consolidated into new blocks and separated from those of the Crown. But Mr Nikora's points are nevertheless highly relevant to our analysis, because he was outlining general principles. In Mr Nikora's opinion, a sound consolidation scheme must include seven basic elements, or principles, which he summarised under the following headings: objective, consultation, topographical plan, draft scheme, valuations, accounting, and implementation (see sidebar above). The Crown did not contest any of these points.

Mr Nikora's analysis starts from the general assumption that consolidation schemes were designed to improve the land-holdings of Maori owners who had been adversely affected by the consequences of individualisation. A sound consolidation scheme would proceed only on the basis that a general consensus had been reached among the affected landowners as to the fundamental objectives of re-organising land-holdings, based on detailed and verified information – not only about the land involved but also about the full range of impacts of the possible consolidation options. In order to set the objectives and to achieve the necessary

re-organisation of holdings, the process of consolidation had to be led by the owners themselves; the role of officials – in practice – would be to assist in this process, and to map out any details required to implement the owners' decisions.

In essence, Mr Nikora told us that successful consolidation schemes not only depended on the close involvement of Maori owners in their design and implementation, but also must be for their benefit. This indeed was their sole purpose. In other words, all co-owners would be treated fairly and equally, and all ought to emerge with an enhanced land base capable of economic development. These principles are in keeping with the way that consolidation schemes were originally conceived in the recommendations of the Stout–Ngata commission and in the early legislation providing for schemes, which represented the Crown's attempt to rectify the problems created by nineteenth century native land legislation. The statutory provisions for consolidation may have left the initiative in getting a scheme off the ground with the Native Minister or the land court, and may not have required Maori owner involvement or consent to a scheme, as the Central North Island Tribunal pointed out; but the Tribunal also noted that, in practice, consolidation officials worked closely with Maori owners in the preparation of a scheme.¹⁹⁸

The principles described by Mr Nikora reflect what Maori owners might have expected from a consolidation scheme, which were in keeping with Ngata's understandings as outlined in his speech at the May hui. Maori owners in reserve blocks were no less the victims of the individualisation of title and of Crown purchasing than Maori owners elsewhere – though the UDNR Act had been designed to protect them from both. The Crown should never have embarked on purchasing on such a scale in a protected reserve. Crown counsel said that the scheme was necessary because of the 'problem of undivided interests'; but it was a problem entirely of the Crown's creation. Maori resistance to Crown purchasing meant that the vast majority of the original owners remained owners somewhere in the reserve. Not only had the Crown failed to buy all the interests in a single block, but it had barely bought out any individual owner. All these circumstances meant that the interests of Maori owners should have been placed first. The Crown owed these owners no less than it owed Maori owners in other consolidation schemes: they should secure the lands which they considered necessary for their economic development. Any benefits the Crown would derive by way of its award in this consolidation scheme should reasonably have been secondary and incidental to those of Maori owners.

Yet, as we have seen, as formal discussions began to take place in 1921, officials primarily developed proposals that put the Crown's interests first. This was a major reassessment of the original purpose of consolidation schemes, which was the product of the Crown's relentless purchase of individual, undivided interests to the point where the well ran dry, its refusal to allow Maori owners to partition out their interests, and its emergence as a co-owner in so many reserve blocks.

The test for whether it was possible for the Crown to achieve mutual benefits

198. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 729–730

with Maori owners fairly lay in the scheme's implementation: the division of the land between the Crown and Maori owners; the pooling of Maori owners' interests into consolidation groups and blocks; how the Waikaremoana block might be treated in the scheme; the survey and issuing of titles for the new Maori-owned blocks; and the construction of the arterial roads. The principles outlined by Mr Nikora can be applied to these various aspects of the scheme: a clear and transparent process to ascertain owners' objectives for the land they wished to retain, the owners' close involvement in the design and implementation of the scheme (including which land they wished to retain), a full disclosure of the costs involved and likely outcomes, and clear and transparent accounting to ensure an equality of exchange and outcomes.

14.5.6 Conclusions: how the origins of the Urewera Consolidation Scheme affect the standards by which we judge it

As will be clear from the foregoing discussion, the parties proposed two sets of standards by which we should judge the Urewera Consolidation Scheme, both of them derived from standards of the time. Crown counsel proposed that 'mutual benefits' were the key, while Mr Nikora maintained that the route to such benefits was a careful, transparent process to which the co-owners consented – on the basis of sufficient information – at every step of the way. In the next sections of this chapter, we will analyse the design and implementation of the scheme, followed by three key flow-on issues: the means by which the Crown acquired the Waikaremoana block; the question of surveys, survey costs, and certainty of title; and the extremely important matter of the arterial roads. Before doing so, however, we summarise here how the material discussed in the present section has shaped the standards by which we judge the Treaty claims on these matters.

The Crown's set of standards were derived from statements made by Ministers at the time, whether to the Maori owners of the reserve or in the form of instructions to officials. First, the Crown cited Guthrie's statements at Ruatoki in May 1921: 'We are out for the good of both the Natives and the pakeha, and if we are to administer the Urewera country to the benefit of both, then we ought to have consolidation.'¹⁹⁹ From this statement, Crown counsel argued that the mutual benefit of Crown and Maori was an appropriate standard, and one which the Crown believes that it has met.²⁰⁰

Secondly, the Crown cited Coates' statements to Maori owners at the same hui, to the effect that his 'first duty' as Native Minister was to them, to ensure that they 'get full justice by the Government of the day'. He assured them that the Crown's intention was 'not to rob or to steal but to help you move along the paths of progress'. If both sides approached consolidation with 'an open mind', then the outcome would 'help not only the native race but this country of ours, which knows no difference between native and pakeha.'²⁰¹

199. Crown counsel, closing submissions (doc N20), topics 18–26, p 20

200. *Ibid*, pp 19–24

201. *Ibid*, p 20

Thirdly, the Crown cited Coates' 'directive' to the consolidation commissioners, which will be discussed in the next section, emphasising that a 'round-the-table conference' would result in a 'practical and amicable settlement'. Any such conference and settlement would be guided by the principles of 'reasonableness and give-and-take', resulting in 'good results accruing to both sides'.²⁰²

Fourthly, the Crown cited Ngata as also embracing the concept of 'a mutuality of benefits'.²⁰³ Fifthly, Crown counsel argued that 'a large section of Urewera Maori perceived a mutuality of benefits'.²⁰⁴

For the claimants, as we discussed in the preceding sub-section, Mr Nikora proposed a set of standards derived from Ngata's consolidation schemes as they worked (or were intended to work) in the early to mid-twentieth century. These, too, were standards of the time. As we have seen, Mr Nikora's 'principles of a sound consolidation scheme' related to fair and transparent processes designed to result in a fair and equal outcome for the various co-owners whose interests were being exchanged and consolidated, leaving everyone better off than when they had started, and with a sufficient base for development.

As we see it, the Crown's standards are indeed an appropriate measurement in the sense that they were derived from the Crown's own view of appropriate standards at the time. These standards expressed Treaty principles in the language of the day. We shall return to this point at the end of the chapter, when we make our Treaty findings, but here we note that the statements made by Guthrie and Coates have obvious significance in terms of the Treaty principles of mutual benefit, the active protection of Maori interests, equity (fair treatment of interests as between settlers and Maori), partnership, consultation, and Maori autonomy, with the Treaty partners dealing with each other reasonably and in good faith. In our view, Coates and to a lesser extent Guthrie were expressing these Treaty principles in the quotations highlighted by Crown counsel. Similarly, Mr Nikora's standards speak of informed consent, the Maori right of development, and the need for scrupulously fair and honest dealings as between the Treaty partners – in this case the co-owners – in deciding the future of the reserve. As we discussed in the preceding sub-section, these standards are clearly relevant to assessing the various features of the Urewera Consolidation Scheme.

One problem with both sets of standards, however, is the underlying assumption that co-owners in a consolidation scheme should be treated equally and derive mutual benefits from the scheme. This was central to the concept of schemes as developed during this period by Ngata (and Mr Nikora's principles) and also to the Ministers' public statements and instructions to officials. If our analysis began in 1921, and if the Crown had come honestly by its shares in the reserve, then we would accept this proposition. From our discussion of events in chapter 13 and the present section, however, it must be clear that the Crown had not come by its interests honestly and should not – had the UDNR Act and the Treaty been honoured

202. Crown counsel, closing submissions (doc N20), topics 18–26, p 20

203. *Ibid*, p 21

204. *Ibid*, pp 21–22

– have been owners of half of the reserve. Thus, while there is a superficial appeal in the idea that the Crown and Maori owned half of the reserve each by 1921 and should thus have entered into a scheme designed to produce mutual benefits and equality of outcomes, we cannot accept it because the underlying reasoning is seriously flawed.

As a result, we consider that the Crown's standards of mutual benefit, reasonable give-and-take, decisions by 'round-table conference', protection of Maori interests, and justice for both Maori and (future) settlers, as derived from the statements of Guthrie and Coates, are *minimum* standards for the Crown to have met. The Urewera Consolidation Scheme should, at the very least, have met those standards. We also consider that Mr Nikora's principles for the fair treatment, meaningful participation, informed consent, and mutual benefit of the co-owners in a consolidation scheme are in their turn a minimum standard. Again, at least that much should have happened. These were the standards of the time. But in our view, the Crown should not have profited from the extremely serious Treaty breaches by which it had become a co-owner of half the reserve. This was not a situation that had created an even playing field, requiring fairness for both sides. At a higher and more appropriate standard, therefore, we conclude that the Crown should have put Maori interests first and left its own to one side until the Maori interests had been satisfied and Maori development – on the basis of what land was left to them – was ensured. Only then should the Crown have looked to its own interests and sought to secure its own benefits. This is what the Treaty required, and this is the standard by which we judge the consolidation scheme in the following sections. Sadly, as we shall see, the Crown did not meet even the minimum standards proposed by its own Ministers, nor did it meet the standards proposed by Mr Nikora for co-owners in a scheme.

This will become clear in our discussion of the design and implementation phases of the Urewera Consolidation Scheme, to which we turn next.

14.6 BY WHAT PROCESS WERE INTERESTS CONSOLIDATED AND THE LAND DIVIDED BETWEEN MAORI OWNERS AND THE CROWN ?

SUMMARY ANSWER: The Crown's original objectives for purchasing in the reserve determined the initial stages of the scheme, when many crucial decisions were reached about the division of the land between Maori owners and the Crown. Ministers and officials continued to act on the assumption that the Crown stood on an equal footing with Maori owners, by virtue of being a co-owner in the reserve, and was entitled to negotiate over the division of the land on that basis. That assumption underlay the Crown's position at the crucial hui at Tauarau marae, Ruatoki, in August 1921. This was the 'design' phase of the scheme. The Crown's representative, RJ Knight, presented a series of proposals to Maori owners which represented the Crown's objectives of acquiring sufficient land for settlement, timber, and water conservation purposes, the last of which took on increasing importance. Maori owners obtained some concessions during the three week hui, when approximately 80 per cent of the key decisions regarding the future

ownership of the former reserve lands were made. These concessions demonstrate that there was some spirit of reasonableness to the proceedings.

But Maori owners were never given a sufficient opportunity to develop their own objectives for the land they would retain, and were instead forced to respond to a series of Crown proposals that had been developed by officials responsible for promoting the acquisition of land for the Crown's specific purposes. That was the format that evolved at the hui. The Crown would make proposals it had planned well ahead and Maori were called upon to respond. Maori owners were never given the time, the access to adequate advice, or organisational networks such that they could explore their own initiatives. By the end of the hui, Maori owners had successfully organised themselves into consolidation groups that represented their last attempt to retain some form of communal ownership and ancestral connections to certain lands of their choosing. Yet they had little say in how these decisions would be implemented. They did have the assistance of Apirana Ngata (then member of Parliament for Eastern Maori), who was very knowledgeable about consolidation, but he was one man. For 2,000 Maori owners organised in 100 consolidation groups and planning the future of their homeland, a team of representatives and advisors was needed. After the hui had finished, and without the input of Maori owners, officials designed a special process which became enshrined in the Urewera Lands Act 1921–22. The Act also spelled the official end of the Urewera District Native Reserve, as all legislation relating to the reserve was repealed.

The consolidation scheme was flawed at the outset and throughout its life due to opaque processes and poor record-keeping. At no stage was there ever a clear statement of how much land was included in the scheme or the total relative interests of Maori owners and the Crown. There was similarly no final report showing how the exchange of interests occurred during the course of the scheme. Although this did not result in serious discrepancies, the scheme lacked the transparency expected of an undertaking of this nature. The stable basis of exchange that should be at the very heart of sound consolidation practices was undermined by the flawed valuations on which exchange was based, and was further undermined by the continuation of Crown purchasing during the scheme's implementation.

Two consolidation commissioners were empowered to carry out the scheme that was negotiated at the Taurarau hui, as legislated for in the Urewera Lands Act 1921–22. The implementation of this scheme lasted for four years. The owners' committee and Ngata did secure some real concessions from the Crown. For instance, the value of the land the Crown would acquire for the Maori contribution to the cost of roads was reduced from £32,000 to £20,000; and more land was awarded to Maori owners between the Whakatane and Waimana Rivers, though the Crown had sought this land itself. In some areas, the commissioners accommodated the wishes of Maori owners, giving them more land in certain areas than had been negotiated at the hui. In Te Whaiti, however, the commissioners purchased further interests in the face of protests and refused to meet the requests of Maori owners about where their land would be located, so that the Crown would secure much of the valuable timber land. Nor were the commissioners always

responsive to requests from Maori owners to set aside certain areas as reserves. Although 27 reserves were set aside for Maori, there was no special protection for some of their most tapu sites: the Maungapohatu and Huiarau reserves were included in the Crown award after Ministers failed to make recommendations to the Governor-General, evidently because the Crown wanted to retain control of the area for its watershed reserve.

The process of the division of the land, and the consolidation of Maori interests, is appropriately viewed as the final stage in the defeat of the UDNR Act; the outcomes are best considered as the consequence of unremitting Crown purchasing. Those outcomes are starkly evident at Ruatahuna, where many Maori groups who had pooled their interests from a number of blocks competed for the best land. The amount of land available was reduced because of the commissioners' insistence on awarding small areas to the Crown in the most sought-after lands, as well as a 10,000-acre area in the south, adjacent to the Waikaremoana block, which became part of the protected watershed. Some Maori owners took their interests to other parts of the former reserve to avoid further competition. One group of owners – known as *te taha apitihana* (the opposition side) – remained defiant, refusing to participate in the process until the commissioners gave them an ultimatum: their land would be chosen for them if they did not choose it themselves. *Te taha apitihana* maintained a range of objections against the scheme, many of which were associated with the costs involved and their lack of understanding of the scheme's potential outcomes when it began. Ultimately they opposed the process of consolidation itself. But their actions were equally a protest against the Crown's failings since the passing of the UDNR Act; many of the tensions in Ruatahuna that surfaced during the consolidation process were evident earlier in the hearings of the Urewera commissions. By the end of the scheme, the Crown was the biggest single owner in the Ruatahuna region.

The process led by the consolidation commissioners, though fair to the owners in some cases, was far from the owner-led process originally envisaged by Ngata for consolidation schemes. More to the point, it was the complete antithesis of the policies set by *Te Whitu Tekau* for tribal self-determination, as well as the peoples' expectations for self-governing institutions and economic development promised by the UDNR Act. Although the process of consolidation in *Te Urewera* was quick in comparison to other areas, it was also the last in a long line of title-related processes which, rather than protecting owners, moved inexorably towards Maori dispossession.

14.6.1 How was the process for the 'design phase' of the scheme established?

One of the key points established by the Stout–Ngata commission, and echoed by Mr Nikora in our hearings, was that consolidation schemes had to be led by Maori owners with their own objectives for the land in mind. Most schemes carried out during the twentieth century followed this general principle. For the outcomes of any scheme in which titles would be re-organised to have durability, Maori owners had to decide first on the objectives for pooling their interests and second to select

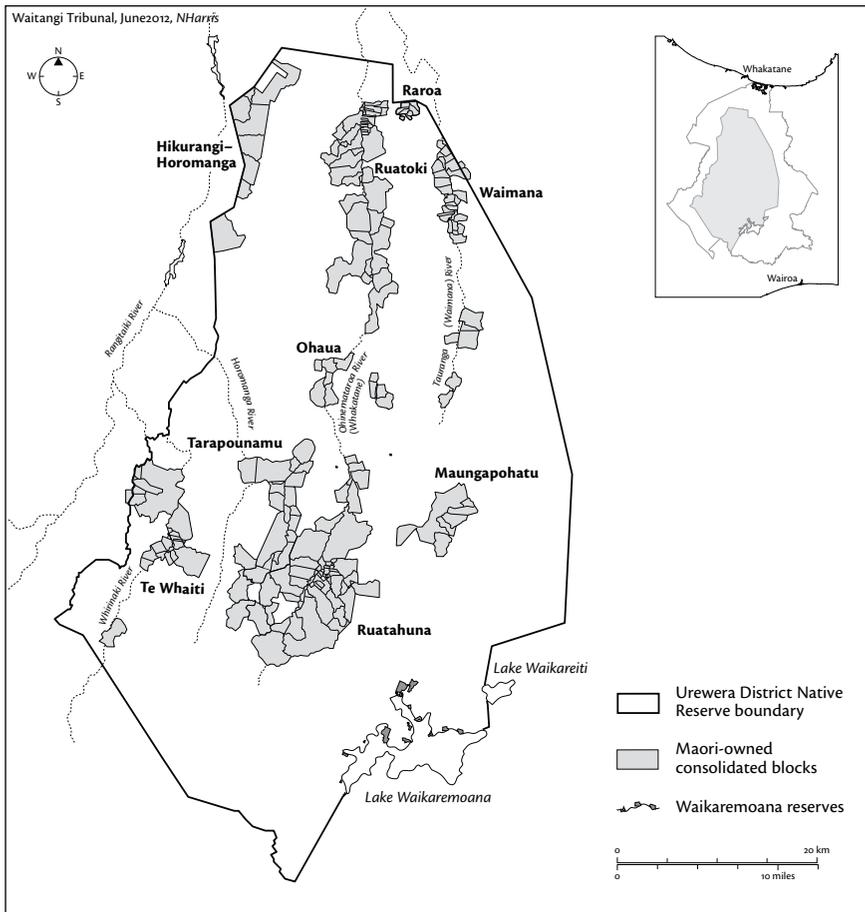
appropriate land that matched these objectives. While trained professionals were required to assist in the nuts and bolts of any scheme, the process of pooling interests and negotiating the land that would be taken up by the new groups could only be achieved by the owners themselves; Maori owners decided how their holdings would be re-organised in line with what they hoped to achieve with their land. These points are important to bear in mind when we consider the 'design phase' of the Urewera Consolidation Scheme: the period from August 1921 to February 1922 when most of the details of the scheme were solidified, ahead of the 'implementation phase'. The parties differed on their assessment of the process established for this stage of the scheme: the claimants said the process was flawed, and weighted too heavily in favour of the Crown; a claim which the Crown denied.

By May 1921, Ministers and officials had already determined that the Crown would have a greater role in directing proceedings in the reserve than was the case in other consolidation schemes. As a co-owner in reserve blocks, the Crown considered itself to have equal bidding rights to the land. At that time, however, the plans developed by Jordan and Knight had articulated few concrete details about how the scheme would proceed. Another hui had been scheduled for the end of July at which it was assumed further 'negotiations' would take place; but the exact purpose of the hui had not been established. Both Jordan and Knight had assumed the Native Land Court would be involved in some capacity, presumably with oversight and as an umpire if needed, and that such a scheme would be implemented under existing legislation. Beyond that, and perhaps for that reason, the process envisaged for implementing the proposed scheme was vague.

In the wake of the May hui, Coates and Guthrie did not seek to instil more rigour and detail into the planning. Instead, they and officials continued to focus primarily on the outcomes the Crown hoped to achieve from a scheme, and how these outcomes might be achieved through 'high-level' negotiations. Upon returning to Wellington, the two Ministers held a meeting to discuss what should happen next. Coates wrote to Ngata about their decisions. Consolidation, he said, would be 'gone on with' at the hui already set down for 18 July. In an early indication of how they expected the events to proceed, Coates explained that Knight would 'represent' the Lands Department. Harold Carr of Ngati Kahungunu, the nephew of James Carroll and a commissioner of the Native Land Court,²⁰⁵ would similarly represent the Native Department. Coates then asked Ngata if he would 'represent the Natives so that their side of the question may be properly submitted'. Ngata was asked to render this service as a Member of Parliament – he would not be paid.²⁰⁶ While Coates and Guthrie had established that the Crown would be

205. Section 7 of the Native Land Act 1909 provided for the Governor to appoint any registrar or permanent official as a commissioner of the Native Land Court, possessing and exercising the functions and powers of a judge of the Native Land Court, either generally or as specified in an Order in Council. Carr was appointed a commissioner of the Native Land Court in 1910.

206. Coates to Ngata, 13 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p143)



Map 14.2: Land remaining in Maori ownership at the end of the Urewera Consolidation Scheme. There were 183 Maori-owned blocks created from the Urewera Consolidation Scheme, plus a further 27 urupa and papakainga reserves and 14 reserves in the former Waikaremoana block. Note the nine 'series' of locations in which the blocks were placed. Most of the urupa and papakainga reserves are too small to represent on this map. By the end of the scheme, Maori owners retained approximately 106,000 acres.

represented at the hui by lead negotiators, and had selected those negotiators, it was still unclear what exactly Knight and Carr were expected to achieve.

Coates and Guthrie then met with Knight in Wellington. They asked him to conduct a further, more detailed study on which land the Crown might expect to obtain from a scheme and the process that could be used to achieve this. They informed him that another hui had been scheduled at Ruatoki, at which the scheme was expected to commence. Following this meeting, at the end of June, Knight submitted the most detailed plan to date about how the scheme might proceed,

which was only three pages long and described by its author as ‘suggestions and proposals.’²⁰⁷ The report contains a series of ideas about which land the Crown could acquire, which were in keeping with the Crown’s objectives for the land as reflected in the policies of the Department of Lands and Survey. Knight advanced three central ideas as to how the land might be divided. First, the Crown’s core objective remained the same as before: to obtain a large area of land that could be opened for settlement. Significantly, Knight noted that less than half the land under consideration was actually suitable for settlement. This was a radical revision of the amount of land that officials had previously assumed was available. Six years earlier, Wilson and Jordan said that just over 470,000 acres could be either cultivated or used for sheep farms by both Maori and European settlers. Knight, in contrast, assessed it as more in the range of 250,000 acres (less than half of the 518,000 acres in which the Crown had purchased interests).

Secondly, Knight signalled that more land would be protected for watershed conservation and scenic purposes, a shift in thinking that was to assume increasing prominence in coming years. Wilson and Jordan had merely said that small patches of land (totalling less than 100,000 acres) should be reserved for ‘scenic and climatic purposes.’²⁰⁸ In contrast, Knight outlined a more specific case: a much larger area had to be preserved to prevent flooding in surrounding districts and to allow the planned hydro-scheme in Lake Waikaremoana to proceed. Conservation, therefore, was a ‘matter that warrants serious consideration.’ Finally, the Crown aimed to obtain the important timber resource in the Te Whaiti blocks.

These ideas informed Knight’s recommendation for the division of the land between the Crown and Maori owners. He proposed that the Crown acquire its interests in two main areas. The first area would consist of ‘a composite block in the north of the district to embrace the land on either side of the Waimana and Whakatane Valleys.’ This would give the Crown possession of all the land most suitable for settlement barring the Ruatahuna Valley, which Knight conceded there was ‘no hope of securing.’ The second area consisted of ‘Te Whaiti and adjacent lands less any Native settlements and areas adjoining which the Natives wish to retain for their own use.’²⁰⁹ The Crown could acquire a further area to account for the cost of surveying the new Maori-owned blocks and for constructing two arterial roads, which should come from lands considered ‘useless’ for settlement, such as the Hikurangi–Horomanga and Tarapounamu–Matawhero blocks.²¹⁰ He also recommended that the Crown acquire land in the Waikaremoana block, either by omitting the block from the scheme and taking a portion of it under the Scenery Preservation Act or by commencing ‘purchasing operations.’

207. Knight to Under-Secretary for Lands, 21 June 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp 147–149)

208. Wilson and Jordan to Skeet, 1 August 1915 (Edwards, supporting papers to ‘The Urewera District Native Reserve Act 1896, Part 3’ (doc D7(b)(i)), p 147)

209. Knight to Under-Secretary for Lands, 21 June 1921 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 70)

210. Campbell, ‘Land Alienation, Consolidation and Development’ (doc A55), pp 47–48

Knight's proposals for the Crown's award envisaged a considerable overhaul of Maori settlement patterns as they existed in the former reserve. Steven Webster argued that if Knight's plan had been implemented, Maori owners would have been confined to an area from Tawhana and Ohau southwards and from Ngaputahi eastwards, apart from a large area in the north of the Hikurangi–Horomanga block.²¹¹ Knight himself described this pattern of settlement redistribution in terms of two types of land: land suitable for settlement that would be surveyed and broken up into blocks, and land that was considered unsuitable for settlement, which would be left unsurveyed as one large block. Survey and roading costs would be accounted for in the form of Maori land in the area considered unsuitable for settlement. Knight said that if there was not enough non-settlement land to meet these costs, 'the Crown will have to be awarded supplementary areas in the Native [settlement] sections'. He concluded that this last scenario was 'very unlikely', but we note here that it was in fact exactly how the costs of surveying in the scheme were eventually met.

Knight's 'suggestions and proposals' were in short order either adopted or adjusted to become the Crown's core proposals to Maori owners at the Tuarau hui. But as an indication of how uncertain he must have felt about it, Knight pitched his report as a request for written instructions. He particularly requested clarification about what authority he would have as the Crown's representative: 'I take it that the consolidation proposals will have to be made by the Crown, and that I am authorised to act as the Crown Agent, and conduct the negotiations with the Natives.' Carr, he assumed, would 'sit as Judge and record any agreements entered into and decide any disputed point that may arise'. In making this assumption, Knight was presuming that the Native Land Court would play its usual role as umpire and arbiter of consolidation schemes, and that that was the point of sending a commissioner with the powers of a Native Land Court judge. Balneavis would be the interpreter, with Bowler also on hand to provide any details required. The decisions reached would be final, Knight assumed; there would be no subsequent process. But at other points in the report he also suggested that the Native Land Court would be involved, in keeping with existing statutory provisions. Knight thus revealed his uncertainty about both the role he was being asked to fulfil and the status of the decisions that would be reached at the hui. He finished by recommending that 'the several officers engaged [should have] their functions clearly defined by written instructions.'²¹²

On receiving Knight's report, Coates wrote to Guthrie outlining how he understood the scheme would proceed. The 'various Departmental officers' would not be sent 'as a Commission or Court', but as Departmental representatives 'for the sole purpose of joining in a round-the-table conference with the Native non-sellers with a view to arriving at some practical and amicable settlement'. Coates evidently hoped that the forthcoming hui would achieve final decisions about how

211. Webster, 'Urewera Consolidation Scheme' (doc D8), pp 257, 260–262

212. Knight to Under-Secretary for Lands, 21 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 149)

the land would be divided between Maori owners and the Crown. He provided no indication as to how he anticipated these outcomes would be given legal effect. Any points of dispute, he noted, would be referred to the Minister of Lands and Native Minister, who would act as mediators. 'If a spirit of reasonableness and give-and-take is introduced into these proceedings,' he wrote, 'I have every reason to believe that the task that these officers are about to undertake, will not be found to be an insuperable one and good results will accrue to both sides from their efforts.'²¹³

As we noted earlier, Crown counsel emphasised this passage from Coates' letter and considered it further evidence of the 'mutual benefits' the Crown believed would accrue to both parties entering into the scheme.²¹⁴ But the approach taken by the Crown up to this point rather demonstrates that it wished to place itself in a superior negotiating position. On the one hand, the planning lacked the thoroughness and forethought we would expect of an undertaking of this nature. Knight – possibly the most important official involved in the planning for the scheme – signalled as much in his request for written instructions, which either were never given or have not survived. But negotiations on an 'informal' basis ran the risk of putting the Crown in a much stronger position than everyone else, by virtue of the fact that it was by far the biggest single owner in the reserve, if there was no independent authority or watchdog to protect the interests of the other owners. Crown counsel suggested that Maori could rely on Ngata's influence and his 'personal relationship with Coates' to perform this function.²¹⁵ One thing was certain: by conducting the hui along these proposed lines, the Crown negotiators would set the agenda and the Maori owners would have to respond; much would then depend on the quality of information placed before them and the amount of time which they were accorded to work out their own objectives and to consider how the various options might affect their interests.

Yet it should have been obvious to Coates that no matter how 'informal' the proceedings, the existing legislation did not allow for a scheme of this nature. It was not until much later that officials engaged in the negotiations at the hui began speaking of the need for special legislation and for a 'special tribunal' to implement the arrangements. Up until that point, including Knight's 'suggestions and proposals' in June 1921, the Native Land Court was considered the appropriate institution through which the scheme would be implemented in accordance with existing legislation. But at some time during the hui, officials discovered that the Native Land Court had no jurisdiction, because legislation did not allow for the inclusion of Crown-purchased undivided interests in a scheme.²¹⁶

213. Coates to Guthrie, 12 July 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 145)

214. Crown counsel, closing submissions (doc N20), topics 18–26, pp 13, 20

215. *Ibid*, p 23

216. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 181–191); see also Carr to Coates, 20 September 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 195).

There is little evidence to suggest that, at any point in the lead up to the Taurarau hui, Maori owners were informed of the possible significance of the forthcoming discussions. On 16 June, a notice appeared in the *Gazette* and the *Kahiti* informing the people that a hui would be held at Ruatoki on 18 July.²¹⁷ The *Gazette* notice stated that the purpose of the meeting was to consider ‘the details of a scheme of the consolidation of the interests of Native owners who are non-sellers in the Urewera Blocks and of the Crown purchases.’²¹⁸ This was enough to place Maori owners on notice that these would be significant proceedings, which explains why they turned out in force. But it was hardly a full disclosure of the fact that consolidation was to be ‘gone on with’ at the hui, and that Crown negotiators would be despatched to conduct very important negotiations. As a consequence, Maori owners would have had little indication prior to the hui of what was in store for them. Perhaps most importantly of all, it was at this stage of a scheme that – under Mr Nikora’s principles – a ‘study is carried out to assess the economics involved’, which ‘is then referred for the owners’ discussion and general approval to proceed.’²¹⁹ As noted above, Knight had concentrated on how the Crown was to derive its intended benefits from the scheme. No such study of the type described by Mr Nikora was referred to the owners in advance of the Taurarau hui and nor, as will soon be apparent, was one made available to the Maori owners before they were asked to agree to the Crown’s proposals for the division of the land.

14.6.2 What was the significance of the Taurarau negotiations for the division of the land and the consolidation of Maori interests?

The preparations and planning for the Taurarau hui might not have been so crucial had the outcomes of the hui not determined the overall outcomes of the scheme. But in many respects, the events that took place at Taurarau marae over the course of three weeks in August 1921 *were* the Urewera Consolidation Scheme. We have referred to this period as the ‘design’ phase of the scheme. While this is an appropriate shorthand in many respects, the term ‘design’ does not just apply to the process of the scheme. In fact, many of the decisions about the division of the land between the Crown and Maori owners were made at this hui. These decisions were recorded in the official report tabled to Parliament – authored by Knight, Carr, and Balneavis – as ‘the Urewera Consolidation Scheme’. This was not just the authors’ sketch for a scheme, or a series of proposals, but rather a fully fleshed-out series of workings based on the negotiated outcomes of the hui. The authors recommended special legislation to give effect to this draft scheme, which would include authorising special commissioners to make minor adjustments where necessary, but whose primary role was to implement the draft scheme and make awards accordingly. The report itself, and the scheme referred to therein, was later referred to in the Urewera Lands Act 1921–22, and thus given official status beyond

217. Campbell, ‘Land Alienation, Consolidation and Development’ (doc A55), p 47

218. *New Zealand Gazette*, 16 June 1921, no 56, p 1551; *Kahiti*, 16 June 1921, no 24, p 341

219. Nikora, ‘Urewera Consolidation Scheme’ (doc E7), p 5

that of a mere ‘proposal’. In recognition of this official status, we refer to it as the ‘Consolidation Scheme Report’.

14.6.2.1 Outcomes of the Tauarau hui: four-fifths of division of land confirmed

Before examining the proceedings of the hui in detail, it is important to summarise its outcomes so as to provide an appropriate sense of the hui’s significance in the overall context of the scheme. In short, we are able to demonstrate that in the ‘implementation phase’ of the scheme, the consolidation commissioners followed the general pattern of land division as outlined in the Consolidation Scheme Report. Out of the approximately 550,000 acres subject to exchange in the scheme, only one-fifth of the broad division of the land between Crown and Maori owners changed subsequent to the report during the scheme’s implementation. We have compared the provisional division of the land negotiated at the Tauarau hui with the final awards, and have concluded that of the 183,390 acres that were earmarked for award to Maori owners at the hui, the consolidation commissioners authorised significant changes to 33,134 acres, or 18 per cent. (We explain our workings in appendix VII.)

The most significant changes during the implementation phase occurred in two areas:

- ▶ In the northern part of the former reserve, the commissioners authorised the award of more land to Maori owners in the line of blocks down to the Waikarewhenua block. The biggest addition in acre terms occurred in the mid-section of what became the ‘Ruatokei series’ of blocks, where an extra 6,168 acres was awarded to Maori owners – a 50 per cent increase on what was negotiated at the hui. To offset this, less land was awarded in some of the northern blocks, particularly Parekohe and Waipotiki.
- ▶ The Ruatahuna region, however, was subject to the biggest changes, where 14,709 fewer acres were awarded to Maori owners than was originally planned in the Tauarau negotiations.

These changes had consequences for the overall amount of land Maori owners were awarded in the scheme, which was reduced by 7,166 acres from what was negotiated in 1921. This was largely as a consequence of owners moving their interests from land with a low value (including Waikaremoana) into land with a high value (in the north of the reserve). We explore the reasons behind these changes later in this section.

Although this type of comparison does not account for changes that occurred on a small scale – such as how boundaries were set between Maori-owned blocks, or between Maori-owned blocks and the Crown’s award – it does give a good indication of the significance of what occurred at the Tauarau hui. Crown counsel rightly pointed out, therefore, that by ‘mid-September 1921 . . . the bulk of the Crown and Maori interests on the ground [were] largely settled as to location.’²²⁰ While this was not the case for the Ruatahuna lands and some significant areas

220. Crown counsel, closing submissions (doc N20), topics 18–26, p 15

in the north, it is true for the vast majority of the reserve, the division of which remained as it was mapped out in late 1921.

14.6.2.2 Process of dividing land and forming consolidation groups at Tauarau hui

In light of the fact that the outcomes of the Tauarau hui were of such importance for Maori owners, we turn our attention to how these outcomes were reached. The hui was initially set to take place on 18 July but was postponed by two weeks and began on 1 August (as notified in the *Kahiti* on 30 June).²²¹ Knight, Carr, Bowler, Ngata, and Balneavis appeared in their respective capacities, as requested by Coates. They were joined by Matahe, H M Awarau, and H T Fox, who were said to have had experience working on the Waipiro consolidation scheme.

The proceedings that followed took place in two stages. Herries, it will be recalled, had contemplated reviving the General Committee when it came time to negotiate and arrange for consolidation in the reserve. This did not happen. Instead, the Maori owners who had assembled at Tauarau elected a 'committee of thirty-seven representatives' (which – according to the list supplied in the Consolidation Scheme Report – was actually 38, but was also given as 40 by Balneavis²²²). In the first stage of the proceedings, this committee received a list of five Crown proposals for the scheme, which they discussed over the course of two days and then accepted, subject to variations. For the remaining three weeks, the owners organised themselves into 'consolidation groups' (groups of owners who had combined their interests), and indicated where they would like their combined interests located, which was not allowed to be in more than three areas. To assist in this process, Carr determined 1061 succession orders so as to bring the lists of owners and their interests up to date.²²³

Knight opened proceedings on the first day by outlining the Crown's five key proposals. With or without written instructions, he had prepared for the hui on the understanding that he would act as the lead Crown agent and developed his earlier ideas into a series of 'proposals' to put to the Maori owners. These proposals differed from his June 1921 report in several key respects. First, he had earlier suggested that the Crown should be awarded all the land in the north of the reserve as far south as Tawhana. Instead, as Crown agent, he asked the assembled owners for the 'bulk' of the Crown's purchases to be 'located in the area between the Whakatane River and the Waimana basin south of the Ruatoki Settlement': Maori owners would receive awards to the west of the Whakatane River and to the east of the Waimana River. Secondly, he had earlier suggested that the Crown should acquire 'Te Whaiti and adjacent land less any Native settlements and areas adjoining which the Natives wish to retain for their own use'. At the hui, the Crown

221. Campbell, 'Land Alienation, Consolidation and Development' (doc A55), p 47

222. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 4; Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55 (b)), pp182–183)

223. Carr to Coates, 20 September 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p196)

The Crown's Proposals at the Tauarau Hui, as Presented by RJ Knight

Quoting the Consolidation Scheme Report of 31 October 1921, the Crown's five proposals at the Tamarau hui were summarised as follows:

1. The consolidation scheme to cover only those blocks in which the Crown had purchased interests. Summarized, the position was that in forty-four blocks, totalling 518,329 acres, the Crown had bought 345,076 acres 1 rood 8 perches, valued at £193,076 4s 11d, and the non-sellers retained 173,252 acres 2 roods 32 perches, valued at £78,479 15s, the total estate involved being valued at £271,555 19s 11d. The Crown would not exchange Urewera interests for any Crown lands outside the Urewera country, and for Native interests in blocks other than these under purchase.
2. The Crown asked for complete awards of Te Whaiti 1 and 2, Maraetahia, Tawhiuau, and Otairi Blocks, subject to small reservations at Te Whaiti Settlement for non-sellers, who would take the bulk of their interests elsewhere in the territory.
3. The Crown asked that the bulk of its purchases should be located in the area between the Whakatane River and the Waimana basin south of the Ruatoki Settlement.
4. The Crown asked that the non-sellers should contribute £32,000 worth of land towards the cost of the arterial roads, connecting Ruatoki with Ruatahuna, and Waimana via Maungapohatu with Ruatahuna.
5. The Crown proposed that the existing titles and surveys and tribal boundaries be cancelled and abolished, and new titles issued to the non-sellers for properly surveyed and roaded sections under the Land Transfer Act.¹

1. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 4

asked for the award of both Te Whaiti blocks 'subject to small reservations at Te Whaiti Settlement for non-sellers, who would take the bulk of their interests elsewhere in the territory'. Thirdly, although he had earlier presented several options about how the Crown might acquire the Waikaremoana block for the purposes of water conservation, the proposal made to the Maori owners at the hui was to exclude the block from the scheme. The Ruatoki blocks would also be excluded on the understanding that their relatively high valuation would have thrown out exchanges of interests in other blocks.²²⁴ (This land later became subject to its own

224. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 5

scheme – the Ruatoki–Waiohau Consolidation Scheme – which we consider in chapter 19.) Other significant changes were made regarding the cost of surveying the Maori-owned blocks and constructing the arterial roads, which we discuss later in the chapter. We cannot say whether these changes were the result of ministerial direction or adjustments made by Knight himself. Overall, the proposals were significant, but more in the nature of a further refinement of which land the Crown wished to obtain and therefore which land it intended would be awarded to Maori owners.

We know very little about how the committee of Maori owners deliberated on these proposals. No minutes or notes were taken during the two days of discussion.²²⁵ On 27 August, two days after the hui finished, Balneavis wrote a report summarising the proceedings up to that time, noting what he perceived to be the reaction of the Maori owners at the opening of the hui: ‘these proposals to the Maori mind were of a most-far-reaching and revolutionary character.’²²⁶ Beyond this, however, there is little to gauge the extent of the discussion that took place on the receipt of the proposals.

The claimants have raised a number of concerns about both the constitution of the committee of Maori owners and its role in the proceedings. Their first concern is whether it was fully representative of those owners who were affected by the scheme. This was of particular concern for the Tuawhenua claimants. Their counsel noted that only 11 members of the committee were from Ruatahuna, despite the fact that a much larger proportion of the remaining interests in the former reserve came from there.²²⁷ While this is an understandable concern, we would not necessarily expect to see an exact correlation between the distribution of remaining interests and the leaders’ primary affiliations, especially because many leaders would have held interests throughout the reserve. The committee was big enough to have included a broad range of leaders from communities who were affected, though we note that it did not include a large of number of leaders who were also leaders of ‘consolidation groups’. Of the committee members, 28 later were consolidation group leaders; the other 10 were owners but not group leaders. This means that about 70 group leaders were not part of the committee. But given these other leaders were at the hui, we are not in a position to conclude that they were excluded from the committee for any particular reason.

We would add that Maori owners did turn out in large numbers and were present for the act of organising themselves into consolidation groups. The Consolidation Scheme Report noted similarly: ‘The Ureweras attended in large numbers, every family of non-sellers being represented.’²²⁸ This was not merely a gloss placed on proceedings by the report’s authors. Further, many key Ruatahuna

225. Bassett and Kay, ‘Ruatohuna’ (doc A20), pp 137–138; Webster, ‘Urewera Consolidation Scheme’ (doc D8), p 248

226. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 152)

227. Counsel for Tuawhenua, closing submissions (doc N9), p 183

228. Knight, Carr, and Balneavis, ‘Urewera Lands Consolidation Scheme’, 31 October 1921, AJHR, 1921, G-7, p 4

leaders were part of the committee, including Wharepouri Te Amo, who later headed the group of owners who organised in opposition to the scheme. As we explain shortly, his protests against the scheme in the following months were not about his people's lack of participation in these initial stages; rather, they emerged from a lack of sufficient information at the hui.

Nor, it seems, was the committee limited to Tuhoe leaders. Ngati Whare and Ngati Manawa leaders were elected as members. A comment made by Balneavis suggests that Ngati Ruapani leaders may also have been represented, though possibly not Ngati Kahungunu.²²⁹ We consider the extent of their participation in this stage of the process later in the chapter.

The second concern raised by the claimants was the role played by Apirana Ngata, who was recorded in the Consolidation Scheme Report as having been 'unanimously asked to act on behalf of the non-sellers' in the negotiations.²³⁰ (Knight said that Ngata was 'unanimously appointed by a representative meeting of the non-sellers to represent them during the negotiations and afterwards to act on their behalf'.²³¹) Claimants' concerns centred on Ngata's recent history in Te Urewera, particularly his role in the commencement of Crown purchasing in the reserve (see chapter 13).²³² Ngata, in the submission of counsel for Wai 36 Tuhoe, acted in the capacity as a Crown representative at the hui: 'Ngata was a Crown agent and could not be relied upon.' It was therefore inappropriate for him to represent the interests of Maori owners in negotiations with Crown representatives, even if he was 'unanimously elected'.²³³

Ngata was not, in fact, a 'Crown agent' at the time of the Tuarau hui. Not only did he hold no position within Government, but he was a member of the Opposition and was asked to attend the hui in his capacity as the local member of Parliament (Eastern Maori).²³⁴ The first suggestion that Ngata might represent the Maori owners was made by Coates, who considered it necessary for the proper protection of their interests. Coates had written to Ngata: 'I suppose and hope that you will represent the Natives so that their side of the question may be properly submitted.'²³⁵ While Ngata, therefore, must have already expected to carry out this role at the informal request of the Native Minister, we have no reason to doubt that he was freely elected by the committee to act as their representative. This comes as no surprise, even though some of the committee members may have had reservations about him for the very reason put to us by claimant counsel. After all,

229. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p190)

230. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 4

231. Knight to Coates, 3 October 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p160)

232. Counsel for Tuawhenua claimants, closing submissions (doc N9), p183

233. Counsel for Wai 36 Tuhoe claimants, closing submissions (doc N8(a)), pp105-106

234. At the 1922 election, the polling station at Ruatoki recorded 140 votes for Ngata and only 80 for his opponent: see 'The General Election, 1922', AJHR, 1923, H-33A, p 31.

235. Coates to Ngata, 13 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p143)

Ngata was the founding father of consolidation schemes, both in his role as part of the Stout–Ngata commission and because he had helped implement the first scheme in New Zealand. He had also taken a prominent role in the two hui earlier in the year. Maori owners would have rightly looked to him for his expertise. In our view, he would have been faced with great difficulties in negotiating the ‘battle ground’, reconciling the views of Maori owners with his knowledge of Crown processes and intentions.

While Ngata’s credentials are not in doubt, our concern is with the form of the ‘negotiations’ in which he was asked to represent the interests of Maori owners. How could the owners plan for the future of their entire homeland, with the assistance of just one representative? A team of representatives and advisors was needed, not a single representative. Yet, the Crown expected that 2,000 Maori owners, who ultimately organised themselves into 100 consolidation groups, and who selected 40 leaders to negotiate their general interests, would be represented by one individual with the assistance of two officers; the Native Department and the Lands Department would represent the Crown’s interests, as presented by Knight and Carr. Coates had deliberately established this format for the proceedings when he asked Ngata to attend and ‘represent the Natives so that their side of the question may be properly submitted.’²³⁶ In his July letter to Guthrie, Coates had also recorded that Ngata would represent the ‘Native non-sellers.’²³⁷

As we have seen, Coates expected that the Crown’s representatives would negotiate the details of the scheme as equal players with equivalent interests, and he hoped that this would take the form of a ‘round-the-table conference’ governed by a spirit of reasonableness and ‘give and take’. In practice, however, the negotiations may have been confined mostly to the representatives: Maori owners may have had no direct involvement, beyond whatever information Ngata needed from them to formulate their ‘side of the question’. Balneavis stated in his report: ‘Mr Knight representing the Crown and the Hon Mr Ngata representing the Native owners have come to an understanding as to the respective spheres of Crown and Consolidated non-sellers.’²³⁸ Webster suggests that the owners’ committee was possibly placed in the position of ‘negotiating with Ngata as their representative’, rather than with the Crown.²³⁹ As we discuss below, Webster’s proposition is supported by the role Ngata later adopted in making arrangements for the Te Whaiti and Waikaremoana lands.

Were the proceedings of the hui conducted in a way that can be described as satisfactory, as Crown counsel submitted? Counsel’s line of reasoning ran as follows. Although Knight was ‘biased’ in his role as Crown representative, to the extent that he was employed in an official capacity representing the policies of the Department of Lands and Survey, his official status was clearly notified to Maori

236. Ibid

237. Coates to Guthrie, 12 July 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p145)

238. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp187–188)

239. Webster, ‘Urewera Consolidation Scheme’ (doc D8), p 238

owners. In order to counter the Crown's proposals, Maori owners were able to draw on 'the benefit of Ngata's experience'. Any points of dispute between the parties that emerged during the course of the negotiations could be referred to Coates as Native Minister for resolution (and, we add, to Guthrie). Most importantly, Crown counsel submitted, Maori owners were more than capable of countering any potential 'ongoing bias' through the course of the negotiations, as shown in the concessions they managed to secure from Knight. The Crown did not enjoy a 'dominant position' in the negotiations; both sides were able to agree upon 'a set of proposals for consolidation', and the result was 'successful'.²⁴⁰

Counsel for Wai 36 Tuhoe, however, submitted that the Maori owners should have been dealt with at the very least through 'properly appointed counsel'.²⁴¹ We agree. We would add, however, that even had legal counsel been appointed to advise them and protect their interests, this would not have substituted for a process in which Maori owners were given sufficient information and a sufficient opportunity to develop their own objectives, rather than responding to a series of proposals. Although we do not have a detailed record of the discussions that took place, it is unlikely that the committee members were given enough information to evaluate their options or to consider the wider consequences of the scheme, or even to develop a fully articulated set of proposals about what they themselves hoped to achieve from the scheme. The Crown's proposals had only offered very basic outlines of what might occur. While Maori owners would have gained a reasonable idea of the total value of their interests relative to the Crown (based on the statement of relative interests included in the Crown's first proposal), there would have been no way for them to fully comprehend the consequences of this when blocks were reconstituted on the ground.

Despite this, the committee agreed to the Crown's proposals 'subject to modifications and variations in detail', as Balneavis wrote. A decision was then made to 'proceed forthwith with the consolidation and exchange of non-sellers interests', in which 'the translation of the Crown proposals into terms of definite areas and figures' would occur.²⁴² This suggests that the committee did not discuss 'definite areas and figures' as between the Crown and Maori owners, but that this was left to this later stage as each group of Maori owners formed and chose provisional locations for their land.

Although it is understandable that such detailed work did not take place until the latter stages of the hui, the evidence suggests the committee was not given the opportunity or the resources to develop the broad parameters in which groups might chose land, as those parameters were largely set in the Crown's proposal. It was a constant refrain in the claimants' case that there was no topographic plan of the reserve at the hui for the Maori owners to study. Such a plan had been prepared by the Department of Lands and Survey ahead of the hui (showing 'the

240. Crown counsel, closing submissions (doc N20), topics 18–26, pp 22–24

241. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p105

242. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p183)

roads and topography, the positions of the Native clearings, the streams, the flats and the open land²⁴³), and a number of other plans were in existence at the time (such as that appended to Knight's interim report and the plan Guthrie spoke to at the May 1921 hui). But whether or not all Maori saw a plan, we doubt that it was adequate to give them a clear idea of how their new blocks would be demarcated.

The shortfall in the owners' understanding of the hui's outcomes extended to other areas as well. Later in this chapter, we explain how Maori owners came to request changes to boundary locations during the implementation of the scheme, which – in its particular way – suggests they had been only aware in very general terms where their interests would be located. We will also explain how little information they were given regarding survey costs, the type of title that would be issued, and their contribution toward the cost of constructing the arterial roads. And the valuations that would be adopted as the basis of exchange – based on the 1910 and 1915 Lands Department assessments – were flawed and unlawful; they were hardly a solid basis from which to make an assessment of which land would be worthwhile retaining. Given these factors, it was unlikely that the committee could have been in any position to consider the overall economics of the land division as it was raised at the hui, though doubtless there was enough to suggest that more land should be awarded to Maori owners along the river valleys, where the Crown had asked for the 'bulk' of its award, hoping for the benefits of the arterial roads. A more serious discussion, however, would have revealed that the objectives of Maori owners and the Crown remained in conflict with each other. Thus, after Taurarau, there was still no real agreement on the objectives of the scheme, which Mr Nikora identified as the scheme's first major failing.²⁴⁴

Despite these flaws at the heart of the process, we agree with Crown counsel that the owners' committee and Ngata were able to secure some real concessions from the Crown. These concessions had a significant impact on the final outcomes of the scheme. Balneavis did not record what 'modifications and variations in detail' were requested by Ngata and the committee, but they most likely referred to four matters.

First, the value of land that the Crown would acquire for the Maori contribution to the cost of roads was reduced from £32,000 to £20,000. Secondly, a decision was made to treat the Te Whaiti lands and the interests of Ngati Whare and Ngati Manawa owners as separate from the main bulk of the proceedings, and to conduct a mini consolidation scheme within a scheme. Accordingly, Knight travelled to Te Whaiti after the Taurarau hui to discuss arrangements there (which we review below). Thirdly, the Waikaremoana block was included in the scheme, as Tuhoe owners had requested, and awarded in whole to the Crown. In the next section, we discuss the circumstances surrounding the inclusion of this block and the subsequent negotiations with Ngati Ruapani and Ngati Kahungunu owners; but we note here that this decision had important consequences for Tuhoe owners, because their interests in Waikaremoana were redistributed into consolidation groups in

243. Campbell, 'Land Alienation, Consolidation and Development' (doc A55), p 47

244. Nikora, 'Urewera Consolidation Scheme' (doc E7), pp 13–14

other areas of the reserve. For example, the number of interests transferred from Waikaremoana to Ruatahuna essentially cancelled out all of the Crown's purchase of interests in the Ruatahuna blocks up to that time. The transfer of Tuhoe interests out of Waikaremoana also significantly increased the interests of consolidation groups in Ruatoki, Te Whaiti, Maungapohatu, Waimana, Tarapounamu, and Hikurangi–Horomanga. Finally, it is very likely that the committee successfully requested more land to be awarded to Maori owners between the Whakatane and Waimana Rivers, where the Crown had initially asked for the bulk of its award to be located.

The second stage of the hui was a crucial one, as modified proposals were turned into 'definite areas and figures', and the assembled Maori owners organised themselves into what became known as 'consolidation groups'. As with the process as a whole, we only know how this took place in general terms, though it appears that it was a process led by the owners. In late August, Balneavis reported that 99 groups had been formed.²⁴⁵ Each group had its own 'group leader', who was one of the owners and invariably a community leader as well. Many of these groups, however, had their interests divided between more than one of the old reserve blocks. Schedule 2 of the Consolidation Scheme Report recorded each of these groups and their proposed locations separately, so that 150 groups are shown.²⁴⁶ No group located their interests in more than two blocks. Carr wrote that individuals were 'reduced to a maximum of three' blocks in which they could locate their interests (individuals could be in more than one group).²⁴⁷ This suggests that a limit was placed on the Maori owners by Ngata or by the Crown's representatives, which was in keeping with one of the core objectives of consolidation schemes generally, but also with Jordan's earlier plan to limit the number of blocks and individuals in blocks so as to allow for further Crown purchasing. Bowler also completed 20 purchases from individuals during this period, totalling the equivalent of 331 acres.²⁴⁸ Observing Bowler's activities, Knight recommended that all purchase activities cease beyond those groups earmarked as 'probable sellers so as not to disturb the details of the consolidation scheme more than is necessary'. Coates approved this recommendation on 8 August, and asked Jordan to instruct Bowler accordingly.²⁴⁹

Maori owners had their own objectives when they came to organising themselves into consolidation groups, and in many ways their objectives differed from those of the Crown. Not only did they attempt to use the process of consolidation to retain some form of communal land-holding, but they also used it to retain connections to a range of ancestral lands. Shortly before the hui, Coates had told

245. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p184)

246. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, pp9–39

247. Carr to Coates, 20 September 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p199)

248. Bowler to Carr, 15 August 1921 (Webster, 'Urewera Consolidation Scheme' (doc D8), p704)

249. Campbell, 'Land Alienation, Consolidation and Development' (doc A55), pp54–55

Guthrie that he expected consolidation to create a new form of title that 'knows no more of ancestral rights to particular portions of the land.'²⁵⁰ This was not an objective shared by Maori. Balneavis reported that groups consisted 'for the most part of one family or part of a family.'²⁵¹ Steven Webster's research on the Tamaikoha whanau revealed the difficult decisions people had to make in organising their holdings, but on the whole consolidation groups were often organised around one or more sets of siblings.²⁵² We would expect this to be the case in any process where Maori owners sought to balance the requirements of re-organising their remaining interests in blocks while yet retaining a core element of communal and ancestral connections to that land. However, the process did pose dilemmas, which were reflected in Balneavis' comment that 'there was continual shuffling and re-shuffling of individuals composing a group, the relatives claiming inclusion in one group or the other according to the sources from which rights were derived.'²⁵³ What emerged from this stage of the proceedings had lasting consequences: while owners were able to shift between consolidation groups during the implementation phase, they mostly did not. The groups essentially remained stable through to the conclusion of the scheme.

In many ways, the process of owners organising into consolidation groups and choosing which land they would retain might be seen as the final defeat of the UDNR Act, but it was also the owners' last attempt to retain some of the original purposes of the Act as they understood them. Mr Nikora considered that Maori owners were likely 'attracted [to the process of consolidation] by the grouping of their families.'²⁵⁴ These groups were not organised along hapu lines, and in this sense what emerged from the scheme was as far from what had been envisioned under the UDNR Act as possible. But it is likely that the owners themselves recognised the necessity, in the circumstances they were in, of concentrating their interests. This, after all, was the purpose of consolidation: an attempt to recover and redistribute their last surviving interests in the form of a few useable blocks.

Balneavis observed how these discussions played out among the Maori owners as they formed into groups, capturing the dilemma in which they now found themselves:

During the first week the more conservative elements in the tribe were in the foreground, showing naturally a hesitation to accept consolidation of interests in the fullest sense, and a disposition to magnify sentimental attachment to old time kaingas (now practically abandoned) in preference to laying out new farming areas in accord

250. Coates to Guthrie, 12 July 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p146)

251. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p184)

252. Webster, 'Urewera Consolidation Scheme' (doc D8), pp 286–290

253. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p184)

254. Nikora, 'Urewera Consolidation Scheme' (doc E7), p11

with modern ideas of land settlement. Later the progressive elements emerged and their acquiescence in the multitudinous details of this vast scheme and the assistance they gladly rendered facilitated our work very considerably.²⁵⁵

Elsewhere in his report, Balneavis revealed that the differing views among the people were the result not only of huge difficulties in coming to terms with giving up land with which they had ancestral connections but also of accepting that all the title processes since 1899 had been wasted:

The abolition of existing Native land titles and tribal boundaries, and the substitution of Land Transfer titles for defined sections, sounded revolutionary enough to the Ureweras. It meant to them that the land-marks settled after generations of quarrel and bloodshed and later of protracted litigation were to be wiped out. Their expressive way of stating the position was that the titles were to be 'whakamoana-ed' (literally, put out to sea). But it was explained that in practice the non-sellers would be allocated to existing blocks at the approximate areas and values obtaining for these blocks, but that on actual definition by survey the lines of the magnetic surveys would be disregarded in favour of fencing lines, and boundaries more in accord with settlement conditions. This interpretation they readily acquiesced in.²⁵⁶

Maori owners were once again faced with the bind that had confronted them since it had become apparent that, given Crown actions, the UDNRA Act would not live up to expectations. While they lamented what was essentially the loss of many years' hard work to achieve those titles, and the hoped-for block management by owners that had not been delivered for them, they were also aware that this system had been undermined and they were now faced with the necessity of reorganising their remaining land as best they could. The consolidation groups they formed were their attempt at a compromise. From the Crown's perspective, the reserve titles were now obsolete. The titles that emerged from the consolidation process were seen as modern, as Coates explained shortly before the Taurau hui: 'the underlying principle of consolidation of interests is the extinction of existing titles and the substitution of another form of title which knows no more of ancestral rights to particular portions of the land.'²⁵⁷ Mr Nikora also rightly observed, however, that 'it is wrong to presume, as other researchers do, that hapu were dispossessed by the Urewera Consolidation Scheme – the hapu had already been dispossessed by the [failure of the] UDNRA.'²⁵⁸

There were some positive aspects to the 'informal' manner of the proceedings adopted at the hui. Tribal leaders had organised their people into consolidation groups without any outside interference. Carr also pointed to what he saw as the

255. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 183–184)

256. *Ibid*, p 8 (p188)

257. Coates to Guthrie, 12 July 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 146)

258. Nikora, 'Urewera Consolidation Scheme' (doc E7), p13

'advantages gained by the mode of procedure adopted'. Much time was saved compared to the Native Land Court: 1,061 succession orders were made quickly and efficiently. In total, Carr estimated that the court would have taken anywhere between three and four months to complete this process, rather than three weeks, and at much greater expense. Carr also considered it a positive that Maori owners were given the opportunity to organise themselves into consolidation groups, whereas the court might have taken up to four months to achieve the same. 'The informal Commission made its proceedings quite informal so as to get into direct touch with the representatives and leading men, dispensed with intermediaries, conductors and lawyers, and ran as it were with the mood of the people. It was wonderful to see how they responded.'²⁵⁹ If there was ever an example in favour of Maori owners being allowed to organise their own holdings, this was it.

But Carr also presented the informal nature of the proceedings in terms of the outcomes that favoured the Crown. He listed a series of outcomes that the Crown achieved through the form of the negotiations: 100,000 acres of land that could be made available to the Crown immediately; 'practically all of the millable timber area' in the Te Whaiti blocks; the acquisition of the Waikaremoana block; and a contribution from Maori owners towards the construction of the roads and the survey of their new blocks.²⁶⁰ In concluding his report, Carr summarised the overall success of the hui for the Crown:

I am sure that the method adopted in carrying out the Urewera Consolidation Scheme has saved a great deal of money and certainly a great deal of time, which from the standpoint of the present Government investment in Urewera lands should also spell a large sum of money.²⁶¹

It was understandable that Carr would present the hui in these terms in his report to the Government, but this was also the outcome that Ministers hoped to achieve when they decided to adopt informal proceedings. We are certain, however, that the Maori owners also appreciated a swift and relatively inexpensive process, significant parts of which were under their own control.

Crown counsel suggested that the concessions made to Maori owners in the northern blocks are 'evidence of the robustness of the negotiations'. Counsel cited the following comment from Balneavis as evidence of its intentions: 'Mr Knight has met the Maoris in a very fair spirit, being prepared to make ample reservations around their main settlements.'²⁶² But while it is true that Maori owners achieved some concessions from the Crown during the negotiations, we think that the Maori owners were on the back foot at Taurarau, responding to the proposals of the largest shareholder (the Crown) without adequate information or professional

259. Carr to Coates, 20 September 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp195, 198)

260. *Ibid.*, p 4 (p198)

261. *Ibid.*, p 5 (p199)

262. Crown counsel, closing submissions (doc N20), topics 18–26, pp15, 23

advice at their disposal. This was not, according to Mr Nikora's principles for a sound consolidation scheme, how it was supposed to happen.

Balneavis recorded that, during the hui, 'it was found necessary to recognise certain Maori occupations' in these northern areas, notably additions of 3,000 acres in the Tauwharemanuka block and 6,000 acres in the Paraeroa block. These changes were probably signalled by the owners' committee, with the details worked out later in the hui. Other areas 'required detailed investigation', and were 'therefore left to the special tribunal or special officers which are the subject of a recommendation later in this report'.²⁶³

It is significant that it was in these northern lands that some of the most substantial adjustments occurred during the next (implementation) phase. While we would not expect the hui to have achieved complete finality as to the details of the locations of the new blocks, it is likely that more accurate outcomes would have been reached earlier had Maori owners been given a sufficient opportunity to develop their own objectives at the beginning of the process, rather than being forced to respond to a series of Crown proposals with relatively limited information to hand. Nonetheless, there was some genuine give and take at Tuarau, as Coates had envisaged, and – at the end of the day – the Crown could not move forward without the committee of owners' consent to the scheme. This gave at least some bargaining power; power that was to be sorely missed in the next phase of the scheme, when the Crown, as we shall see, assumed the full and absolute authority to make all further decisions.

Before we begin our discussion of this 'implementation phase', however, we must first consider the separate arrangements negotiated with the owners of Te Whaiti.

14.6.2.3 The arrangements for a separate scheme in Te Whaiti

In early August 1921, after the committee had completed its deliberations, Ngata joined Ngati Whare and Ngati Manawa leaders to make preliminary arrangements for the consolidation of interests and the division of land in the Te Whaiti blocks. The Crown had asked for the 'complete award' of Te Whaiti 1 and 2, except for a few 'small reservations'.²⁶⁴ By July 1921, the original owners of the blocks – Ngati Whare and Ngati Manawa – still held interests to the equivalent of 12,437 acres, or 17.4 per cent. This was lower than the average remaining interests in rest of the reserve, and Ngati Whare and Ngati Manawa would have been deeply dissatisfied had the process of consolidation reduced their remaining land further. Ngati Whare leaders, in particular, had been campaigning for a partition of their interests for some time. It is likely that the Tuarau committee pressed this view on Knight, given that Ngati Whare and Ngati Manawa leaders were members of the committee. Balneavis also reported that a review of Bowler's lists of 'non-sellers' showed that Ngati Whare and Ngati Manawa owners of Te Whaiti 1 and 2,

263. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 186–187)

264. Knight, Carr, and Balneavis, 31 October 1921, AJHR 1921, G-7, p 4

Maraetahia, Otairi, and Tawhiuau blocks were not owners in other reserve blocks. ‘The Ngati-Manawa and Ngati-Whare, who own the blocks in question, may be regarded as tribes apart from the Urewera [Tuhoe]: It was decided, he said, ‘to deal with them specially’.²⁶⁵

Ngata assisted the Ngati Whare and Ngati Manawa owners to organise themselves into consolidation groups within a couple of days. Ten groups were formed for the Te Whaiti 1 block, and another group for Te Whaiti 2. Two groups of Ngati Manawa owners had already negotiated with Knight to exchange their interests in Te Whaiti 2 for Crown-owned land in the Whirinaki block, and Ngata confirmed these arrangements. On 6 August, Ngata updated Knight on the outcome of his discussions with the owners, including suggestions about where the other groups might locate their interests. Although possible locations had yet to be determined, Ngata said that apart from a few exceptions most groups would probably ‘ask for sections at Te Whaiti and one section each in the larger area’.²⁶⁶ Although he did not specify where this ‘larger area’ was, he likely referred to what became the large ‘Te Whaiti Residue’ area in the north-west of Te Whaiti 1, where over one-third of the interests were eventually located.

Knight travelled to Te Whaiti later in August to arrange where the Maori-owned blocks would be located. According to Balneavis, ‘an arrangement was arrived at satisfactory to the Crown and the Natives’; beyond that, little is known about how any decisions were reached. But Balneavis did indicate the rough areas where owners would take their interests: to the south, a section of 1,500 acres in Te Whaiti 2, and two sections of Crown land in the Whirinaki block; to the north, 1,800 acres around the main kainga in Te Whaiti 1, and another block to the north-west of Te Whaiti 1.²⁶⁷ This last block again most likely referred to the residue area.

Knight seems to have believed that he had achieved final decisions regarding the location of this land. When he later returned to Te Whaiti in the position of consolidation commissioner (as we will explain later in this section), he refused to authorise requests from owners which he believed deviated from the original arrangement. But the Ngati Whare owners, in particular, had emerged from the discussions with the understanding that Balneavis recorded in his August 1921 report to his Minister:

details as to location, actual area of non-sellers award, proportion of roading contribution and assessment of cost of survey, require to be worked out after a topographical survey and an enquiry to be conducted at Te Whaiti by a Special tribunal or specially empowered officials.²⁶⁸

265. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p185)

266. Ngata to Knight, 6 August 1921 (Paula Berghan, comp, supporting papers to ‘Block Research Narratives of the Urewera, 1870–1930’, 18 vols, various dates (doc A86(g)), vol 7, pp 2281–2282)

267. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p185)

268. Ibid

They later made requests to the consolidation commissioners accordingly, mainly relating to land around their main settlement; many of the requests were refused.

Knight set out to achieve specific results in the Te Whaiti lands in accordance with his brief. The Crown had commenced its purchasing operations in the Te Whaiti blocks with the definite intention of acquiring the timber-rich lands in Te Whaiti 2. Ngata revealed as much when he told Knight about the results of his preliminary investigation on 6 August: the amount of land that had been earmarked for award in Te Whaiti 2 – 1,500 acres – was ‘slightly above the area agreed upon in our conversation yesterday’.²⁶⁹ And although Ngata had been successful in overseeing the transfer of some interests out of Te Whaiti 2 or marking their owners as ‘probable sellers’, many of these interests went into Te Whaiti 1, in effect replacing those who had taken their interests to other blocks. The aim, Ngata revealed, was to reduce the interests of Ngati Whare and Ngati Manawa owners in the Te Whaiti blocks as much as possible. It seems clear that, in this instance, Ngata saw himself at least in part as working to achieve the Crown’s objectives – he was no longer acting simply for the owners as he had at Taurau. In order to assist this process, Bowler continued purchasing in the blocks. This was in direct contravention of Coates’ instruction, but presumably accorded with the standards of acceptable purchasing set down by Knight. By mid-September, he reported the purchase of the equivalent of a further 1,014 acres, thus further undermining one of the key promises made to Maori owners on entering the scheme.²⁷⁰

It is possible that in an attempt to minimise the impact of remaining Ngati Whare and Ngati Manawa interests on the Crown’s plans for the Te Whaiti blocks, Knight insisted on locating as many of those interests as possible in what became the ‘Te Whaiti Residue’ block, located in the northern end of Te Whaiti 1. In consolidation schemes, the term ‘residue’ was usually used to indicate a set of interests that were placed together on an interim basis until owners selected land where those interests could be taken. But given many owners did make later requests for changes, and specifically expressed their discontent at the location of the residue block, its location appears to have been at the Crown’s insistence. Yet, many owners had pooled their interests from the Otairi, Maraetahia, and Tawhiuau blocks in an attempt to concentrate their holdings around their main settlement, many of which were then placed in the Residue block. One of the consequences of this was the loss of the ancestral maunga, Tawhiuau, which was located in the Tawhiuau block. Counsel for Ngati Manawa pointed to this loss as one of the clear effects of the scheme: ‘this was and is Ngati Manawa’s sacred maunga’.²⁷¹ This is a prime example of the choices Maori owners had to make in the course of the scheme: in most cases, they chose to concentrate their interests at their existing settlements, sacrificing places of ancestral importance, unless they could secure those places later from the commissioners as a reserve. As a result, the Crown emerged as sole owner of the Otairi, Maraetahia, and Tawhiuau blocks.

269. Boast, ‘Ngati Whare and Te Whaiti-nui-a-Toi’ (doc A27), p 209

270. Bowler to Carr, 12 September 1921 (Webster, ‘Urewera Consolidation Scheme’ (doc D8), p 705)

271. Counsel for Ngati Manawa, closing submissions, 2 June 2005 (doc N12), p 57

Counsel for Ngati Whare submitted that ‘the Crown failed to adequately consult with Ngati Whare about the Urewera Consolidation Scheme.’²⁷² A lack of consultation does not adequately capture what occurred at Te Whaiti in this early stage of the process, the consequences of which were played out during the implementation of the scheme. From the Crown’s perspective, the outcome of proceedings at Te Whaiti lands showed the advantage of embarking on an ‘informal’ process. Carr trumpeted the Crown’s acquisition of ‘practically all the millable timber area’ in the Te Whaiti blocks as one of the best results achieved through the informal style of negotiations.²⁷³ From our perspective, it shows the risks involved for Maori owners when even their honest broker – in this case Ngata – seems to have been working not entirely in their interests.

14.6.2.4 Legislating the outcomes of the Taurarau hui

It was not until after the Taurarau hui had finished that officials identified the need for special legislation to implement the Taurarau arrangements. This was for two reasons: the outcomes of the hui were not as ‘final’ as initially hoped and, in fact, existing statutory provisions did not allow for a consolidation scheme that resulted in an award of land to the Crown. As both Balneavis and Carr explained in their reports, the complexity of the consolidation and land division process meant that a further process of deliberation would be required; this much should have been obvious before the Taurarau hui, but it was not until Balneavis wrote his report shortly after the hui that this requirement was identified for the first time. He recommended that ‘a special tribunal or special officers be appointed to carry out the details of the arrangements made between the Crown and the Natives, and I think Mr Knight and Mr Carr should be selected for the work.’²⁷⁴ This ‘special tribunal’ was necessary, he explained, because a large number of the ‘details’ of the land division in the northern lands and in Te Whaiti had been arranged on a preliminary basis, but had yet to be confirmed.

On top of this, officials discovered that the scheme could not be carried out under existing legislation. Until that time, it had been assumed that the decisions emerging from the hui, though conducted informally, could then be authorised by the Native Land Court. But Carr explained in his September 1921 report that the nature of the Crown’s purchasing in the former reserve meant that the Urewera Consolidation Scheme would require its own Act:

In the first place the Court would not have had jurisdiction, as there is no power to include the undivided interests acquired by the Crown in any Consolidation Scheme. It would have been necessary to wait a few months for legislation to confer

272. Counsel for Ngati Whare, closing submissions (doc N16), p 79

273. Carr to Coates, 20 September 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 198)

274. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 190)

jurisdiction. Such a delay would have involved the piling up of interest charges on the £193,000 odd spent by the Government in the purchase of Urewera Lands.²⁷⁵

In other words, officials suddenly discovered that legislation only allowed for consolidation schemes involving the interests of Maori owners, not the Crown – a fact which they should have been aware of before embarking on the negotiations.

Faced with the prospect of amending the existing legislation, Knight, Carr, and Balneavis set about preparing a report which summarised the Tauarau negotiation and its outcomes, including the recommendation for a ‘special tribunal’ to implement the scheme under new legislation. The Consolidation Scheme Report – submitted to Coates and Guthrie on 31 October – speaks plainly of the Crown’s key objectives in approaching the negotiations at the Tauarau hui, and the outcomes that were thought to have been achieved. The report begins with a summary of the Crown’s involvement in Te Urewera since the passing of the UDNR Act, the failure of which was put down to the large volume of appeals lodged against the awards, and the ‘large section of the Ureweras, led by Rua Kenana, [who] . . . demanded that some of the lands should be sold to the Crown.’ The need for a consolidation scheme arose in this context. ‘It became necessary to concentrate attention on the problem of how best to dis sever the Crown from the Native interests without the intrusion of the latter into the Crown’s sphere of settlement prejudicing a comprehensive scheme of roading and cutting-up[,] and the reservation of forest and watershed areas.’ The Government had rejected other options, such as acquiring the remaining interests by compulsion or seeking a partition through the Native Land Court.

The report then set out the process by which the hui was conducted and a summary of the outcomes, followed by a recommendation for the ‘proposed legislation.’ This involved first repealing ‘all existing legislation relating to the Urewera Native District Reserve.’ The officials specifically noted that this would result in the ‘abolition of the Local Committees and of the General Committee’ but suggested that ‘the majority of the Ureweras are opposed to their continuance.’ They also recommended the appointment of ‘special officers’ to carry out the draft scheme outlined in the Report. These officers would have the power to amend any details of the proposed scheme, including ‘proposals for the location of the area that any group may be found entitled to.’ Any matter of dispute, whether between the ‘special officers’ or between the officers and the Maori owners, would be referred to the chief judge of the Native Land Court for resolution. In other words, the Maori owners would have a right of appeal to an external arbiter, if not the arbiter of their choice. The chief judge’s decision was to be final. Importantly, the officials recommended appeals to the chief judge alone and not to the Native Appellate Court, which could have sat with Maori assessors to consider any appeals.

In concluding the report, the authors noted the advantages that the Crown had

275. Carr to Coates, 20 September 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p195)

derived in 'the carrying-out of negotiations in an informal way, unhampered by legislative and other restrictions':

The ordinary machinery of the Courts would have been at a serious disadvantage. A Court, acting judicially under statute, could not have conducted negotiations such as resulted in the acquisition of the Waikaremoana forest area, or the settlement of the Te Whaiti Blocks, where the Crown's objective was the large area of valuable milling-timber. Its own rules would have caused delays and adjournments at a time when the fullest advantage had to be taken of the complete representation of all non-sellers' interests at one place.

While Maori owners would derive benefits from the scheme – in the form of 'sections, ready surveyed and accessible by or handy to arterial roads', and land titles that would be 'as far advanced as the best Native titles in any part of the Dominion' – the officials emphasised the benefits won by the Crown when 'unhampered' by legislation or due process. There is a definite implication in the report that the Crown would not have done quite so well in the Native Land Court, had that court supervised the division of lands between the co-owners in the reserve.²⁷⁶

Although the recommendations outlined in the report had yet to be tabled in Parliament, or the required legislation passed, the Government proceeded on the basis that they would be approved. Coates informed the incoming Under-Secretary for the Native Department, RN Jones, in early November 1921 that the report's recommendations had been approved by Cabinet and that Chief Judge Browne of the Native Land Court had been instructed to draft the necessary legislation. He said that Knight and Carr would be appointed as the 'special officers' and that they should be 'empowered to employ such experts and other assistance they may require, including the making of topographical surveys necessary for the settlement and location of disputed sections.'²⁷⁷ And when Coates tabled the report in Parliament on 14 December, he repeated that 'although the work that has been done has not been legalized – legislation being necessary and essential to legalize it', work was going on to formalise the arrangements regardless.²⁷⁸

The terms of the Urewera Lands Act 1921–22 – as it became when it passed its third reading in February 1922 – reflected the Crown's long-term objectives for purchasing in the reserve. The long title of the Act was given as 'An Act to facilitate the Settlement of the Lands in the Urewera District'. Although such 'settlement' included Maori owners, the process by which the land division would be implemented meant that the Crown would obtain its land first. Section 2 confirmed that all purchases made by the Crown were valid. Section 4 allowed for the appointment

276. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, pp 2–7

277. Coates to Native Under-Secretary, 11 November 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 205)

278. Coates, 14 December 1921, NZPD, vol 192, pp 1110–1111

of the commissioners. Because there were two (co-equal) commissioners, section 4 provided for them to refer any disagreement between themselves to the chief judge of the Native Land Court for resolution. This was an important departure from the draft scheme in the Consolidation Scheme Report, which had also provided for disagreements between the commissioners and the Maori owners to be referred to the chief judge. Under the Act, however, the commission represented one co-owner in the reserve (the Crown) but provided no representation for the Maori owners, yet gave the latter no right of appeal from its decisions. This was further than even Knight had been prepared to go.

Section 5 of the Act said that the commissioners should proceed 'with all convenient speed' to identify the Crown's award, and make orders accordingly. The commissioners would be the 'sole judges of the location and boundaries of the portions so awarded to the Crown, but shall, in fixing any boundary, consult so far as practicable the wishes and convenience of the Natives.' Land would be allotted to Maori owners only after 'providing for the portion of land to be allotted to the Crown.'

In short, the Act expected that the commissioners would follow the draft scheme set out in the report, as negotiated at the hui, but that in practice the Crown would receive its land first. Ngata commented on the potential dangers of this approach in his memorandum attached to the Consolidation Scheme Report, recommending the process of land division to occur 'pari passu' – a Latin phrase meaning that one action should take place on an 'equal footing' with another.

It would be a breach of the spirit of the negotiations so successfully conducted if the Crown, on whom the responsibility for surveying and roading has been thrown, were to complete its own titles first and place settlers on the areas awarded to it, leaving Native claims in the air.²⁷⁹

Later in this section we explain how the commissioners had already begun their hearings by the time the Act was passed in February 1922, and had established a process for laying out the blocks which increasingly departed from that outlined in the Act. Nevertheless, the Act itself clearly signalled that the commissioners were to prioritise the Crown's award ahead of the Maori owners', a process that Ngata had advised against before the passing of the Act.

While we might consider that it was understandable for the Crown to proceed straight from the negotiations to legislation, especially given the need to deliver the scheme's promises as quickly as possible, Maori owners were never given the opportunity to understand the full significance of the report and its recommendations or to provide any input on how their titles would be determined. According to Mr Nikora's principles for a sound consolidation scheme, the draft scheme would normally be referred to the owners at this point for their detailed scrutiny and approval, along with up-to-date valuations (including those of any improvements on the land). Yet no aspect of a process for implementing the outcomes of

279. Apirana Ngata, memorandum, no date, AJHR, 1921, G-7, p 7

the Taurarau hui had come up for discussion during that hui. As a consequence, Maori owners came away from it with no understanding of how they were actually to receive title to their land; nor were they given the opportunity to influence the shape of this process.

To make matters worse, they did not receive the printed report until early January 1922, and then only in English. The consequences of this could be seen immediately. Some Maori owners in the northern lands voiced their concerns about the outcomes of the hui to surveyor HD Armit, who had arrived in Te Urewera in late 1921 to begin preparing topographic plans of the area. Armit brought with him the lithographic plan that was prepared after the Taurarau hui showing the proposed location of the Crown and Maori awards. He noted that 'several Natives have approached me and I promised to enquire if the plan produced shews the correct position'. Two owners in particular, he said, had told him that the plan showed their paddocks, homes and cultivations as part of the area to be awarded to the Crown.²⁸⁰

In keeping with such concerns, Te Pouwhare Te Roau told the commissioners (when they sat at Ruatoki in January 1922) that surveys should not go ahead until they were satisfied that 'fears as to locations, groupings etc. were groundless: they had only just seen the printed reports and that there were matters therein that required enlightenment'.²⁸¹ But the report did little to enlighten owners. At the commission's first sitting at Waikaremoana in February 1922, Ngati Ruapani strongly voiced their inability to understand the report that had suddenly appeared in front of them: 'all present complained of the report being printed in English only'.²⁸² The report was not printed in te reo Maori for another year, and only after complaints such as this had been made. Even then, its complex terms and the way it was intended to operate alongside the Urewera Lands Act may have remained opaque to Maori owners.

The Crown argued that a relative lack of protest from Maori owners in the wake of the Taurarau hui and during the scheme's implementation 'suggests support by a large section of Urewera Maori because of the prospective benefits of such a scheme'.²⁸³ For the most part, however, Maori owners were not in a position to offer any significant protest because they did not know what to protest against. The complaints that did emerge reveal the owners' inability to understand the terms of the scheme, based on the information they had received at the hui and their slow access to the relevant documents setting out the terms of the scheme, which when they arrived were largely impenetrable.

The first petition against the scheme, submitted by Wharepouri Te Amo, Te

280. Armit to chief surveyor, 8 December 1921 (Steven Robertson, 'Te Urewera Surveys, Survey Costs and Land Valuations in the Urewera Consolidation Scheme, 1921–22: An Overview Report' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003) (doc A120), pp 123–124). The two owners were Taupae Karaka (in the Parekohe block) and Moutu Hakaipara (in the Omahuru block).

281. Urewera minute book 1, 19 January 1921 (doc M29), p 9

282. O'Malley, 'Waikaremoana' (doc A50), p 107

283. Crown counsel, closing submissions (doc N20), topics 18–26, p 21

Wharekiri Pararatu, and Pomare Hori on 5 October 1921, showed some confusion following the Tauarau hui, even before the Consolidation Scheme Report was published.²⁸⁴ The petitioners objected to paying for half of the cost of constructing the arterial roads, whereas in fact this had been reduced to £20,000 on discussion with Apirana Ngata. Wharepouri repeated his protest and raised others when the commission arrived at Ruatahuna at the end of February 1922, after they had received the report. ‘Tuhoē objected to £32,000 being contributed towards roading’. Although the report stated that £20,000 would be the total contribution, it also included Knight’s original proposal, which was possibly a source of continued confusion. Wharepouri also noted their objections to the payment of rates and survey costs, which he was recorded as saying was ‘not discussed at Ruatoki’.²⁸⁵

As we explain later in the chapter, although some Maori owners appear to have been persuaded of the need to pay for the new surveys in land, the exact form and extent of survey costs were not raised – let alone settled – at the hui. The report would have clarified for them the form of the takings from each block, but not the extent of land that would be taken, which did not become clear until the commission began determining the location of each block. The application of rates upon the completion of the roading scheme was another matter introduced into the report and the Act, but featured in none of the Crown’s proposals or negotiations at Tauarau. On this basis, Maori owners were hardly in a position to signal any opposition. The determined efforts of some Ruatahuna peoples to oppose the scheme originated from their earlier opposition to Crown purchasing; an opposition which only strengthened when the consolidation commissioners arrived at Ruatahuna in 1922 and they had little idea of what the commissioners were authorised to achieve. Others continued to offer their support for the scheme on the understanding that the Crown would deliver the promises that had been made to them: security in their remaining land and arterial roads to assist their economic development.

14.6.3 How much land was included in the Urewera Consolidation Scheme and was the process of exchange transparent?

Although the Consolidation Scheme Report and the Urewera Lands Act 1921–22 set out to define the scope of the scheme, many crucial facts were never spelled out. No figure was ever given for the total size of the scheme in acre terms, which was less than the 656,000 acres of the reserve, but more than the 518,329 acres of the 44 blocks in which the Crown had purchased interests, with the further addition of some small pieces of Crown land from outside the former reserve. In all of the documents relating to the scheme – from its inception in 1921 to its conclusion in 1927 – the total figure was never disclosed.

There was also no figure in any of the records that disclosed the full relative

²⁸⁴ Wharepouri Te Amo, Te Wharekiri Pararatu, and Pomare Hori to Parliament, 5 October 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp 201–202)

²⁸⁵ Urewera minute book 1 (doc M29), p 31

interests of the Crown and Maori owners before the scheme began or even after the final awards were made. Although the report gave the relative interests for the 44 reserve blocks in which the Crown had purchased interests as at 31 July 1921, this did not accurately reflect the total interests after the addition of the Waikaremoana block and small areas of land outside the reserve. Given these facts, it was unlikely that Maori owners would ever have been able to understand the basic machinery of the scheme. We agree with Mr Nikora that the scheme ‘was not transparent and even today defies comprehension.’²⁸⁶ Nevertheless, it is important for the purposes of our investigation to attempt a reconstruction of the scheme’s parameters. This is because the Crown’s case rested on the assertion that the process of exchange in the scheme was sound, based on open and accountable record keeping.²⁸⁷

By our calculations, the scheme consisted of approximately 600,000 acres. This was made up of 45 reserve blocks, including the Waikaremoana block, in which the Crown had not purchased any interests. It also included the four Tuhoe and Ngati Ruapani reserves in the Taramarama and Tukurangi blocks to the south of Lake Waikaremoana; and Hereheretau B2 and Oamaru 1C blocks. The Consolidation Scheme Report made no attempt to add the total amount of land together, and nor was there a final statement comparing the original figures with the final awards. Our assessment of the scheme’s total size is based on comparing how much land entered the scheme with how much land was awarded. Both figures rely on quite different sets of information: one uses the old reserve blocks, the other uses the new Urewera Consolidation Scheme blocks; both of which were surveyed according to different methods. It is unsurprising that they do not match exactly. Even so, such a comparison provides a good basis for establishing how much land was in the scheme.

- ▶ The total size of the reserve blocks and other land included in the scheme is 599,564 acres.
- ▶ The total size of the same land at the end of the scheme – which consisted of the Crown’s award, the new Maori-owned blocks, and the small amounts of land included in the scheme from outside the reserve and awarded variously to the Crown and Maori owners – is 598,692 acres.

The discrepancy of 872 acres might have been brought about by the increased accuracy of the new surveys, thus shrinking the size of the land in the order of 1.5 per cent from its pre-scheme equivalent. It is equally possible, however, that some land was never properly accounted for, particularly in the Crown’s award of 482,300 acres.

While it is important to know how much land was included in the scheme, the basis of the consolidation process was not the land itself but rather the relative interests of the Crown and Maori owners respectively. The total value of these interests was based on the valuation of each of the blocks included in the scheme. As part of the first proposal to Maori owners at the Tauarau hui, Knight presented the relative interests of the Crown and Maori owners (in total) in the 44 reserve

286. Nikora, ‘Urewera Consolidation Scheme’ (doc E7), p 13

287. Crown counsel, closing submissions (doc N20), topics 18–26, p 52

Scenario 1 – based on the Reserve block figures	
Land	Acres
45 Reserve blocks included in the scheme	591,996
Four southern block reserves	2,498
Hereheretau B2	256
Oamaru 1C	4,814
Total	599,564
Scenario 2 – based on the final awards	
Land	Acres
Crown award	482,300
Maori owner awards	106,287
Waikaremoana block reserves	607
Road reserves	1,930
Four southern block reserves	2,498
Hereheretau B2	256
Oamaru 1C	4,814
Total	598,692

Table 14.2: Area of the Urewera Consolidation Scheme

Source: Knight, Carr, and Balneavis, 'Report on Proposed Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, pp 4–5; 'Proclaiming Native Land to be Vested in His Majesty under Section 368 of the Native Land Act, 1909', 14 February 1924, *New Zealand Gazette*, 1924, no 9, pp 488–489; 'Proclaiming Native Land to Have Become Crown Land', 23 June 1927, *New Zealand Gazette*, 1927, no 43, p 2121; 'Proclaiming Road-lines Laid Out through the Urewera Reserve, Auckland and Gisborne Land Districts', 17 July 1930, *New Zealand Gazette*, 1930, no 52, p 2194; Ngata to Coates, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 476); Urewera minute book 1, 9 March 1923 (doc M29), p 320

blocks that had been subject to purchase. The Crown had purchased interests to the value of £193,076 4s 11d, which – given the value of those particular blocks – was the equivalent of 345,076 acres. Maori owners retained interests to the value of £78,479 15s, which was the equivalent of 173,252 acres.²⁸⁸ During the Taurarau hui, the number of remaining interests belonging to each individual was calculated; these interests were then combined as part of larger consolidation groups.

With these interests as the basis of the consolidation process, Maori owners and the Crown could be awarded more or less land than the equivalent amount each had taken into the scheme, depending on the valuation of the block they were moving from as compared to the block into which they were moving. If the Crown or a group of Maori owners took their interests in land with a higher value than the land in which those interests were held on entering the scheme, the amount of land they were to be awarded would be less in acre terms. The opposite also applied: transferring interests into land with a lower valuation meant more land. The number of owner interests at the beginning and the end of the scheme, however, had to stay the same.

²⁸⁸ Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 3

Land categories	Acres
Additional land taken by Crown during consolidation scheme	137,224
Less:	
1. Survey costs	32,368
2. Roading costs	39,355
3. Crown reserves (Webster's estimate)	3,000
4. Land purchased (Webster's estimate)	10,000
5. Land 'falsely purchased' in Waikaremoana block (Webster's estimate)	4,000
6. Excess deductions from Apitihana block	2,400
Total identified deductions from Tuhoe allocations	<u>91,123</u>
Balance of Crown award still unidentified origin	46,101

Table 14.3: Steven Webster's calculations in support of a Crown 'windfall'

Source: Steven Webster, 'The Urewera Consolidation Scheme: Confrontations between Tuhoe and the Crown, 1915–1925' (commissioned research report, Wellington: Waitangi Tribunal, 2004) (doc D8), p 600

It was the complexities of this process of exchange that accounts for the 'windfall' of land that Steven Webster argued was acquired by the Crown during the course of the scheme. Webster claimed that in increasing its interests from the equivalent of 345,076 acres before the scheme to its final award of 482,300 acres, the Crown unfairly acquired an extra 46,101 acres. He came to this theory initially because he was unable to account for the additional land the Crown acquired during the scheme, and nothing was contained in the records of the scheme to explain the extra acquisition. The difference between the pre- and post-scheme figures was 137,224 acres: of this, Webster claimed he could only account for 91,123 acres, which was made up of a combination of survey and roading deductions, further Crown purchases, and other Crown acquisitions. The Crown's 'windfall', Webster reasoned, was likely explained by earlier surveying errors: when the land was re-surveyed during the scheme, more acres were discovered than had previously been unaccounted for, which were then included in the Crown's award.²⁸⁹ Counsel for Wai 36 Tuhoe supported Webster's finding, saying that the 'shambolic' record keeping in the scheme resulted in a 46,000-acre windfall to the Crown.²⁹⁰ The Crown cautiously advised that 'this matter is so significant it should be pursued by the Tribunal', noting that it had not examined the claim in depth.²⁹¹

In our view, the Crown's acquisition of this land can be explained by a combination of the impact of the Waikaremoana block transaction and the normal process of exchange of interests in consolidation schemes. Later in this chapter, we will discuss the circumstances surrounding the Crown's acquisition of the Waikaremoana block, which began during the process of the Tauarau negotiations.

289. Webster, 'Urewera Consolidation Scheme' (doc D8), pp 596–606

290. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 107

291. Crown counsel, closing submissions (doc N20), topics 18–26, p 51

For now, it is sufficient to note that the result of these negotiations was that the block in its entirety (73,667 acres, minus 607 acres for reserves) was earmarked for award to the Crown. This was not factored into Webster's calculations. As noted above, the interests of Tuhoe owners (valued at £8,696, the equivalent of 29,060 acres) were transferred into consolidation groups who located their interests in other areas of the former reserve. The remaining interests of Ngati Ruapani and Ngati Kahungunu owners (valued at £13,400, the equivalent of 44,607 acres) were transferred out of the scheme to be taken as a combination of cash, debentures, and land.²⁹² The Crown therefore put this part of the Waikaremoana block directly into its award, and did not have to compensate for it in other areas of the scheme.

What appeared to be a 'windfall' can be explained by the division of land at the Taurarau hui after these Tuhoe interests were transferred out of Waikaremoana to various consolidation groups. The obstacle in demonstrating this point is that the additional Tuhoe interests were never recorded on a total proportional basis between Maori owners and the Crown in the main part of the Consolidation Scheme Report. But they were included in the list of consolidation groups and their locations contained in schedule 2 of the report; that, and other evidence,²⁹³ shows how the Tuhoe interests were spread around a variety of areas, many of which had a higher valuation than the Waikaremoana block and thus resulted in a smaller acreage. Further movements during the implementation phase followed this trend, particularly when groups took their interests from Ruatahuna to the northern blocks. Over the course of the scheme, these movements meant that while the total value of Maori interests remained steady at around £87,000, the amount of equivalent land tracked downwards from 202,313 acres (after the inclusion of the Waikaremoana block) to 183,398 acres (after the Tuhoe interests from that block had been distributed around other areas), and finally to 176,488 acres (after further changes during the implementation phase, and taking into account ongoing purchases by the Crown). (These figures are set out in more detail in appendix VII.)

While these changes are too complex for us to track across the whole of the scheme, we believe that they account for the area of land Webster was unable to identify. The Crown acquired approximately 20,000 acres from this process, which was nearly equivalent to the amount of additional interests Tuhoe owners took from the Waikaremoana block. Ordinarily, the added interests would need to have been offset by land elsewhere in the scheme. But, as Tuhoe owners gradually moved into more valuable land, the Crown acquired proportionately more land.

The extra land the Crown acquired during the course of the scheme, therefore, can be accounted for through five distinct elements:

- ▶ Approximately 20,000 acres through the transfer of interests between high and low value land.

292. Ngata to Coates, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 476)

293. These were, namely, the books that recorded the movements of individual interests into groups during the Taurarau hui.

- ▶ The additional purchase of interests from Maori owners during the implementation of the scheme, the equivalent of 5,976 acres (see below).
- ▶ The Crown's direct acquisition as part of the Waikaremoana block transaction; 44,000 acres from Ngati Ruapani and Ngati Kahungunu owners.
- ▶ Approximately 31,500 acres for the cost of surveying the Maori-owned blocks.
- ▶ Approximately 40,000 acres for the Maori contribution toward the cost of constructing the arterial roads.

The 137,224-acre difference between the Crown's interests at the end of purchasing and the Crown's final award can roughly be accounted for, but only just and in a way that casts further doubt over the scheme's implementation.

Given the lack of intelligible information about how the scheme worked, it is unsurprising that counsel or commissioned researchers failed to understand how this process occurred. Yet, the Crown maintained that a sound basis of exchange was put in place, which, in its view, was another element of the scheme that contributed to its overall success. Crown counsel submitted:

to ensure an equitable outcome to both Maori and the Crown in the consolidation of their respective interests, the consolidation had to proceed on a common valuation, that is, on a valuation using a common method at a fixed or uniform date or period so that there was a common denominator to ensure equality of exchange across blocks.²⁹⁴

The case of the so-called 'windfall' demonstrates that very little was done to 'ensure equality of exchange' in the scheme. Without transparent record keeping, the outcomes would always be open to question, whether or not the valuations used as the basis of exchange were reliable. The scheme's record keeping was not so much 'shambolic' as inadequate, and insufficient for an undertaking of this magnitude in which owners' property rights were at stake.

While the interests of the Maori owners were translated into penny shares, and recorded in some detail in schedule 2 of the Consolidation Scheme Report, the Crown's interests were never disclosed. From that point on the scheme proceeded as a one-sided equation: the Crown, by inference, was to receive all the land that was not awarded to Maori owners. As we explain below, this became entrenched as the commissioners departed from the process of awarding blocks to the Crown first, which resulted in a final award to the Crown *after* the Maori-owned blocks had been laid out.

Nonetheless, despite its inadequacies, poor record keeping does not appear to have resulted in significant discrepancies. But given the thousands of acres involved, Mr Nikora observed, the scheme 'should have been the subject of an independent reconciliation and audit in order to assure the owners that their value in the Scheme had been properly accounted for.'²⁹⁵ Instead, the scheme failed on this most basic of elements of a sound consolidation scheme: clear and transparent accounting.

294. Crown counsel, closing submissions (doc N20), topics 18–26, p 52

295. Nikora, 'Urewera Consolidation Scheme' (doc E7), p 46

The flaws at the heart of the scheme did not stop with poor record keeping; we also have serious reservations about the Crown's submission that it ensured a reliable 'common denominator' in the valuations it adopted for the scheme. Crown counsel submitted that the 'values were constant as to method and time in the sense that there was no shift (that is to say, no increase or decrease) in values between the respective valuations'.²⁹⁶ In the last chapter we explained the various flaws associated with valuations conducted for the reserve blocks, the great majority of which were made by Wilson and Jordan in their 1915 report. While these so-called valuations were unlawful and unfair, and had not valued any timber except at Te Whaiti – a very material point for the scheme – they were also unreliable. They were, in fact, not 'valuations' conducted by trained professionals, but rather assessments of value conducted by Department of Lands and Survey officials for the purposes of establishing a scheme of settlement (with the exception of Burch's valuations of the Ruatahuna blocks in 1919).

As a basis of exchange in a consolidation scheme, these assessments of value were wholly inadequate. Although Crown counsel is correct to observe that, once adopted, the valuations were stable, in the sense that all owners in the reserve exchanged in and out of land valued according to the same method, the valuations hardly provided a reasonable guarantee to Maori owners that the proportion of land they would receive for their interests was sound: they had been made by officials who assessed the land for the Crown's settlement purposes and were by no means reliable.

We also note here that as a basis for fresh acquisitions after 1921, whether by way of new Crown purchases or by deductions for surveys and roading, the common denominator 'valuations' were seriously out of date. We will consider this issue in more detail below.

The final flaw in the Crown's case that it ensured an 'equality of exchange' in the scheme was the fact that the Crown continued to purchase interests from Maori owners during the scheme's implementation. Coates' 8 August instruction to halt purchasing during the scheme was followed by a confirmation of the policy at the end of September: 'all further purchases by the Crown are to cease'.²⁹⁷ These instructions were reflected in the terms of the Consolidation Scheme Report, which recommended that alienation should not be allowed during the implementation phase, either to private parties or to the Crown. The logic was obvious: in order for the process of consolidation and exchange of interests to occur successfully, those interests had to remain stable throughout the course of the scheme. But the report also noted that the Crown might have to purchase some interests 'to adjust a difficulty', in which case the 'special officers' would be authorised to make a recommendation.²⁹⁸ This became normal practice in most consolida-

296. Crown counsel, closing submissions (doc N20), topics 18–26, p 52

297. Coates to Jordan, 30 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 469)

298. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 6

tion schemes: the Crown would buy land to assist Maori owners in reorganising their interests. As we explain in chapter 20, the main issue surrounding the Ruatoki–Waiohau Consolidation Scheme is why the Crown failed to give back land it had supposedly purchased for that purpose. In the Urewera Consolidation Scheme, the powers for the commissioners to purchase interests were granted in section 10(1) of the Urewera Lands Act 1921–22. The commissioners could certify ‘any sum of money . . . to be paid to any person in connection with the consolidation or exchanges required to carry out the said scheme’. The purchase money would be authorised by the Minister of Finance. In accordance with these provisions, a proclamation was issued under the Native Land Act 1909 preventing alienations to private purchasers. On 30 September 1921, Coates instructed Bowler that ‘all further [Urewera] purchases are to cease’.²⁹⁹

Coates said in July 1922 that ‘a promise was distinctly made to the Urewera Natives that further purchasing would stop’, which was ‘the intention when the Act was framed’.³⁰⁰ But it appears that his understanding of the instruction differed from that of his officers on the ground. Although Knight objected to Bowler’s relatively small number of purchases at the Tauarau hui, amounting to the equivalent of 331 acres, he offered no objection when it came to the purchase of a further 1,014 acres worth of interests in the Te Whaiti lands. And this was not the end. The way Knight and Carr assisted Maori owners into consolidation groups at the Tauarau hui suggests that, as far as the officials were concerned, purchasing in the scheme would not be limited to adjusting a ‘difficulty’. During the hui, some owners were earmarked as ‘probable sellers’ and placed into special groups of owners that were said to be held in ‘suspense’. Maori owners of the Te Whaiti blocks were placed in such groups, although we do not know whether they were aware that their interests had been set aside for purchase in the future. Jordan’s November 1919 plan had anticipated an arrangement of this nature: one of the purposes of a consolidation scheme, in his plan, was to expedite further Crown acquisitions through the process of concentrating the interests of Maori owners.

In chapter 16, we discuss the legacy of Jordan’s plan in the 1950s, when the Crown attempted to acquire some of the blocks remaining in Maori ownership – which by then were known as ‘enclaves’ – for addition to the national park. It first took shape during the design phase of the Urewera Consolidation Scheme (through Bowler’s purchasing and in the form of ‘suspense’ groups), which was then followed through by the commissioners during the implementation of the scheme. Although Knight himself had recommended in June 1921 that no further purchasing take place until after the scheme’s completion, purchasing continued; even after Coates had cautioned Knight that such purchasing flew in the face of promises made to Maori owners.³⁰¹ Between May 1922 and October 1924,

299. Coates to Native Under-Secretary, 30 September 1921 (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(b)), p 469)

300. Coates to Guthrie, 1 July 1922 (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(b)), p 457)

301. Knight to Under-Secretary for Lands, 21 June 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 148)

the commissioners purchased the equivalent of 4,604 acres in land that had been earmarked for award to Maori owners in the scheme, in approximately 120 separate purchases. The main concentration of purchases was in Te Whaiti 1 and 2, Hikurangi–Horomanga, and Ruatahuna.³⁰² (The equivalent of 1,863 acres was purchased from Ngati Ruapani owners of the Waikaremoana block who were due to receive their payment in the form of debentures at 15 shillings per acre, but instead were paid six shillings per acre. We discuss this separately below.) In addition to the interests Bowler acquired in August and September 1921, the Crown acquired a total of 5,976 acres during the scheme's design and implementation. Below, we discuss how the commissioners approached purchasing in a wide range of blocks.

The Crown has not acknowledged any problems associated with its purchasing activities during the scheme, except that it knowingly paid a price to some owners of the Waikaremoana block lower than that paid to others, and that this was 'unconscionable'.³⁰³ But the number of individual purchases that took place during the scheme suggests they went beyond what was needed to 'adjust a difficulty'. Maori owners entering the scheme did so on the understanding that their remaining land would be secured to them. They could not have confidence in a process that saw the Crown continue to target individuals who were owners in consolidation groups. At heart, ongoing purchasing during the scheme represented a continuation of the Crown's practices begun a decade earlier, despite Coates' statements to the contrary. This was particularly the case in Te Whaiti, where (as we will see below) the commissioners continued to purchase interests with the express intention of increasing the Crown's holdings. In Ruatahuna, purchasing took place to 'weaken the opposition'. Both of these examples cast doubt on the validity of the Crown's purchasing during the scheme. On top of the poor record keeping and the flawed basis of exchange, the very fact that the Crown continued to acquire interests in order to maximise its own award further undermines the idea that a 'common denominator' existed in the scheme, or that the Crown ensured an 'equality of exchange'.

What is certain is that the Urewera Consolidation Scheme proceeded into its implementation phase on shaky foundations.

14.6.4 How did the consolidation commissioners implement the land division?

The Urewera Lands Act 1921–22 gave two consolidation commissioners specific powers to implement the scheme negotiated at the Tauarau hui. They were, first, authorised to 'allot to the Crown portions of the lands in accordance with the said scheme'. While being the 'sole judges of the location and boundaries' of the Crown's land, they would 'consult so far as practicable the wishes and convenience

302. These figures are taken from an analysis of purchasing information recorded in the minute books of the consolidation commission (Urewera minute book 1 (doc M29); Urewera minute book 2A (doc M30)). Webster concluded that 8,000 acres was purchased during the scheme's implementation but appears to have counted a number of purchases more than once in his analysis: see Webster, 'Urewera Consolidation Scheme' (doc D8), p 374.

303. Crown counsel, closing submissions (doc N20), topics 18–26, p 71

of the Natives' over the location of their land. All orders made by the commissioners would be final: 'there shall be no appeal therefrom'. As we noted earlier, the draft scheme had provided for Maori owners to appeal to the chief judge but this was omitted from the legislation. In this section of the chapter, we look at how the commissioners went about their business from 1922 through to the conclusion of their hearings in 1925, and their final award of land in 1927.

Claimants' concerns about this stage of the process centred around the composition of the commission and the broad powers granted to it. These broad powers influenced the way the commissioners implemented the scheme, which the claimants said was harsh and often to the detriment of the Maori owners.³⁰⁴ The Crown, however, denied this was the case: 'With several possible exceptions, the commissioners implemented the scheme in accordance with its principal elements as recorded in the [Consolidation Scheme] report . . . and with enabling legislation'. In the Crown's view, the implementation of the scheme merely followed the main lines set down at the Taurarau hui. The way the commissioners went about their business was 'by and large . . . fair to both Maori and the Crown', the evidence for which was the small number of complaints that the Government received about their decisions.³⁰⁵

In terms of the composition of the commission, counsel for Wai 36 Tuhoe submitted: 'Tuhoe's primary criticism is that no Tuhoe were appointed as Consolidation Commissioners. The commissioners were imposed on Tuhoe without consultation.'³⁰⁶ In addition, counsel suggested that the commissioners who were appointed were neither independent nor impartial; rather, they were architects of the scheme and they favoured the Crown's interests, answering directly to Ministers.³⁰⁷ The Crown's view was that the composition of the commission could have been worse, as Coates had to scotch Bowler's appointment. Knight and Carr, however, were appropriate choices who had been endorsed by Ngata – although the Crown conceded that Ngata may have been reassured by the proposed right of appeal for Maori owners to the chief judge, which never made it into the legislation. Crown counsel accepted that the commissioners were not independent of the Crown, nor was their work that of a commission of inquiry. Rather, theirs was an 'administrative' task from which there would not normally be a right of appeal. Overall, the Crown considered that the commissioners acted competently and fairly, although Knight should not have been purchasing interests while he was performing his tasks as a commissioner; this may, counsel conceded, have made him appear less than impartial.³⁰⁸

In many respects, the Crown is justified in its interpretation of the commissioners' activities. The most important decisions, as far as the division of the land and the grouping of Maori owners were concerned, occurred at the Taurarau hui. But

304. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p108

305. Crown counsel, closing submissions (doc N20), topics 18–26, p 4

306. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p106

307. *Ibid*, pp 106–108

308. Crown counsel, closing submissions (doc N20), topics 18–26, pp 35–36

the commissioners did also oversee a number of important changes, particularly in the northern blocks and in the Ruatahuna region. As we have noted, the changes they authorised significantly affected approximately 20 per cent of the overall division of land. Yet, the way they dealt with the claims of consolidation groups and set boundaries of blocks was also crucial to the division of the land on a small scale, particularly for Maori owners. For only one co-owner – the Crown – to be represented on the commission and to have the final say on all these matters was, of course, a profoundly unfair arrangement. In that respect, we agree with Tuhoe claimants that they should have had equal representation on the commission. Now that the ‘give-and-take’ of a ‘round-the-table conference’ had been replaced by an adjudicative body with the power to make awards, it was important that that body be fairly constituted. Knight, Carr, and Balneavis had originally proposed that the Maori co-owners would at least have a right of appeal from the Crown co-owner’s decisions, but Parliament rejected this safeguard. We return to this point in our Treaty analysis and findings below.

The process followed by the commissioners was not set out in the Urewera Lands Act, but was rather developed over the four years of hearings, and followed roughly the same pattern in each of the nine series of new blocks. On the first day of the hearings, which usually occurred at the main settlements nearest the blocks being laid out, the proceedings would open with a request from a representative of a consolidation group (usually the group leader) for land in a particular area. This request was in line with the general area that had been identified by that group at the Tauarau hui, but with a more specific location. The commissioners would then receive any objections to this request from other groups who were present. If any objections were lodged, the commissioners might revisit that particular case at another time, in order to leave the owners an opportunity to resolve any disputes. In most cases, the owners resolved differences among themselves, or they might have arranged with each other before the hearing where they would make requests for land.³⁰⁹

We have identified at least seven instances in which the commissioners resolved disputes over competing claims, as well as a similar number of boundary disputes.³¹⁰ The commissioners waited for a period before stepping in, except in one case in Ruatahuna where an immediate decision was given.³¹¹ Decisions were not revisited. The commissioners approved compensation for Maori owners who were not awarded land on which they had made improvements, to be paid either by the Crown or by the Maori owners who had been awarded the land. Improvements were valued by surveyors.

309. Webster cited one example, in which group leaders Tari Manihera, Tane Hauraki, and Wiremu Wirihana appeared before the commissioners with an arrangement about locating their respective groups’ interests at the Pukareao end of the Tarapounamu series: Webster, ‘Urewera Consolidation Scheme’ (doc D8), p 571.

310. The seven areas where the commission made decisions settling disputed requests for locations were Waikirikiri, Paraeroa B, Rangatepihi flat, Oputea, Omakoi, Umuroa, and around Uwhiarae.

311. Urewera minute book 2A (doc M30), pp 140, 156–157

Once the commissioners felt satisfied with a group's proposed location, they would then visit the land with group representatives,³¹² often with a pre-prepared topographic plan, to point out the proposed boundaries.³¹³ This was possibly the first time Maori owners had the opportunity to consider where they would take their land with the benefit of such a plan. The boundaries of these new blocks would then be cut by surveyors, with further assistance from group representatives, taking into account the deductions for the cost of surveying the blocks and for constructing the arterial roads, which we discuss in subsequent sections.³¹⁴ Although alterations could be made to proposed block boundaries and to the constitution of groups of owners up to this time, once a block had been surveyed no further changes were considered.³¹⁵ Once a series had been confirmed, block order awards were drawn up and sent to the Native Land Court in Rotorua for confirmation. (The chief judge had to countersign the orders.)

This process played out in different ways in the nine series of Maori-owned blocks that were created during the scheme. Each series had on average a total of 20 to 30 blocks, with a total of 183 blocks (not including reserves) across the whole scheme. The number of owners in each block varied, ranging from one to 283. Over half of the blocks (115) had 10 or fewer owners; the remaining number (95) had more than 10. The commissioners tended to focus on two or three series at a time. A number of areas were revisited several times in order to resolve some of the disputed issues around the location of block boundaries, or simply to process the claims of all the consolidation groups. The commission sat regularly throughout its four-year lifespan, but went into recess over several months in winter, which the commissioners complained had delayed their progress considerably.³¹⁶ But the time taken to process all the blocks was partly because of the requirement to revisit some areas numerous times, and not just because of intermittent hearings. From its first hearing in December 1921 through to its last in July 1925, the commission sat a total of 81 times, each for a period of between a day and a week, and at different locations throughout Te Urewera, but sometimes as far away as Rotorua or Auckland.

312. See Urewera minute book 1 (doc M29), pp 60, 110, 116, 156, 201, 258, 268, 273, 276, 301, 321–322, 329; Urewera minute book 2A (doc M30), pp 62, 142.

313. Knight and Carr to Guthrie and Coates, 'Urewera Lands: Report by the Commissioners under the Urewera Lands Act, 1921–22', 6 August 1923, AJHR, 1923, G-7, p 2. In one case, in Ruatahuna, proposed boundaries were sketched onto a plan, which was circulated to the group heads for their assent: see Urewera minute book 1 (doc M29), p 321.

314. The following description from the Taumaha block gives an indication of how the process generally occurred: 'Ere Ruru will point out boundaries from the Mimiha Stm . . . Te Waioho te Parekura & others to Whakatau on the Tarapounamu bdy, but these will probably have to be varied to give correct area.' See Urewera minute book 2A (doc M30), p 194.

315. For examples of where the commissioners refused requests for changes, on the grounds that they had been made too late, see Urewera minute book 2A (doc M30), pp 33–34, 74, 124, 164–165.

316. Knight and Carr to Guthrie and Coates, 'Urewera Lands: Report by the Commissioners under the Urewera Lands Act, 1921–22', 6 August 1923, AJHR, 1923, G-7, p 2

14.6.4.1 The implementation phase in the northern lands

The first set of hearings began in late 1921. The commissioners' initial focus was on the northern lands: the Waimana, Raroa, and Ruatoki series of blocks. The Department of Lands and Survey aimed to prepare the Crown's award in this area for sale as early as possible, and impetus had been provided by the work that had begun on the arterial road in the Waimana Valley.

At the very beginning of its hearings, in the Waimana series, the commissioners accepted requests from owners to change the location of their awards. This began with a request from Tukuaterangi Tutakangahau, who asked for his interests in Tawhana to be moved to the western side of the Tauwharemanuka block. Other changes followed, as Maori owners submitted requests to take up land on the western side of the Waimana Valley.³¹⁷ At a very early stage, therefore, the commissioners showed that they were willing to move away from what had been arranged at the Tauarau hui if requested. The small Raroa series was confirmed quickly, because the owners comprised one consolidation group.³¹⁸

The Ruatoki series blocks were subject to some of the most significant changes in the whole implementation phase. The commission's hearings began in December 1921, when a number of succession orders were made. When the commissioners returned in January 1922, they immediately set about addressing the concerns raised by Te Pouwhare and other leaders about where their land would be located. By the end of the first day, he and others 'stated that they were much clearer in mind concerning locations and groupings.'³¹⁹ These assurances were no doubt prompted by the number of changes the commissioners were willing to authorise, which began immediately as owners made requests for land in the river valley, particularly in Ruatoki South.

The biggest changes came at the end of the process and were brought about mainly by a number of errors that appear to have been made at the Tauarau hui: there were more groups wanting to take up land in the river valley than originally anticipated, and there was not enough land to go around. As a consequence, when the commission returned in late 1922, the group led by Tawera Moko asked for land in the former Te Poroporo block, because other groups already had claims approved to the available land to the north. Te Poroporo had been earmarked as Crown land but the commissioners consented to this, and to a similar request made by another group.³²⁰ Some changes were authorised after groups asked to move from the former Waipotiki block closer to the Whakatane River; others as groups merged or changed their locations to better reflect their desired land holdings. The commissioners signed off on the majority of the blocks in November 1922, but further alterations were required a year later, when owners' interests were transferred from Ruatahuna and the Oamaru 1c block (one of the 'rim' blocks, located in the Waioweka Valley, which the Crown had purchased). In these cases,

317. Webster, 'Urewera Consolidation Scheme' (doc D8), pp 492–494

318. Urewera minute book 1 (doc M29), pp 136–138

319. *Ibid*, p 12

320. Webster, 'Urewera Consolidation Scheme' (doc D8), pp 495, 548–549

boundaries of existing Maori-owned blocks were expanded to reflect the number of interests that had been added.

The necessity for some changes was anticipated in Balneavis' report at the end of August 1921, and further reflected in the requirement for a 'special tribunal' in the Consolidation Scheme Report. Although it had only taken a year from the Tauarau hui to make these changes, which is remarkably quick compared with other consolidation schemes that dealt with similar amounts of land, it is possible that these outcomes could have been better anticipated had the committee of Maori owners been given the opportunity to develop their own objectives for the land; and we cannot say what outcome might have been achieved had they been given this opportunity. Nonetheless, the commissioners responded to Maori owners' requests in these series of blocks with a commendable degree of flexibility.

The Hikurangi–Horomanga series was another area with which the commission dealt relatively quickly. The first hearing began at Rewarewa in November 1922 and the proceedings were concluded at Waiohau in February 1923. This was largely because the owners had discussed where they would take their land in between the two hearings, so that only one disagreement remained by the time the commission returned.³²¹ All of the blocks in the series had been signed off by February 1923. In the intervening period, however, the Crown had continued its purchasing activities in this land, acquiring interests to the equivalent of approximately 851 acres (or £280) in 23 separate purchases.³²² It is not surprising that the Ngati Haka Patuheuheu community who remained in the region were still prepared to sell their interests during this period, as they still faced legal costs from fighting the Waiohau Fraud (see chapter 11). By the time the commissioners signed off on the awards (before deductions for the cost of surveys and roads had been taken into account), 17,903 acres of the former Hikurangi–Horomanga block remained in Maori ownership, compared with 21,096 acres in July 1921 (see appendix VII). This was despite the fact that Maori owners had transferred interests from other parts of the former reserve in order to bolster their interests there.

14.6.4.2 The implementation phase at Te Whaiti

While the commissioners' activities in the northern lands demonstrated the flexibility that was required to secure an outcome in accordance with the decisions reached at the Tauarau hui, their approach to the Te Whaiti lands was quite different. In marked contrast to some other areas, the commissioners flatly refused to accept requests from Maori owners who wished to take land otherwise than as laid out in the rough sketch made in August 1921, when Ngata and Knight had made separate visits. The commissioners promoted the Crown's main aim for the Te Whaiti lands, which was to acquire as much of the prized forests as possible. As discussed above, before the commissioners even began to hear such requests, the Crown's interests were advanced – and the position of the remaining owners undermined – by purchasing further interests equivalent to 1,014 acres.

321. Urewera minute book 1 (doc M29), pp 202, 204–205, 274

322. Ibid, pp 106, 293; Urewera minute book 2A (doc M30), pp 24, 59, 64, 68

The commission had sat briefly in Te Whaiti in February and March 1922, and received several requests from consolidation groups about where their land might be located. It returned again in May to hear the final set of requests. This was enough time for Ngati Whare leader Wharepapa Whatanui to lodge a protest against the continued purchase of land for the Crown by the commissioners, particularly Knight. Shortly after the commission began its May 1922 hearing, Whatanui wrote to Ngata:

I write to inform you regarding the injustice done by the Commission when sitting at Te Whaiti last week in reopening the purchase of the interests of persons who were consolidated into the various groups. Several have sold. I urged Mr Knight not to reopen the purchase of interests in my group and the commissioner replied that my request could not be granted as it was a matter left to the wish of each individual.³²³

Ngata in turn wrote to Coates:

The position revealed here is serious and may endanger the Urewera scheme. It was never intended that the Crown should resume indiscriminate purchases in the Urewera Country. Mr Knight should cease purchasing until the position is looked into.³²⁴

Coates told Guthrie that Knight was in fact contravening the ‘promise’ made to Maori owners at the Taurarau hui that purchasing would cease. He insisted that the commissioners jointly seek the consent of both Ministers before any further purchases took place, and that such purchasing would only be to assist the consolidation process ‘as was the intention when the Act was framed.’³²⁵ Knight, however, claimed that he had not purchased a single interest; rather, certain owners had ‘willingly asked to be transferred to the sellers group.’³²⁶ Whether actual money had changed hands by this point is unclear. The main point is that these owners were not just being transferred into groups of ‘probable sellers’ to ‘adjust a difficulty’; Knight’s intention was for the Crown to maximise its award in the Te Whaiti lands.

The other way that the commissioners advanced the Crown’s interests was by refusing to budge from the rough division of land that had been arranged in August 1921. Although Balneavis had said that ‘details as to the location, actual area of the non-sellers award . . . require to be worked out after a topographical survey and an enquiry to be conducted by a special Tribunal’, the details had in fact been set in stone.³²⁷ This much was signalled in the first hearings in February

323. Boast, ‘Ngati Whare and Te Whaiti-nui-a-Toi’ (doc A27), p 217

324. Ibid

325. Coates to Guthrie, 1 July 1922 (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(b)), p 457)

326. Boast, ‘Ngati Whare and Te Whaiti-nui-a-Toi’ (doc A27), pp 217–218

327. Balneavis to Coates, 27 August 1921 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 80)

and March 1922, when the commissioners told Wharepapa Whatanui that he could not take his land at Ngaputahi.³²⁸ Similarly, the commissioners told Turanga Manuka and others that they could not exchange their interests in the Te Whaiti Residue block for Crown lands near Murupara, because the areas involved were too small to cover the costs of surveying.³²⁹

About one-quarter of the interests in Te Whaiti 1 had been placed in the Te Whaiti Residue block, which was located north of the valley containing the main area of settlement. As noted above, most of the Te Whaiti 1 consolidation groups had been earmarked to take their land in two areas: the main settlement area in the Te Whaiti Valley and a 'larger area', the location of which Ngata did not identify in his report.³³⁰ But the commissioners acted as if the 'larger area' was the Te Whaiti Residue block and that Maori owners had agreed to this arrangement. The requests made by group leaders clearly demonstrate that this was not a decision of their choosing, but was instead forced upon them by the commissioners in order to keep the Maori-owned blocks as far north as possible, leaving much of the Te Whaiti Valley and the timber-rich land to the south for the Crown.

The commissioners acted as if this was a widely accepted outcome of the August 1921 discussions when, in May 1922, William Bird asked that all of the interests of Group D, headed by Emere McCauley, amounting to around 650 acres, be located to the west of the Whirinaki River around her house and cultivations. She signalled her dissatisfaction at the proposed split of her group's interests between a smaller block of 200 acres beside the river and the Residue block. But Knight told them that 'the area already laid off for subdivision among these groups was not sufficient to permit of this, and . . . the agreement to take around 200 acres must be adhered to'.³³¹ In fact, the commissioners did not sign off on the Huirangi and Residue blocks until February 1923. It was certainly not too late to make changes when McCauley raised her complaint in May 1922. This point aside, it was a breach of faith that the Crown claimed to take from the provisional agreements made at Te Whaiti in 1921 that the location of Maori land was fully settled; a fact made worse when the commissioners' motivation appears to have been that the Crown had set its sights on specific Te Whaiti lands and forests.

The placement of Maori owners' interests in the Residue block continued to cause anger two years later. In March 1924, Tari Manihera wrote to Coates about an agreement he believed had been reached and the subsequent location of their land by the commission: 'The Commission has committed a breach of this arrangement by refusing to locate the consolidated interest of the owners in one piece.'³³² Coates asked Knight to respond. Knight said that when he went to Te Whaiti in August 1921, it was agreed that the owners 'would take their interests in three places':

328. Urewera minute book 1 (doc M29), p 45

329. *Ibid*, p 56

330. Ngata to Knight, 6 August 1921 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(g)), p 2282)

331. Urewera minute book 1 (doc M29), p 94

332. Boast, 'Ngati Whare and Te Whaiti Nui-a-Toi' (doc A27), p 225

(1st), in the Papakaingas, (2nd), each group to take a cultivation area on the flat and undulating lands up the Whirinaki Valley and that the residue after these claims were satisfied should be located in one block in the bush north of Rotorua–Ruatahuna Road.

Knight added that the final awards were made as a consequence:

upon these lines with certain amendments the Commission made their awards in February and May 1922, dividing lines as between rival claimants were fixed on the ground, areas of bush adjacent to the cultivation areas ‘sufficient for building and fencing’ added to each section.³³³

The owners, he added, were ‘perfectly satisfied with these arrangements.’³³⁴

But this had clearly not been the case: separate requests for changes were made in March and May 1922, which should have been enough to signal to Knight that his understanding of the August 1921 agreement was not shared by Maori owners.³³⁵ The only concession that the Maori owners received from the commission was the inclusion of 50 acres of bush to meet housing and fencing needs at Te Whaiti (although 150 acres had been asked for).³³⁶ Because the commissioners had taken such a strict line, the only way Maori owners could change the location of their land was to shift between groups. And, as we have already noted, there was no right of appeal from the commissioners’ decisions. The Crown took comfort from the fact that whenever Maori complained to Coates, he invariably ‘called for a report,’³³⁷ and that Coates’ protective responsibilities towards Maori balanced Knight’s bias in favour of the Crown.³³⁸ We see little practical protection being offered here in the case of Te Whaiti.

The Ngati Whare claimants have long believed that the Crown retained the largest portion of good, flat, clear land in the Te Whaiti Valley as well as a substantial area of high quality podocarp timber. The western boundary of four of the Te Whaiti consolidation blocks near the settlement of Te Whaiti, Ngati Whare counsel told us, was intentionally cut along the forest line so as to place the valuable heavy forest in the hands of the Crown.³³⁹ Certainly, this contention is supported by the Crown’s approach to the Te Whaiti lands from its commencement of purchasing through to the end of the consolidation scheme. But the proposition is also supported by the subsequent history. Maori owners by and large retained the blocks in the valley, as they contained the most useful areas of land for cultivation and milling. The Te Whaiti Residue Block, by contrast, was one of the first pieces

333. Knight to Native Under-Secretary, 6 May 1924 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(g)), p 2344)

334. *Ibid*

335. Boast, ‘Ngati Whare and Te Whaiti Nui-a-Toi’ (doc A27), pp 225, 227

336. Urewera minute book 1 (doc M29), pp 45, 101–102

337. Crown counsel, closing submissions (doc N20), topics 18–26, p 43

338. *Ibid*, pp 22–25, 40–43

339. Counsel for Ngati Whare, closing submissions (doc N16), p 81

of their remaining land the owners sought to alienate after the scheme. In 1938, they proposed an exchange of the block for agricultural land. The Forest Ranger who valued the land noted that it was very steep and broken, the soil being of a loose sandy formation. He noted that there was timber, but mostly in steep gullies, scattered throughout the block. The millable stands were limited to flats along the stream.³⁴⁰

Maori owners of the Te Whaiti lands would have preferred to take land in the main valley; instead the Residue block was forced on them. This much was made known to the Crown during the scheme's implementation, and repeated up to Ngati Whare's claim to the Waitangi Tribunal. In May 1925, Whatanui submitted a petition setting out his people's grievances:

1. THAT we are the owners of the [Te Whaiti] blocks of land situated in the Urewera Country.
2. THAT we are very dissatisfied with the decisions and determinations of the Commissioners in regard to our lands.
3. THAT in the Scheme of Consolidation our wishes and convenience in regard to our lands were to be duly considered and the Commissioners have not done so, but have in particular deprived us of many and large valuable areas in favour of the Crown.³⁴¹

The Crown chose to ignore such concerns, which was not entirely surprising given this was the outcome it had set out to achieve when purchasing in the Te Whaiti blocks commenced in 1915. Coates' failure to intervene, however, and to live up to the promises he made at Ruatoki of protection and justice, was disappointing. Since 1915, leaders such as Whatanui had sought ways to end purchasing and to be given certainty about which land was theirs. Whatanui's petition spoke of his disappointment at the outcomes of the consolidation process, which the people of Te Whaiti had hoped would locate and secure their remaining land. While they got some of the land of their choosing, they were also confined to an area they had never asked for and had protested strongly against. The Crown, however, had other designs for the land and its forests, which it had set out to acquire six years before.

14.6.4.3 The implementation phase at Ruatahuna, Maungapohatu, and surrounding lands

The biggest changes during the implementation phase, and by far the biggest protests against the scheme as a whole, occurred in the central lands, particularly in Ruatahuna. The reasons for the emergence of a group of owners who opposed the scheme – known as *te taha apitihana* ('the opposition side')³⁴² – are complex,

340. John Hutton and Klaus Neumann, 'Ngati Whare and the Crown, 1880–1999' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001) (doc A28), pp 319–324

341. Boast, 'Ngati Whare and Te Whaiti Nui-a-Toi' (doc A27), pp 227–228

342. Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two' (doc D2), p 164

as are the various changes that the commissioners either made or authorised. By the end of the scheme, before taking into account deductions for road and survey costs, Maori-owned land amounted to 39,968 acres – 14,709 fewer acres than had been earmarked for award to them at the Tuarau hui (see appendix VII). This was equivalent to the amount of land the Crown had purchased in the blocks up to the beginning of the scheme. But during the Tuarau hui, Tuhoe owners in the Waikaremoana block transferred many of their interests to the Ruatahuna series; others transferred interests there from elsewhere as well. This had the effect of nearly cancelling out the Crown's purchases. Tuhoe's goal was to protect Te Manawa o te Ika: their ancestral lands at Ruatahuna, which remained the home for many and the focus of their developmental aspirations.

In comparison to the other lands in this central region, Maungapohatu was dealt with relatively quickly. The Tuhoe owners of the Maungapohatu blocks had retained the equivalent of 10,202 acres at the beginning of the scheme, or 36 per cent of the blocks (see appendix VII). The commissioners effectively dealt with this land in one sitting in April 1923. In large part this was because Rua Kenana requested that several groups be amalgamated into one.³⁴³ The creation of this new group meant that many of the people's interests could be located in one, large Maungapohatu block. At that time, there were only two other groups with interests in Maungapohatu, both of which were represented by Taihakoia Poniwahio. Most of the blocks were signed off in April 1923; with a few minor adjustments in March 1924, the eight new Maungapohatu blocks were confirmed.

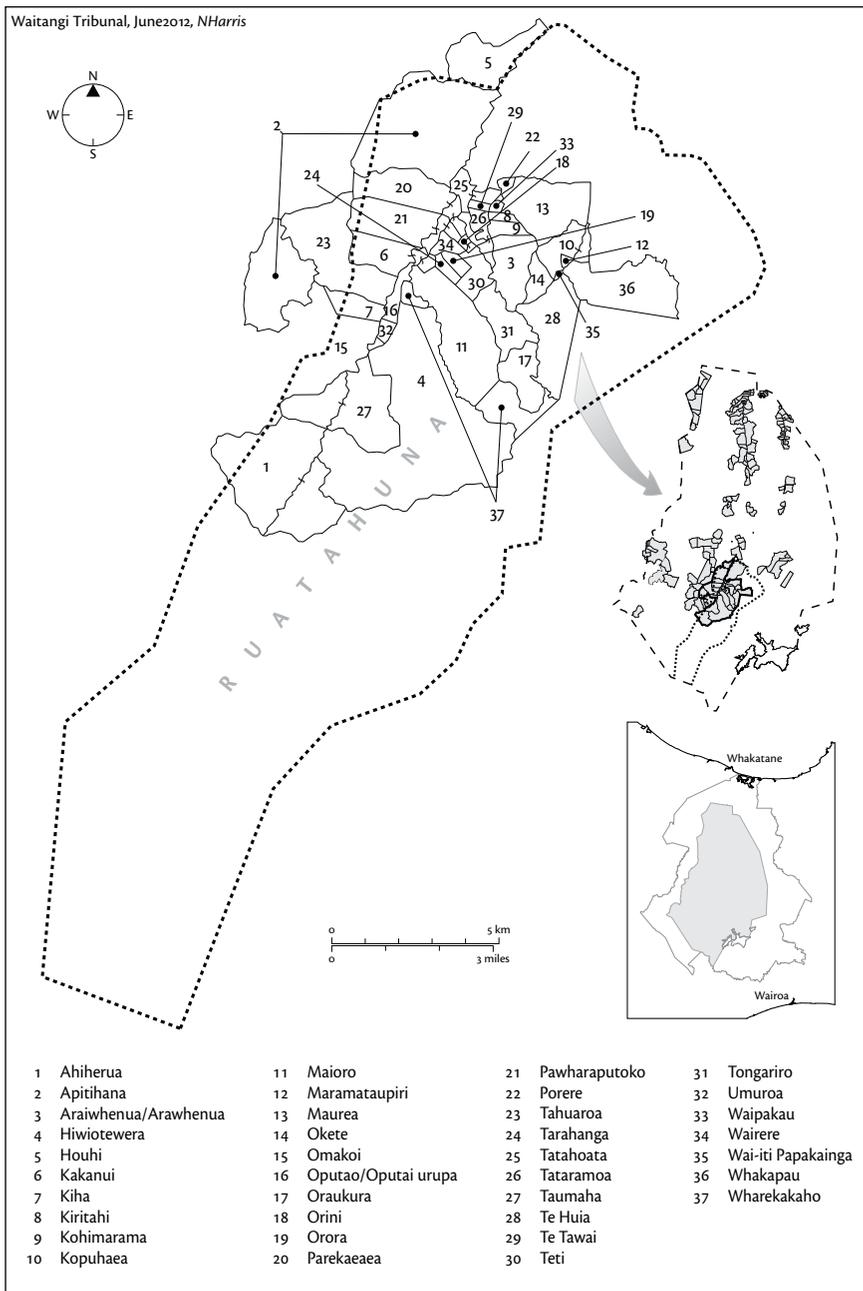
The commissioners tackled the blocks in the Ruatahuna, Ohaua, and Tarapounamu series last, because it was from these areas that the strongest opposition to its work arose. On the commission's first hearing at Ruatahuna in February 1922, Wharepouri Te Amo voiced a number of complaints about the scheme, including the taking of land for surveys, the amount of land to be taken for the roading contribution, the impending liability for rates, the transfer of interests on a monetary (rather than acre-for-acre) basis, and the transfer of Tuhoe interests from the Waikaremoana block into other consolidation groups in the scheme. The commissioners, however, largely dismissed these complaints: in their view, it was too late to change the basis of the scheme.³⁴⁴ The remainder of the first sitting consisted mainly of share transfers between groups and the preparation of succession orders. It was not until a year later, in February 1923, that the commissioners held their second hearing at Ruatahuna, and even then their visit was only fleeting.³⁴⁵ During some of the other sittings in the interim, a number of group leaders made requests about where they wanted their group's land to be located, following the broad parameters that had been negotiated at the Tuarau hui. Most of these requests were for the Ruatahuna 3 and 5 blocks.

Having completed their work in other areas, the commissioners turned their full attention to the Ruatahuna, Tarapounamu, and Ohaua series in April 1923.

343. Urewera minute book 1 (doc M29), pp 294, 298–299

344. Webster, 'Urewera Consolidation Scheme' (doc D8), pp 557–559, 561

345. Bassett and Kay, 'Ruatahuna' (doc A20), pp 143–144



Map 14.3: Land awarded to Maori owners in the former Ruatahuna block during the Urewera Consolidation Scheme. The original Ruatahuna block was 57,523 acres. By the end of the consolidation scheme (before counting the deductions for road and survey costs), approximately 40,000 acres remained in Maori ownership.

With the exception of a brief visit to Murupara, the commission spent five weeks in and around Ruatahuna. This was followed by a short hearing at Papueru in October 1923, and then another month in and around Ruatahuna in April 1924.³⁴⁶

The April 1923 hearing began with another challenge from the opponents of the scheme. Pomare, also known as Pineeri Hori, announced: 'I lead Tuhoe who did not desire to consolidate'. The commission, he said, should refrain from authorising any awards for land in the Ruatahuna, Tarapounamu–Matawhero, and Kohuru–Tukuroa blocks. He went on to say: 'we oppose the road contribution, we do not desire to pay rates . . . we will not evacuate from Waikaremoana'.³⁴⁷ In essence, he asked the commissioners to stop their hearings entirely because the previous concerns raised by the leaders had gone unaddressed, which had started with the petition from Te Wharepouri Te Amo, Wharekiri Pararatu, and Pomare on 5 October 1921 (about the lack of remaining Maori land at Te Whaiti and the high level of the roading contribution under the consolidation scheme proposals).³⁴⁸

In September 1922, the opposition gained momentum with another petition from a group of 176 Ruatahuna owners, this time led by Tikareti Te Iriwhiro. His petition voiced the people's objections to ongoing Crown purchasing, which they said contravened the agreements reached at the Tauarau hui.³⁴⁹ This group of owners came to adopt the word 'apitihana' as their name – a transliteration of 'opposition'. The commission eventually used this name for the huge block in which the unallocated interests of Ruatahuna and Tarapounamu groups were placed at the end of the Ruatahuna sittings in 1924. While Te Apitihana emerged in the immediate context of the scheme's implementation, it had its origins in the numerous petitions Maori owners had submitted from 1917 through to 1919. Two of the key leaders at that time were Te Amo Koukouri and his son Te Wharepouri Te Amo, both of whom submitted petitions asking for an end to Crown purchasing. At a hearing held at Ruatoki in November 1922, the commissioners were told that a hui had recently taken place at Ruatahuna, at which a number of leaders had spoken of their determination to withdraw from the scheme altogether if the Crown did not address their concerns.³⁵⁰

Pomare's very public statement of opposition in April 1923, however, prompted immediate voices of support for the scheme. Leaders such as Takurua Tamarau and Matamua Whakamoe announced their support for the commissioners to continue awarding the land, and for the benefits they had been promised would result from the scheme.³⁵¹ The commissioners conducted a count of interests to see which group had the greatest number. The groups in favour of consolidation

346. Bassett and Kay, 'Ruatahuna' (doc A20), pp 143–144, 149–150

347. *Ibid*, p 144

348. Wharepouri Te Amo, Te Wharekiri Pararatu, and Pomare Hori to Parliament, 5 October 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 201–202)

349. Webster, 'Urewera Consolidation Scheme' (doc D8), pp 396–397, 562–563

350. Bassett and Kay, 'Ruatahuna' (doc A20), p 143

351. Webster, 'Urewera Consolidation Scheme' (doc D8), pp 564–565; Nikora, 'Urewera Consolidation Scheme' (doc E7), app D, pp 52–54

outnumbered the interests of te taha apitihana by around 3.2 million shares to 2.5 million shares.³⁵² Although there were some groups of owners (such as those led by Wi Mei and Wairama Na) who never declared a position, it is unlikely their addition to either side would have changed the outcome of the tallying exercise.³⁵³ Support for the two sides differed in the various parts of the former Ruatahuna blocks. Those who claimed interests to the north and west – in Ruatahuna 1 and 2, Kohuru–Tukuroa, and the Hanamahihi part of Tarapounamu–Matawhero – tended to be part of te taha apitihana, or neutral. Those with interests to the south and east – in Ruatahuna 4, Ierenui–Ohaua, and Te Ranga-a-Ruanuku – tended to support the scheme.³⁵⁴ Pomare claimed that te taha apitihana owners represented the equivalent of a total area of 40,000 acres.³⁵⁵

The key te taha apitihana leaders were all consolidation group heads. Wharepouri Te Amo, of the Te Urewera and Ngati Tawhaki hapu, headed a number of groups and was generally regarded as the main leader of te taha apitihana, along with Pomare, who was its main spokesman. Another group from the Te Urewera hapu, led by Noho Taratoa, was also allied to the opposition group.³⁵⁶ The commission's 1923 share tallying exercise revealed that these groups were joined by a number of Ngati Tawhaki groups (led by Rawiri Te Kokau and Taiwera Rawiri).³⁵⁷ Ere Ruru, also of Ngati Tawhaki, added his group's interests to te taha apitihana at a later point.³⁵⁸ Te Wharepouri's father, Te Amo Kokouri – then chairman of Ruatahuna's Komiti Kaumatua – was its elder statesman, but Te Wharepouri, Rawiri Kokau, and Taiwera Rawiri were all respected elders, each having been selected for the Ruatahuna or Tarapounamu–Matawhero hapu committees in 1907.³⁵⁹ There was not as much support for the opposition among the hapu in Ruatahuna 3, 4, and 5, except for the group led by Pineere Hori, of Ngati Manunui.³⁶⁰

352. The exact figures were 3,172,446 shares to 2,499,690 shares. The generally reported figure for the pro-consolidation shares is 3,279,622, but the list of shares shows that Group 41 (with 107,176 shares) was counted twice: see Bassett and Kay, 'Ruatahuna' (doc A20), pp144–145; Nikora, 'Urewera Consolidation Scheme' (doc E7), app D, pp53–54; Urewera minute book 1 (doc M29), pp308–310.

353. Groups 43B and 43C accounted for 81,517 and 138,369 shares, and Group 45 for 92,455 shares, based on the group lists in the Consolidation Scheme Report. Two other groups which had Ruatahuna locations but were not declared were Hata Waewae's 5E (160,491 shares) and Tupara Kaaho's 21B (119,622 shares); both ended up in the Apitihana block.

354. Webster, 'Urewera Consolidation Scheme' (doc D8), p573

355. Bassett and Kay, 'Ruatahuna' (doc A20), p144

356. See Webster, 'Urewera Consolidation Scheme' (doc D8), p484; Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two' (doc D2), pp165–166; Nikora, 'Urewera Consolidation Scheme' (doc E7), app D, p53.

357. See Nikora, 'Urewera Consolidation Scheme' (doc E7), app D, p53; Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two' (doc D2), p205.

358. See Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two' (doc D2), p137; Urewera minute book 2A (doc M30), p128.

359. Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two' (doc D2), pp116, 140

360. By Te Amo Kokouri's account, these were Ngati Rongo, Ngati Kuri, Ngai te Riu, Ngati Kakahutapiki, and Ngati Manunui: Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two' (doc D2), p172. According to a whakapapa inserted in the commission's minute books, Pineere Hori was the son of Hori Wharerangi of Ngati Manunui and the grandson of Te Mata: see Urewera minute book 2A (doc M30), p178; Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two' (doc D2), p55.

In comparison, the group of owners who came out in support of the scheme – even though it contained more groups and therefore more shares – was never a combined ‘movement’ on the same scale as *te taha apitihana*. Group leaders Wahia Paraki (Ngati Manunui), Kohunui Tupaea (Ngati Kakahutapiki), and Tane Hauraki (whose group interests were in Tarapounamu–Matawhero) all stated their support for the scheme, but also had some members of their respective groups in the opposition camp as well.³⁶¹ The supporters of the scheme also contained more leaders who had interests in consolidation groups which took land in areas other than Ruatahuna, such as Takurua Tamarau (Ngati Koura and Ngai Te Riu) and Hata Te Waewae (Ngati Rongo and Te Urewera).³⁶² The basis for their support possibly lay in the fact that much of their land that had already been confirmed by the commissioners in the Ruatoki series; it would have made little sense to oppose the commission when it came to Ruatahuna. Reflecting on the statements made on this occasion by Rua Kenana, Matamua Whakamoe, and Takurua Tamarau, the Tuawhenua Research Team have observed that ‘the speakers in favour of the consolidation were more often associated with Maungapohatu, Waikaremoana and Ruatoki respectively rather than Ruatahuna.’³⁶³ From the perspective of these owners, however, this was precisely the point of the consolidation process: people wished to bring their remaining interests into Ruatahuna, which was of ancestral importance to a wide range of hapu in Te Urewera.

Finally, while some leaders noted their support for the scheme, this did not always mean uncritical support. Matamua Whakamoe, for example, had defended consolidation when the commission did its share-counting exercise in 1923, but expressed common concern with Wharepouri Te Amo over the commission’s cutting out of scenic reserves in 1924 (discussed below).³⁶⁴

In the face of ongoing protests from *te taha apitihana* leaders, the commissioners set about their work and had placed groups in a number of new blocks by the end of April 1923.³⁶⁵ The easiest area to complete from the commissioners’ perspective was the Ohau series blocks. The groups who became part of Te Apitihana had transferred their interests from the Ierenui–Ohau, Waikarewhenua, and Te Ranga-a-Ruanuku blocks to Ruatahuna during the Taurarau hui.³⁶⁶ All of the new blocks were chosen during a single visit by the commission in April 1923, with those being chosen more or less in keeping with those proposed at Taurarau.

361. See Webster, ‘Urewera Consolidation Scheme’ (doc D8), pp 639–644; Nikora, ‘Urewera Consolidation Scheme’ (doc E7), app D, p 53

362. Tawera Moko (Ngati Rongo) and Rua Kenana (Ngati Tamakaimoana) were two other influential pro-consolidation voices, but had few share interests in Ruatahuna: see Tuawhenua Research Team, ‘Te Manawa o te Ika, Part Two’ (doc D2), pp 205, 211; Webster, ‘Urewera Consolidation Scheme’ (doc D8), pp 566, 641–642; Nikora, ‘Urewera Consolidation Scheme’ (doc E7), app D, p 54.

363. Tuawhenua Research Team, ‘Te Manawa o te Ika, Part Two’ (doc D2), p 165

364. Nikora, ‘Urewera Consolidation Scheme’ (doc E7), app D, p 53; Webster, ‘Urewera Consolidation Scheme’ (doc D8), p 568

365. Webster, ‘Urewera Consolidation Scheme’ (doc D8), p 571

366. *Ibid.*, pp 573

In March 1924, the commissioners returned to confirm the exact locations and boundaries of these blocks.³⁶⁷

The Tarapounamu series was less easy to deal with but here too the commissioners made rapid progress. The Maori owners had organised their preferred location of their land before the commissioners arrived, although this had largely been achieved at the Tauarau hui. In comparison with other areas, consolidation groups with interests in the Tarapounamu region had been able to agree on more detailed locations during that hui (such as Hanamahihi, the Pukareao Valley, Umukahawai, Tieke, Heipipi, and Papueru). Other groups, however, had not been given a proposed location for their award and so retained the flexibility to arrange matters when the commissioners arrived. As it turned out, the extent of cooperation among the groups in the Tarapounamu series extended across the divide between supporters and opponents of the scheme. At the head of the Pukareao Valley, Taane Hauraki, Paratene Manihera, and Wiremu Wirihana agreed on the various locations so that, notwithstanding their opposition to the scheme, Paratene Manihera's group and the Aare whanau from Tane Hauraki's group could take up land in the same area.³⁶⁸

The main bone of contention for the Tarapounamu groups was the Crown's cutting out of scenic reserves close to the road between Te Whaiti and Ruatahuna. The surveying of scenic reserves near Papueru was suspended in October 1923, after concerns had been raised about tomo (burial caves) being included in the Crown's award. When Te Pou Te Kokau and Tari Manihera raised further objections about the manner in which the Crown reserves were being laid off, which they said prevented groups from taking their preferred land, the commission agreed that scenic reserves at Pukiore, Papueru, and Waituhi should be cancelled, and the remaining scenic reserve land between Papueru and Heipipi should be amended. The proposed Crown award at Ngaputahi also included houses and cultivations belonging to one Maori owner, Paora Paora. But in that case, the commissioners determined that the land would indeed be awarded to the Crown, and Paora would be paid compensation.³⁶⁹

The commissioners' task at Ruatahuna was more complex than in any other area in the scheme, simply by virtue of the fact that there were around 30 groups of owners seeking land in the Ruatahuna blocks. Some 54,677 acres had been earmarked for award to Maori owners at the Tauarau hui, which was 95 per cent of the original Ruatahuna block (see appendix VI). Many of these groups sought land in the Huiarau (Ruatahuna 3) and Parahaki (Ruatahuna 5) subdivisions, close to the Whakatane River, which provoked inevitable tensions. At the same time, te

367. Bassett and Kay, 'Ruatahuna' (doc A20), p151

368. Webster, 'Urewera Consolidation Scheme' (doc D8), pp571–572; Urewera minute book 1 (doc M29), pp309, 314–315; Crown Law Office, comp, 'Urewera Consolidation Block Order Files (Ahiherua to Owaka)', various dates (doc M12(c)); Crown Law Office, comp, 'Urewera Consolidation Block Order Files (Paemahoe to Wharepakaru)', various dates (doc M12(d)). The blocks they took up were the Hauwai and Kopua blocks respectively.

369. Bassett and Kay, 'Ruatahuna' (doc A20), pp158–159

taha apitihana groups remained defiant in their opposition to the scheme. During the April 1923 hearing, another confrontation occurred between the commissioners and te taha apitihana leaders, this time represented by Te Amo Kokouri and Rawiri Te Kokau, who asked the commissioners to supply a list of those who had sold their interests in the Ruatahuna blocks. As they told the commissioners, this would provide the basis for their preferred method of deciding where interests should be located; not a consolidation of interests – as Bassett and Kay and the Tuawhenua researchers have noted – but rather a partition in which the non-sellers would retain their existing links with their ancestral lands, and the Crown would get the unconsolidated interests of the proven sellers. This was, in effect, a rejection of the principle of consolidation and of the ‘modernisation’ of titles which the Government saw as its fundamental basis.³⁷⁰ The commissioners refused this request.³⁷¹

The consequence was that te taha apitihana continued to refuse to have any part in the commission’s proceedings, except to notify where their interests were being encroached upon by other groups. At the close of the April 1923 hearing, Te Amo Kokouri said: ‘On Friday I asked for an adjournment . . . to prepare lists. I have reconsidered the matter. I am afraid to commit anything to paper, and consequently I will not supply a list of owners for my group but will confine myself to watching the case and seeing that there is no encroachment on our lands.’³⁷²

Despite the non-participation of te taha apitihana, the commission operated on a first-come, first-served basis as it began allocating land to groups in the Ruatahuna region. At the April 1923 hearing, the commissioners received requests for land from groups led by Rehua Te Wao, Tawera Moko, Rua Kenana, Tekoteko Hatata, and Atamea Te Whiu.³⁷³ The commissioners hoped that overlapping claims would be settled by the owners themselves, as in other areas. A number of such cases involved Wharepouri Te Amo, who continued to participate in the commission’s process to protect the interests of his groups’ land. For example, Wharepouri Te Amo and Matamua Whakamoe decided on the placement of some of the interests of one of his groups in what became the Paripari block.³⁷⁴ But in one of the most important cases, Wharepouri Te Amo, Wahia Paraki, and Matamua Whakamoe were unable to reach an agreement over the ownership of the Umuroa flats. The commissioners decided to divide up the area between the groups represented by Paraki and Whakamoe, dismissing Te Amo’s case on the grounds that they had not made any of the improvements on the land.³⁷⁵

The question of who was responsible for improvements was also the telling factor in at least two other cases at Pawharaputoko–Kakanui and around Te Waiiti papakainga. In the latter case, the commission ultimately split the area into four

370. Bassett and Kay, ‘Ruatahuna’ (doc A20), Tetip 147; Tuawhenua Research Team, ‘Te Manawa o te Ika, Part Two’ (doc D2), p 170

371. Webster, ‘Urewera Consolidation Scheme’ (doc D8), p 578

372. Nikora, ‘Urewera Consolidation Scheme’ (doc E7), app D, p 55

373. Urewera minute book 1 (doc M29), p 319

374. Urewera minute book 2A (doc M30), p 142

375. Bassett and Kay, ‘Ruatahuna’ (doc A20), p 148

blocks, even though it recognised that the various owners had been using the area communally. Stokes, Milroy, and Melbourne said that such a decision was not in the interests of the owners though, because it created a semi-permanent division for the sake of resolving a short-term impasse between them.³⁷⁶ Although there were not many cases of this nature, they were enough to increase tensions between owners who were already divided over whether the scheme should proceed or not.

But as a reflection of their understanding of how sensitive these issues were, those groups who supported the consolidation process largely refrained from making requests to locate themselves in the large Ruatahuna 1 and 2 blocks in the north-west of the valley because they were the lands that rightfully belonged to te taha apitihana.³⁷⁷ As the amount of land approved by the commission at Ruatahuna increased and the area of unallocated land correspondingly decreased, however, it was inevitable that opposition groups would have felt their position was being threatened. Knight had also engaged in some strategic purchasing in October 1923 of 23,730 shares from Pomare's Group 42, which Knight and Carr noted would help 'as a means of weakening the opposition'.³⁷⁸

Part way through the March 1924 hearing, Wharepouri Te Amo decided that consolidation could not be defeated. He submitted location requests for two of the groups he led (one for Tataramoa at Ruatahuna, and one for a location in the Paraeroa block).³⁷⁹ As we explain later in the chapter, Te Amo may have been partially persuaded by the promise that the Apitihana blocks would be subject to a much smaller taking of land to account for survey costs. Sensing that this was the beginning of the end in their struggle with te taha apitihana, the commissioners immediately issued an ultimatum: unless all the Te Apitihana groups set out requests for land, they would 'be forced to conclude that the locations proposed at Tauarau were sufficient', and as a result they would merely issue them with a 'composite title', meaning a single list of all the owners in these groups for a single block of land.³⁸⁰

The commissioners' ultimatum had the desired effect. Te Amo promptly made a number of requests for the location of his groups' interests.³⁸¹ Another leader of te taha apitihana, Ere Ruru, also submitted his group's requests.³⁸² At the end of the hearing, Tari Manihera submitted a number of requests on behalf of both opposi-

376. Evelyn Stokes, J Wharehuia Milroy, and Hirini Melbourne, *Te Urewera Nga Iwi Te Whenua Te Ngahere: People, Land and Forests of Te Urewera* (Hamilton: University of Waikato, 1986) (doc A111), pp180–182

377. Webster, 'Urewera Consolidation Scheme' (doc D8), p588

378. Pineere Hori's group, as of October 1921, had consisted of just under 157,000 shares: see Carr and Knight to Native Under-Secretary, 22 October 1923 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p440); Webster, 'Urewera Consolidation Scheme' (doc D8), pp282, 430, 446.

379. Urewera minute book 2A, 6 March 1924, 11 March 1924 (doc M30), pp124, 138

380. Urewera minute book 2A, 21 March 1924 (Nikora, 'Urewera Consolidation Scheme' (doc E7), app D, p61)

381. Urewera minute book 2A, 18 March 1924, 21 March 1924, 24 March 1924 (doc M30), pp124, 141, 143

382. Urewera minute book 2A, 25 March 1924 (doc M30), p155

tion and neutral groups for land in the Ruatahuna 1 and 2 blocks. Te Amo opposed this move, as 'he desired all Ruatahuna No 1 & 2 be set apart for the opposition groups', with any overflow to go to Kohuru–Tukuroa.³⁸³ Two weeks later, while sitting at Rotorua, the commission abruptly decided that it would end any debate by simply issuing a 'composite title' for all the shares in the Ruatahuna 1 and 2 blocks, 'whether opposition or otherwise'.³⁸⁴

The Apitihana block had a single list of owners but actually consisted of three separate pieces of land, encompassing the old Ruatahuna 1 and 2 blocks, large areas in the Tarapounamu–Matawhero area, and a small portion of Ruatahuna 3. This contrasted sharply with the highly fragmented pattern of single-group blocks in the low lying areas of Ruatahuna 3 and 5. The number of groups who sought land in these latter areas meant that many groups in the Ruatahuna series also had to take other land further away from the valley in the form of 'overflow' blocks. Ideally these were close together, such as the Kohimarama and Tongariro blocks, which were separated by about two kilometres. Others, however, were considerably further apart. For example, the owners of the Kakanui block, in the Ruatahuna Valley, had little choice but to add their residue interests to their other land in the Tarapounamu series (the Hauwai block), which was a 30-kilometre journey away, because all the land in the Ruatahuna Valley had been set aside for other groups. Unlike what happened at Te Whaiti, however, groups had some say about where they took their overflow interests. Paratene Te Manihera, for example, requested that the excess shares of his group, whose main piece of land was at Kakanui, be located at Hauwai. Similarly, Tahuri Te Hira asked for the overflow interests of his group to be located in the Tarapounamu region.³⁸⁵ Both requests were authorised by the commissioners.

But in other cases the commissioners refused requests, seemingly because they had the Crown's award in mind. Wahia Paraki asked that any overflow from two of his groups, whose main piece of land was at Umuroa, be located around the old kainga at Otangimoana, in the south of the Ruatahuna lands.³⁸⁶ Instead, the commissioners placed their interests to the north-east of Ahiherua, leaving Otangimoana in the Crown's award.³⁸⁷ Wahia Paraki protested against this decision in a petition to Ngata in 1925: 'you gave your word to Tuhoe at Ruatahuna that the best part of the land would be given to us and the inferior part to the Crown . . . When the survey was made the bulk of our acres were located on steep and birch lands, and bad lands generally'.³⁸⁸ The way that many of these overflow blocks were located away from the core Ruatahuna region – particularly when

383. Urewera minute book 2A, 25 March 1924 (doc M30), pp 156–157

384. Ibid, 9 April 1924, p 178

385. Urewera minute book 1, 17 May 1923 (doc M29), p 364

386. Ibid, p 366. Otangimoana and the Hukitawa Stream, which are both referred to by Wahia Paraki in his request, are shown in the map which accompanied Elsdon Best's *Tuhoe: The Children of the Mist*, the Ruatahuna part of which is reproduced in Bassett and Kay, 'Ruatahuna' (doc A20), p 10.

387. See Urewera minute book 2A (doc M30), pp 183–184.

388. Wahia Paraki and 11 others to Ngata, 23 July 1925 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(c)), p 287)

some individuals transferred their interests to consolidation groups whose land was elsewhere in the former reserve – goes some way to explaining why much less land was awarded to Maori owners there than was initially anticipated at the Tauarau hui. The difference amounted to some 14,709 acres, which came to form part of the Crown's award (see appendix VII).

As was the case in the Tarapounamu series, the way Crown reserves were cut out became a key source of dispute between the Maori owners and the commissioners. The commissioners initially set aside a steep face of a valley at Kiha during their brief hearing at Ruatahuna in February 1923.³⁸⁹ Wharepouri Te Amo challenged this decision at the beginning of the March 1924 hearing, stating that the reserve had been located in an area that was still being determined. The commission dismissed his concerns, however, stating that it would adjust the scenic reserve boundaries if they turned out to be a problem.³⁹⁰ The commissioners arrived at a similar decision with respect to the Umuroa flats, in the former Ruatahuna 5 subdivision, where the groups represented by Whakamoae, Paraki, and Te Amo had all made claims. The commissioners decided that the Crown was to be awarded an area of steep land adjacent to the flats, based on the fact that it had purchased one-quarter of the Ruatahuna 5 (Parahaki) subdivision. None of the parties, they said, had been able to establish a claim to the area; as well as being unoccupied, it was also useless for settlement or cultivation.³⁹¹

The commissioners' decisions not to award Otangimoana and the portion of the Umuroa flats to these groups provide clues to the overall shape of the division of the land in Ruatahuna. Of the approximately 18,000 acres awarded to the Crown in the former Ruatahuna blocks, the vast majority was in the very south, in what was formerly the Ruatahuna 5 subdivision. While this area did contain kainga such as Otangimoana, it also formed part of the watershed area with the adjacent Waikaremoana block, which was one of the Crown's key objectives in the scheme. These objectives were known to Knight and Carr as they went about confirming the arrangements with Maori owners in the Ruatahuna region. In short, there was a combination of push and pull factors in play. There was not enough land in the main part of the Ruatahuna Valley for all those groups who had pooled their interests during the process of the Tauarau hui. Consequently, they were forced to take 'overflow' lands elsewhere. While many chose to take these interests in other areas willingly, the commissioners also revealed their hand: the Otangimoana decision showed that they were not willing to allow Maori owners to take up land in the very south of the former Ruatahuna blocks, and the Umuroa decision set a precedent that required the te taha apitihana groups to take much of their land to the north in the Tarapounamu region. These decisions enabled the Crown to take the southern portion of the block, which encompassed part of the Huiarau Range.

The commissioners' determination to set aside land for the Crown in key areas can also be seen in the award of a 60-acre township reserve to the Crown. There

389. Bassett and Kay, 'Ruatahuna' (doc A20), p 158

390. Nikora, 'Urewera Consolidation Scheme' (doc E7), app D, pp 59–60

391. Bassett and Kay, 'Ruatahuna' (doc A20), p 159

is no evidence that the commissioners discussed this award with any of the Maori owners. An entry was made on the final page of the first minute book, setting out the details of the award, but close inspection seems to show different handwriting from the previous entry. It is therefore not possible to establish when or where, between the dates of 5 July 1923 and 9 April 1924, the commissioners made the decision to set aside land as a township reserve.³⁹² In 1949, Rewi Petera recounted that the commission had vested a township in trust for five owners.³⁹³ However, there is no mention of such an arrangement in the minute book references to the reserve.³⁹⁴ When Huriwaka Te Wharekotua complained to Coates in 1927 that the township reserve was located on his block, Carr responded by stating that the commission 'considered that this area should be reserved, and it followed that it should become part of the Crown area. It wasn't equitable that the Crown in every case should be located in the hinterland'.³⁹⁵ This would tend to contradict the recollection of Rewi Petera.

The outcome of the division of the land in the Ruatahuna region was of course the last in a series of events that dates back to Te Whitu Tekau's opposition to the Native Land Court; the disappointments that followed the passing of the UDNR Act confirmed the worst fears that Te Urewera leaders had harboured at that time. The Crown was now the single biggest land owner in the heartland – an outcome Ruatahuna leaders would have wished to avoid at all costs. Te taha apitihana continued the tradition of protest while others continued to hope the scheme would deliver on the Crown's promises. The way this process played out is reflected in the explanation Hinerangi Biddle gave us for the origin of the claim made to the Waitangi Tribunal by her father, Wharekiri Biddle:

Many in Tuhoe refer to the claims of Tuhoe as 'raupatu'. Thus, they think of the claims as being essentially about the confiscation of land. But my father's claims began with his thinking about the Crown's actions through its social and economic policies actions. He sees these as being used by the Crown to work in more subtle ways, but they act in the same way to strip us of our self respect and our mana.³⁹⁶

14.6.4.4 *The creation of reserves*

In the claims before us, there were three key allegations about the creation of reserves: first, Tuhoe had requested that the Crown set aside some land as a reserve

392. The first entry follows minutes from the Rotorua sitting of 5 July 1923 (Urewera minute book 1 (doc M29), p 372), while the township reserve is referred to in the Onini boundary description, which can be dated to 9 April 1924 (Urewera minute book 2A (doc M30), pp 174, 188). The township reserve features in the same list of block boundaries (Urewera minute book 2A (doc M30), pp 197–198).

393. Bassett and Kay, 'Ruatahuna' (doc A20), pp 159–160. The owner list cited by Rewi Petera does not seem to be in keeping with other reserve areas, in that at least three of the five reported owners were from the same whanau (as opposed to their being representatives from multiple groups).

394. Urewera minute book 1, 5 July 1923 (doc M29), p 372; Urewera minute book 2A, 9 April 1924 (doc M30), pp 197–198

395. Carr to Native Under-Secretary, 11 March 1927 (Campbell, 'Land Alienation, Consolidation and Development' (doc A55), p 104)

396. Hinerangi Biddle, brief of evidence, no date (doc D31), p 2

for landless sellers but the Crown refused; secondly, the Maori owners had sought the permanent reservation of some of their most valued sites, not all of which requests were honoured by the Crown; and, thirdly, the Crown had reserved land for public purposes but without using the public works legislation, so that it is not subject to present offer-back requirements.

In respect of the first issue, the Crown accepted in its closing submissions that a 'repeated request' had been made for it to create a landless sellers' reserve. Crown counsel cited Fred Biddle's request during the May 1921 hui and Ngata's endorsement of the request. Knight expected a further request for a 20,000-acre reserve to come up at the Taurarau hui and sought instructions as to how to deal with it.³⁹⁷ As claimant counsel observed, Knight couched the matter in terms of whether he should give a definite refusal or an 'evasive, non-committal reply'.³⁹⁸ The Lands Department, in other words, had already made up its mind to turn down the request from Tuhoe and Ngata, but had not yet decided to tell them so. The Under-Secretary instructed Knight to make a non-committal response. Then, the issue was raised again in 1924 during a hearing of the commission, only this time it was specifically put in terms of soldiers who had sold their interests before they left to fight in the First World War and returned landless. Claimant counsel notes that many other Maori owners supported the proposal at the hearing. The commissioners referred the matter to the Government but this time, as far as anyone knows, there was no answer at all.³⁹⁹

In the Crown's view, the answer to the commissioners' query must have been 'no' since there is no suggestion that such a reserve was created.⁴⁰⁰ Means and opportunity existed, since section 11 of the Native Land Amendment and Native Land Claims Adjustment Act 1923 empowered the Government to set aside any part of its award as a reserve for the 'exclusive use of any of the former owners or their successors'.⁴⁰¹ Ultimately, however, Crown counsel's view is that there was no proof that such a reserve was actually needed: 'There is no evidence as to the degree of the problem of landlessness.'⁴⁰² The Crown further submitted that the Tribunal should consider this matter in terms of the prejudicial effect of Crown purchasing, rather than as one arising from the consolidation scheme.⁴⁰³ This is perhaps to downplay the fact that a further 21 per cent of Maori land in the former reserve had been acquired by the Crown by the end of the consolidation scheme in 1927. We did consider the effect of Crown purchasing in chapter 13, however, and concluded that the evidence points to a figure of some 10 per cent made landless by the end of 1921. The matter of a reserve for landless sellers, raised in 1921, and again in 1924, was conveniently put aside. The Government seems to have made no effort to follow it up – though Bowler's detailed lists of those who retained

397. Crown counsel, closing submissions (doc N20), topics 18–26, p 34

398. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 106

399. Ibid

400. Crown counsel, closing submissions (doc N20), topics 18–26, p 34

401. Ibid

402. Ibid

403. Ibid

shares must surely have provided a helpful starting point. And there is a wider issue here, it seems to us: the amount of land left to communities of owners generally. In chapter 15, we consider the outcomes of Crown purchasing in terms of the amount of land left in Maori ownership, and the effect of the Crown's acquisitions on iwi economic capability.

The second issue raised by the claimants relates to their requests that the Crown reserve special sites for them, some of which were within its award. During the scheme's implementation, the commissioners set aside 27 papakainga and urupa reserves in Maori ownership (totalling 90 acres). These reserves were made at the request of Maori owners. Given that most of these reserves were less than five acres in size (only two were slightly over), the commissioners decided not to deduct an equivalent amount of land from the Maori owners' awards; nor were they subject to survey costs (which we discuss later in the chapter). There were, however, six reserves (totalling approximately 204 acres) set aside for Maori owners, for which an equivalent amount of land was deducted from their total interests. A further eight were requested by owners but not set aside, as the area identified for reservation was simply incorporated into the parent block. In each of these cases, Maori owners were given the land that they had requested.

In the case of requests for another six reserves, however, the land ended up in Crown ownership. These were the Waikokopu hot springs, the Maungapohatu burial reserve, the Huiarau wahi tapu reserve, and three pua manu (described as 'forest reserves') at Kohuru–Tukuroa, Te Weraiti, and Pukeaho. In total, these requested areas amounted to 1,911 acres.⁴⁰⁴ Counsel for Wai 36 Tuhoe submitted that what appears to have been a 'general failing' to reserve certain sites to Maori owners appears to be the consequence of a 'lackadaisical or cavalier approach on the part of the Commissioners'.⁴⁰⁵ The Crown acknowledged that these reserves were not awarded to Maori owners, but said that due to 'insufficient knowledge' it could not comment on whether it had been 'reasonable or practicable' to reserve these lands, or whether there was any failure on the part of the Crown.⁴⁰⁶

The only reserves contemplated in the scheme initially, as set out in the Consolidation Scheme Report, were Crown reserves. According to the Report, land taken for the cost of surveys and roads 'need not be cut off contiguous to the Native section, or it may take the form of scenic or water-conservation or forest-conservation areas within the boundaries of the Native section'.⁴⁰⁷ The commissioners nevertheless received requests from Maori owners for reserves for their use, for purposes similar to those set out in section 232(1) of the Native Land Act 1909 (such as a burial ground, place of historical or scenic interest, well or spring), though they had no authority to create them.

404. No area was specified for Te Weraiti.

405. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p109

406. Crown counsel, closing submissions (doc N20), topics 18–26, p 46

407. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 8

The lack of provision in the scheme for creating special reserves for Maori owners was brought to light at the commission's hearing at Waiohau, in February 1923. At that hearing, Ngati Manawa leader William Bird 'stated that the elders had asked him to get reserved the Hot springs within the Pukehou Bl[oc]k' because the waters had 'great medicinal value and [were] highly prized'.⁴⁰⁸ The minute book notes that 'general approval was expressed by all those present'. Perhaps because the commissioners had no authority to create a native reserve, they simply recorded in the minute book: 'award to be made in favor of the Crown for an area of 10 to 15 acres as may be required, to be called Waikokopu Hot Spring with such necessary right of way over adjoining Bl[oc]k as Surveyor deems requisite'.⁴⁰⁹ But, if this was the commissioners' reason for awarding the land to the Crown, why did they not revisit their decision when a provision (section 11(1)) of the Native Land Amendment and Native Land Claims Adjustment Act 1923 (passed some months later, see below) would have allowed the Crown to make the springs a reserve for Maori? Since they failed to do so, and failed to advise Ministers of the people's wish, Waikokopu was referred to in the final schedule of the blocks emerging from the scheme as 'CL' – Crown land.⁴¹⁰ The springs were ultimately subsumed within the overall Crown award and became part of the Crown's Urewera A block when it was gazetted in 1927.⁴¹¹

The request for the Waikokopu reserve was followed by another, at the end of the April 1923, during the hearing of the commission at Maungapohatu. Rua Kenana submitted a request 'on behalf of Maungapohatu Natives' for the Crown to 'permanently set aside as a Reserve the Maungapohatu mountain area about 500 acres.' The commissioners indicated that this, and a wahi tapu sought in the Huiarau Ranges, would be recommended to the Government.⁴¹² Maori owners in other parts of the former reserve also made three requests for pua manu around this time.

In their interim report to the Ministers in August 1923, the commissioners noted these requests and asked for direction on how to proceed. But they commented that the objectives of the owners could just as easily be met if the areas were retained in Crown ownership:

they ask that about 500 acres of Maungapohatu Mountain and about 200 acres of the peaks of the Huiarau Range be permanently reserved – both localities being regarded by them as sacred places, recorded in their legends and associated with their ancestors, many of whom are buried there. Both places are within the Crown's award, and appear to be quite useless for any practical purpose, and the Crown in the ordinary course of events will probably reserve, for climatic or other reasons, the entire area

408. Urewera minute book 1, 27 February 1923 (doc M29), p 283

409. Ibid

410. Urewera minute book 2A, 9 April 1924 (doc M30), p 207

411. See survey plan ML 21742 in Nikora, 'Urewera Consolidation Scheme' (doc E7), app c2(E)

412. Urewera minute book 1, 12 April 1923 (doc M29), p 305

of both the mountain and the range. The question arises whether such reservation would not be sufficient to satisfy the Natives' request without putting the Crown to the heavy unrecoverable expense of surveying off the special portions asked for.⁴¹³

The commissioners clearly preferred that this land go into the Crown's award, despite being aware of the significance of these sites to the people.

The departmental minute on this letter confirmed that the lands, 'now Crown Lands' which were unsuitable for settlement, would become 'Forest or Climatic Reservations', and added that because of this, Maori were 'assured of protection of sacred spots for all time'.⁴¹⁴ From the beginning, there was no inclination on the part of either the commissioners or officials to reserve the two areas for Maori. Legislative provision was in fact made for the creation of reserves for Maori, as we noted above. Clauses amending the Urewera Lands Act 1921–22 were included in the Native Land Amendment and Native Land Claims Adjustment Bill, a wide-ranging Bill introduced into the House on August 23, that is, shortly after the commissioners' report was received. The clause which became section 11(1), relating to the creation of reserves, provided:

The Governor-General may, on the recommendation of the Native Minister and the Minister of Lands . . . declare that any part of the land awarded to the Crown under the Urewera Lands Act 1921–22 . . . be a reserve for the exclusive use of any of the former owners of the said land or their successors, or such other Natives or class of Natives as may be referred to in such Warrant.

The clause was of general application, though we note that the Attorney-General, Francis Bell, speaking in the Legislative Council, described the provision as relating to the establishment of native reserves 'especially the burial-grounds'.⁴¹⁵ Despite this, the Maungapohatu and Huiarau reserves (as well as the pua manu reserves) were not created. It seems clear that it was decided it would cost too much to survey all of them; they were comparatively large reserves, and the Crown would have to bear the cost. The commissioners' letter to Ministers Guthrie and Coates was annotated by the official quoted above with figures, evidently for survey costs, for each of the reserves. The cost for the pua manu would amount to £760, for Maungapohatu it would be £300, and for Huiarau, £72 (that is, a total of over £1,100).⁴¹⁶ (Only Maungapohatu was in fact surveyed.) It is probable that, given that it now intended to use the area for watershed protection, the Government wanted to retain control of it; it may also have been influenced by

413. Knight and Carr to Guthrie and Coates, 6 August 1923, AJHR, 1923, G-7, p 2

414. Handwritten annotations, evidently by JB Thompson, Under-Secretary for Lands, on Knight and Carr to Guthrie and Coates, 6 August 1923 (Crown Law Office, comp, supporting papers on Urewera consolidation and roading, 2 vols, various dates (doc M31(a)), vol 2, p 1457)

415. Francis Bell, 27 August 1923, NZPD, vol 202, p 579

416. Handwritten annotations, evidently by JB Thompson, Under-Secretary for Lands, on Knight and Carr to Guthrie and Coates, 6 August 1923 (Crown Law Office, supporting papers on Urewera consolidation and roading (doc M31(a)), p 1457)

the requirement in section 11(1) that the reserves would be ‘for the exclusive use of any of the former owners’. In any case, reserves could not be declared until the land had first been awarded to the Crown, and the Crown award was not made until 1927.

In the case of the Maungapohatu burial reserve, the commissioners received a further request from Maori owners during their hearing at Maungapohatu on 6 March 1924. A list of 24 trustees for the reserve had been drawn up at the Taurarau hui, and was re-submitted at the hearing, indicating that this was not a new proposal. The minutes note that ‘action’ would be required under the 1923 amendment to give effect to their request.⁴¹⁷ In the meantime, a survey was completed setting out the reserve’s boundaries; a separate survey plan was made in 1924. The land, Mr Nikora told us, was defined ‘by triangulation and by some estimate of boundaries to contain the Mountain. The boundaries [were] not . . . pegged.’⁴¹⁸ But despite the survey of Maungapohatu (which was done as economically as possible), the surveyed area was not marked out on the Crown survey plan when it was later confirmed. A Maori reserve was not declared.⁴¹⁹ This meant that the sacred ancestral maunga – the peak of Maungapohatu – was awarded entirely to the Crown.

It is possible that the award of these reserves to Maori was overlooked, but we do not think so. The cost of surveying the pua manu had been estimated to be the most expensive, and the official response had been that Maori could be granted a right to hunt ‘in areas’ – but would not be granted title.⁴²⁰ In the case of Maungapohatu, the next most expensive and Huiarau, the commissioners had made it clear they thought separate reserves were not needed, and that view was shared by officials. Yet even though a list of names had been forwarded by the commissioners, and a survey (if hasty) was done, Ministers did not take the next step of making a recommendation to the Governor-General. The survey may have been no more than a precaution in case Ministers ultimately decided – perhaps in the face of continuing Maori owner persistence – that the reserve must after all be made.

It cannot be said that there was a general failure on the part of the commissioners to set aside reserves for Maori owners: 27 reserves were set aside for them in addition to their other land, as well as another six reserves deducted from the land to which their interests entitled them. It appears that the process set out in the 1923 amendment Act was generally not carried out when reserves were created in the scheme. They did not pass through Crown ownership first and were instead awarded directly to Maori owners. And in the case of eight requests for reserves

417. Urewera minute book 2A, 6 March 1924 (doc M30), p 86; see also page 94

418. Tamaroa Raymond Nikora, brief of evidence, 16 February 2005 (doc K14), pp 6–7

419. Jonathan Easthope, ‘A History of the Maungapohatu and Tauranga Blocks as Defined by the First Urewera Commission’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A23), pp 256–257

420. Handwritten annotations, evidently by JB Thompson, Under-Secretary for Lands, on Knight and Carr to Guthrie and Coates, 6 August 1923 (Crown Law Office, supporting papers on Urewera consolidation and roading (doc M31(a)), p 1457)

(five urupa and three papakainga) the commissioners simply included the land in the Maori owners' award, without granting it any special status or protection.

But the process adopted by the commissioners had crucial implications for some of the claimants' most tapu ancestral sites. It seems that the commissioners either took advantage of the new process laid down under the 1923 amendment to tell Maori that responsibility for decision-making no longer rested with them but lay in the more distant hands of Ministers (as in the case of Maungapohatu and Huiarau) or quietly ignored it (in the case of Waikokopu), while taking steps to ensure that the Crown acquired sites which they considered were crucial for watershed or scenic purposes. The process set out in the 1923 amendment was a determining factor in the fate of the three pua manu reserves, the Maungapohatu burial reserve, and the Huiarau wahi tapu, all of which were washed up in the Crown's award. This outcome, clearly favouring the Crown's interests, stands as a failure in the division of the land in the Urewera Consolidation Scheme. It was not until the 1970s that the Maungapohatu burial reserve was placed in Maori ownership, and only after a significant period of protest (see chapter 15 for our discussion of these events). Other significant sites remain in Crown ownership today.

The final issue raised by the claimants in respect of the reserves created during the scheme was whether the Crown reserved to itself public places above and beyond its entitlement. If the Crown no longer required the sites for these purposes, the claimants submitted, they should be returned to the original owners.⁴²¹ As noted, the commissioners cancelled a number of planned scenic reserves in the Tarapounamu and Ruatahuna regions after protests from Maori owners. But 10 reserves (totalling approximately 416 acres) were set aside for the Crown throughout the scheme, most of which were marked out on the Crown's survey plan as separate sites. These included the Ruatahuna township (see above), two school reserves (at Maungapohatu and Ohora), two scenic reserves, and riverbank reserves (totalling 175 acres).

The Crown submitted that, in the case of the Ohora school reserve, 'it is very likely that this was simply land within the Crown award that the Crown intended to use as a school'.⁴²² We agree, and add that this same reasoning applies to the other nine reserves. No interests of Maori owners were put toward their creation; therefore they formed part of the Crown's entitlement in the scheme. Apart from the Ruatahuna township, we have seen no evidence to suggest that these sites were particularly targeted by the commissioners in a way that deprived Maori owners of land that they had requested. The one possible exception applies to the riverbank reserves. In chapter 21, we examine the claim that the commissioners set aside these reserves for the particular purpose of separating Maori land from the Tauranga River and other smaller waterways in the within scheme, thus cementing the Crown's right to those waterways.⁴²³

421. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 119–120

422. Crown counsel, closing submissions (doc N20), topics 18–26, p 70

423. Suzanne Doig, 'Te Urewera Waterways and Freshwater Fisheries' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A75), pp 78–89

Although we received very little evidence on this issue, we presume these Crown reserves for public purposes have not been included in Te Urewera National Park. Crown counsel thus left open the option that these areas could be returned to Maori owners as part of their Treaty settlement:

The Crown notes the submissions that these lands should be returned. If the properties concerned have been declared surplus to requirements by government departments they will be considered through the protection mechanism process. Claimants may request these lands be placed in landbanks.⁴²⁴

In other words, the Crown argued that the peoples of Te Urewera were not disadvantaged because it had not used the public works legislation to set aside these reserves; the land could still potentially be returned through this other mechanism.

14.6.5 Conclusions – the division of the land and consolidation of Maori owners' interests

Maori owners entered the scheme in the hope they could rescue their fragmented interests in the former reserve in the form of useable land, and in doing so sought a compromise between the hapu-title promised to them in the UDNR Act and individualisation. They were confronted by a Crown determined to control a process to which it was also a party. The Crown occupied a superior bargaining position, and constructed the setting for a hui in which an 'informal' process of negotiation was then transformed into a formal process of implementation, which had the effect of considerably strengthening the Crown's control of the process and its ability to secure its pre-consolidation goals for Te Urewera lands. Maori owners, by virtue of this process and its subsequent records, were given little opportunity to understand the scheme's collective consequences.

All the way through the process, the Crown had a clear view of the field; Maori owners, once their committee had disbanded, were simply disparate groups of owners each with a view of only one or two parts of the field. Although this did not mean that most groups were deprived of the land they asked for when the commission came to their area, all groups were deprived of a sufficient opportunity to establish informed and comprehensive objectives as to which land they wanted or needed to retain, which Mr Nikora identified as a fundamental principle of a sound consolidation scheme.

Overall, we think that the Tauarau hui exhibited some of the 'give and take' which Ministers expected to characterise the scheme. The committee of owners, even though it did not have full information or sufficient time to consider and develop informed objectives, was able to bargain successfully with the Crown on some key points. It was facilitated in doing so by its chosen representative, Apirana Ngata. Also, the committee did all the work of organising its own communities of owners into consolidation groups, many of which were small and reflected a

424. Crown counsel, closing submissions (doc N20), topics 18–26, p 70

preference to re-collectivise as whanau. Then, decisions about four-fifths of the land were finalised through this process of 'give and take', although some adjustment of exact locations and boundaries was still required on the ground.

But for the remaining one-fifth of the land, the decisions were made in a process over which Maori owners had none of the autonomy that had been accorded them at the Taurarau hui. Instead, the Crown co-owner appointed two of its officials as commissioners with absolute power to make all the remaining decisions. Maori owners were originally to have a right of appeal to an independent arbiter but this suggestion – made by the officials themselves – was not included in the Urewera Lands Act. While the commissioners exhibited commendable flexibility and willingness to meet the wishes of Maori owners in the division of the northern lands, the flaws in a one-sided commission were clearly revealed in the cases of Te Whaiti and Ruatahuna, where the Crown simply imposed its will in the face of significant resistance from Ngati Whare and Ngati Manawa (at Te Whaiti) and a large body of Tuhoe groups at Ruatahuna.

As a result, some Maori groups in Te Urewera lost out to a Crown that was seeking to advance its own interests: by securing the lands and forests of its choosing and by using the scheme to maximise the size of its award. This is no better illustrated than in the story of the Waikaremoana block, which the Crown acquired in whole through the scheme. We turn to that next.

14.7 WHAT EFFECT DID THE SCHEME HAVE ON WAIKAREMOANA PEOPLES?

SUMMARY ANSWER: The Urewera Consolidation Scheme had particular impacts on Tuhoe, Ngati Ruapani, and Ngati Kahungunu, who by 1921 had retained all of the interests in the Waikaremoana block originally awarded to them. By the beginning of the twentieth century, earlier extensive alienation in surrounding lands meant that the lands that remained in their possession were of even more importance to them, namely the reserves to the south-east of the lake and the large expanse of land to the north that was the Waikaremoana block. Tuhoe and Ngati Ruapani owners had petitioned the Government to refrain from purchasing in the block during the 1910s because they were already short of useable land. They had earlier signalled this to Premier Seddon when he visited the lake communities in 1894. Although William Herries decided against purchasing in the block, some officials suggested a portion of it should be taken under Scenery Preservation legislation, so that the Crown would have the crucial watershed area for scenic purposes and to protect the lake levels for the planned hydro-power scheme.

During the negotiations at the Taurarau hui, the Crown used the threat of compulsory acquisition to get the Waikaremoana block. The Crown initially proposed that the block would be excluded from the scheme; when Coates subsequently indicated that a portion of the block would be taken under the Scenery Preservation Act, many Tuhoe owners threatened to withdraw from the scheme. Tuhoe owners, faced with having to choose some ancestral lands over others, preferred to use their interests from the Waikaremoana block to increase the amount of land they would get around their main settlements; rather than receiving

monetary compensation, which was the alternative. Faced with the possibility of Tuhoe's withdrawal, the Crown decided to include the block in the scheme. Coates used the possibility of a compulsory taking at the crucial time; the result was the award of the whole Waikaremoana block (minus some 600 acres of reserves for Ngati Ruapani) to the Crown.

The outcome of the Taurarau negotiations was that the whole block – not just a portion of it – passed into the Crown's possession. But this decision did not result in equal outcomes, as separate arrangements were made with different groups of owners that reflected their respective bargaining positions and not the value of the land.

Officials at the Taurarau hui recognised that Ngati Ruapani in particular required more useable land; Ngati Ruapani saw the scheme as an opportunity to obtain such land, as well as a sustainable income in the form of debentures, a Government debt that was to pay interest on an annual basis until the principal was paid. But the Crown only succeeded in hastily purchasing private settler land for Ngati Ruapani at a price more than twice that agreed with them. Understandably, Ngati Ruapani rejected this land. The Crown then acquired two of their southern reserves without paying for them, failed to find alternative land on the southern side of the lake at a reasonable price, then refused to increase the size of reserves in the Waikaremoana block, which owners hoped would make up for the lack of land on the southern side. At the same time, the commissioners continued to purchase interests from Ngati Ruapani owners at less than the negotiated rate. On top of this, interest payments on the debentures were withheld from Ngati Ruapani and Ngati Kahungunu at a crucial time during the depression. The Government then reduced the interest rate and extended the period for repayment of the principal by 25 years.

In total, between 1875 and 1930, the land holdings of Waikaremoana peoples reduced from 291,195 acres to 12,580 acres, or 4.3 per cent of what they had held in 1875. When we consider these facts in the context of the earlier history outlined in previous parts of our report, and the abject poverty of these peoples at this time, we cannot but view the actions of the Crown as manipulative and heartless. It is a cruel irony that the only viable Maori community at Lake Waikaremoana survives on one of the reserves created in the wake of the Crown's questionable acquisition of the four southern blocks, on a site which Tuhoe, Ngati Ruapani, and Ngati Kahungunu defended against Crown forces in January 1866.

14.7.1 Introduction

The Urewera Consolidation Scheme had different effects on each part of the former reserve and its communities. But it left a particular and far-reaching mark on the lands and peoples of the Waikaremoana region. Tuhoe, Ngati Ruapani, and Ngati Kahungunu had emerged from the strain of warfare in the 1860s and 1870s, and the tensions arising from successive title-determining bodies that had demarcated a 'tribal boundary', with only one large block of land intact: the Waikaremoana block, which consisted of 73,667 acres of mainly forested land on the north-west shore of Lake Waikaremoana. Although the block was one of the

few in the former reserve that the Crown had not attempted to purchase in the 1910s, it was the only block that the Crown ultimately managed to acquire as a whole, apart from 600 acres of reserves that were set aside for Ngati Ruapani; and it did so through the Urewera Consolidation Scheme.

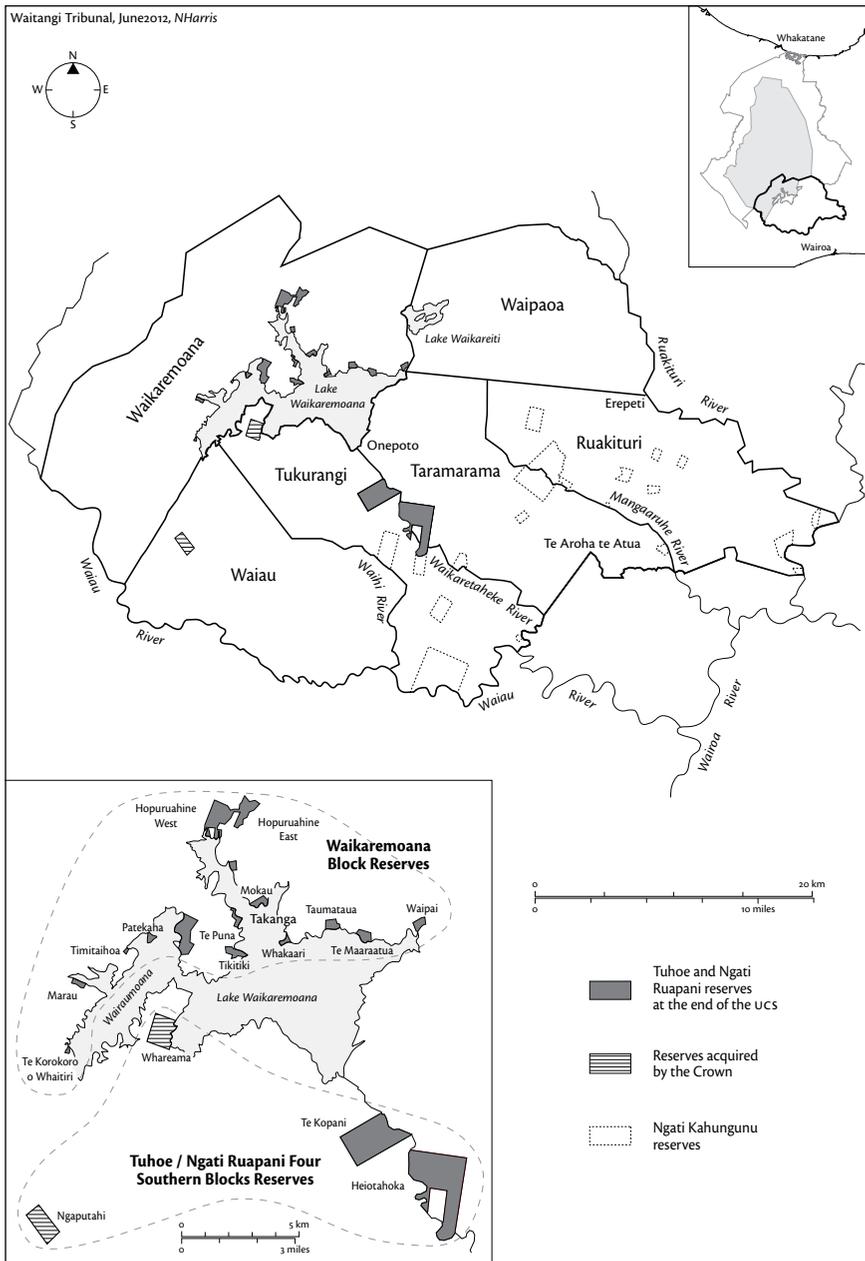
The Crown initially proposed at the Tauarau hui to exclude the block from the scheme, but by the end of the committee's deliberations it had been included at their request. The plan was for the block to be awarded in its entirety to the Crown; Tuhoe owners would transfer all of their interests in the block (the equivalent of 29,060 acres) to other areas within the scheme. This was unlike any other arrangement in the scheme. The terms of this transaction also meant that the majority of the interests in the block – those of Ngati Ruapani and Ngati Kahungunu owners – were purchased by the Crown in exchange for debentures, a Government debt which would pay interest on an annual basis, and thus provide the owners with an ongoing form of income until the capital was paid off. Ngati Ruapani owners were also willing to give up two of the reserves that had been earlier set aside for Tuhoe and Ngati Ruapani south-east of the lake (in the four southern blocks), so long as they received sufficient reserves to the north of the lake and to the south, where the Crown promised to acquire additional land for their cultivation.

In this section, we look at how the Crown's approach to the Urewera Consolidation Scheme could have extreme consequences for a particular community and their lands. The claimants argued that the Crown acquired the Waikaremoana block through coercion, and did not fulfil the promises it had made in connection with it; the Crown denied all of these points, maintaining that its acquisition of the block and subsequent arrangements were conducted fairly, even if some of the outcomes did not live up to the owners' expectations.

The issues discussed in this section are best understood in the context of the land alienation that the peoples of Waikaremoana had already experienced in the decades before the scheme. We begin with a reminder of the history of that alienation from earlier parts of our report in order to explain the situation faced by the Waikaremoana peoples in 1921.

14.7.2 How did land alienation influence the views of Maori owners of the Waikaremoana block towards their remaining land?

By the time the Urewera Consolidation Scheme came about, Waikaremoana peoples had experienced half a century of land alienation; the circumstances in which this alienation occurred determined their views of what should happen to their remaining land. Land alienation began as a direct consequence of the Crown's first attempt at asserting authority in the region during the 1860s and 1870s, as we explained in chapters 6 and 7. Following an intense phase of warfare in the early nineteenth century, Tuhoe, Ngati Ruapani, and Ngati Kahungunu had all maintained settlements on the shores of the lake and surrounding lands. Due to its altitude and terrain, this land was generally of a low quality for cultivation, and was consequently never an area of heavy settlement; but it was by no means uninhabited, and two generations of relatively peaceful co-existence was only brought to



Map 14.4: Land remaining in Maori ownership in the Waikaremoana region by 1930. Between 1875 and 1930, land in Maori ownership surrounding Lake Waikaremoana was reduced 95.7 per cent, from 291,195 acres to 12,580 acres. The Crown's last major acquisition was the Waikaremoana block (73,667 acres), to the north-west of the lake. At the end of the Urewera Consolidation Scheme, 2,488 acres remained in Tuho and Ngati Ruapani ownership.

an end by the first arrival of Crown forces in late 1865. The events of the 1860s had notable effects on Ngati Ruapani, Tuhoe, and Ngati Kahungunu, as witnessed in the loss of life and the destruction of property. This was the worst possible beginning for the relationship between the Crown and Waikaremoana peoples, as it was for Te Urewera peoples generally.

The fighting that occurred in the 1860s and 1870s had lasting consequences for the land to the south of the lake, which came before the Native Land Court as four blocks – Waiau, Taramarama, Tukurangi, and Ruakituri. In 1875, in what was the last stage in a protracted saga, Tuhoe and Ngati Ruapani leaders withdrew from the court proceedings. As we explained in chapter 7, they did so following a threat of confiscation that had emerged during those proceedings. The four blocks were awarded entirely to Ngati Kahungunu owners, who – faced with their own pressures – sold to the Crown. Ngati Kahungunu secured 24 reserves in the blocks, totalling 8,420 acres.⁴²⁵ (The reserves awarded to Ngati Kahungunu are outside the Te Urewera Inquiry District and do not feature as part of our report, except by way of context.) Tuhoe and Ngati Ruapani received 1,250 and 2,500 acres of reserves for their interests. Although there were significant delays in the creation of these reserves, these delays did not cause any prejudice. Nevertheless, the circumstances in which the reserves were created provides important context for the way in which the Crown subsequently acquired two of them; we consider these circumstances below (see sidebar opposite).

The Crown's acquisition of the four southern blocks meant that, apart from a few small pockets, the southern land had gone; only the land to the north remained intact. Tuhoe and Ngati Ruapani's land holdings in the area immediately to the south of the lake became a mere 2,500 acres. In total, the land surrounding Lake Waikaremoana in Maori ownership – the four southern blocks, and what became the Waipaoa and Waikaremoana blocks – was reduced from 291,195 acres to 123,471 acres (42 per cent) by 1875. This was reduced even further in the years after the Native Land Court's award of the Waipaoa block, to the east of the lake, to Tuhoe and Ngati Kahungunu in the 1880s. As we explained in chapter 10, Crown purchasing in the Waipaoa block took place through questionable means. Of the 39,302 acres in this block, 19,490 acres remained in Maori ownership in 1904. By 1930, this had been reduced to 2,092 acres, or 5.3 per cent.

Such extensive land loss made it very difficult for Waikaremoana communities to maintain their livelihood. They were already in some trouble by the time of Premier Seddon's visit to the Te Kopani reserve in 1894. In his speech, Hori Wharerangi told Seddon about the well-being of his community: 'We are not living at ease in this place'. The cause for his people's 'unease' was their material circumstances. 'You will have seen, on your journey', Wharerangi said, 'that we occupy most of our land that will admit of occupation.' Although Seddon responded to this admission in positive terms, as he believed Maori should seek to be rid of any

425. Michael Belgrave and Grant Young, 'The Urewera Inquiry District and Ngati Kahungunu: War, Confiscation and the "Four Southern Blocks"' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003) (doc A131), pp 111–112, 137–140

The Creation of the Four Tuhoe and Ngati Ruapani Reserves in the Four Southern Blocks

The four Tuhoe and Ngati Ruapani reserves were intended to provide a small but permanent foothold in the land to the south of the lake. Shortly after the withdrawal of Crown forces from Waikaremoana in December 1871, Tuhoe and Ngati Ruapani communities settled back at their kainga on the southern shore. Four years later, following the Crown's acquisition of the four southern blocks, they had to start restricting their activities to a much smaller area of land. The 'deed of sale', in which the Crown purchased the interests of Tuhoe and Ngati Ruapani, stated that 2,500 acres would be set aside as 'a permanent reserve' ('kia whakatuturutia kia matou tetahi wahi o aua whenua'). The intended beneficiaries of this reserve were described as 'the Chiefs and people of the tribes of Tuhoe, Urewera, Ngati Ruapani' ('nga iwi me nga rangatira me nga tangata katoa o Tuhoe ara o te Urewera o Ngati Ruapani'). The land, in other words, would be set aside permanently for a tribal community.¹

In 1877, surveyors cut the boundaries of four reserves totalling 2,500 acres: Ngaputahi (in the Waiau block), 300 acres; Whareama (Tukurangi block), 300 acres; Heiotahoka (Taramarama block), 1,100 acres; Te Kopani (Tukurangi block), 800 acres. It is unclear how the location and number of these reserves was chosen, though it is likely that any decisions were informed by the places Tuhoe and Ngati Ruapani had returned to after the end of hostilities; the boundaries were probably chosen with the assistance of leaders. Two of the reserves had lake frontage; the others were near the lake.

Although surveyors did all the necessary work, the reserves were not legally created at this time. The 24 Ngati Kahungunu reserves were created in January 1882.² In June 1882, noticing the absence of an equivalent process for their reserves, Tuhoe and Ngati Ruapani leaders wrote to the Government asking for grants to be made. But at a hearing in July 1884, the Native Land Court found that it was unable to deal with the 'Urewera' reserves because, as George Preece wrote, they 'were not excluded in the deeds of sale to the Crown of the Waiau, in Tukurangi, and Taramarama'.³ The Government resolved the situation by using sections 144 and 145 of the Land Act 1877, which enabled Crown lands to be reserved from sale first on a temporary basis and then permanently. In February 1885, the four reserves were temporarily 'reserved from sale' under section 144 of the Land Act 1877 'for the use

1. Tuhoe and Ngati Ruapani deed of sale, 12 November 1875 (Cathy Marr, comp, supporting papers for 'Crown Impacts on Customary Interests in the Waikaremoana Region in the Nineteenth and Early Twentieth Century', various dates (doc A52(a)), pp 36–37)

2. Michael Belgrave and Grant Young, 'The Urewera Inquiry District and Ngati Kahungunu: War, Confiscation and the "Four Southern Blocks"' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003) (doc A131), p 118

3. *Ibid*, pp 116, 120

and support of the Uriwera and Ngatirupani Tribes of aboriginal natives'. Then, in April 1885, they were gazetted as permanent reserves under section 145.⁴

These reserves were vested in the Public Trustee under the Native Reserves Act 1882. In June 1885, the Public Trustee applied for a Native Land Court hearing (under section 16) to determine the beneficial ownership of the reserves. For reasons unknown to us, this hearing did not take place until 1889. But the outcome was that the court found the beneficial owners of the four reserves, in equal shares, to be the 60 individuals named in the Tuhoe and Ngati Ruapani deed.⁵

It took 14 years for Tuhoe and Ngati Ruapani owners to be guaranteed their remaining land in the four southern blocks. But while this was symptomatic of the poor process that characterised the Crown's acquisition of the four southern blocks, the owners appear to have suffered no lasting prejudice from the delay. Tuhoe and Ngati Ruapani returned to the land shortly after the end of the conflict, and resided at the biggest reserve from this time. And, as the reserves were intended to be inalienable, they were also treated as such by people who, at the time, had no intention of alienating their remaining land. Although the delay in defining the beneficial owners increased the community's uncertainty about their place on the land (particularly when Ngati Hika, a hapu of Ngati Kahungunu, disputed ownership of one of the reserves), they were not denied access; nor, ultimately, ownership.

As the deed had suggested that the reserves would belong to the tribes, their title should not have been vested in the Public Trustee. Nonetheless, any possible drawbacks from listing all 60 individuals as beneficial owners of this land should have been negated by its status as a permanent reserve. In fact, it is unclear whether the reserves were afforded any legislative protections at the time of their creation. Under section 153 of the Land Act 1877, any land reserved from sale could be withdrawn from any reservation or exclusion and sold after three months' notice. But under section 22 of the Native Reserves Act 1882, restrictions on reserves could be lifted only if the Native Land Court was satisfied that the owners possessed enough land 'amply sufficient for the future wants and maintenance of the tribe, hapu, or persons to whom the reserve wholly or in part belongs'. It is unclear which provision applied to the four reserves, because they had been 'set aside' under the Land Act 1877 and title had been issued under the Native Reserves Act 1882. In any case, all restrictions on reserves were lifted by the Native Land Act 1909. This paved the way for the inclusion of the reserves in the Urewera Consolidation Scheme in 1921. By this time (as we explain further below) the owners were beginning to look for alternatives to the four reserves, which had proved insufficient for their needs.

4. 'Lands Temporarily Reserved in the Land District of Auckland', 19 February 1885, *New Zealand Gazette*, 1885, no 11, p 246; 'Lands Permanently Reserved', 30 April 1885, *New Zealand Gazette*, 1885, no 26, p 508

5. Belgrave and Young, 'War, Confiscation and the Four Southern Blocks' (doc A131), p 124; Wairoa minute book 3A, 8 March 1889, pp 384–386; Wairoa minute book 3B, 9 March 1889, pp 3–8

surplus land, Wharerangi saw the situation differently: he wanted land they could use. Another speaker, Hapi, told Seddon:

all the available land, so far as the Tuhoe are concerned, is occupied. The land that you saw lying unutilised when going through this territory you have properly described. It is rough and uninhabitable . . . Where we are living now is only a reserve the Government gave us. We are occupying the whole of it, ourselves and our horses.⁴²⁶

Tuhoe and Ngati Ruapani then raised the possibility of exchanging some of their land for better land. Hapi identified Crown land adjacent to their main settlement (acquired as part of the four southern blocks) as a possible site for a school. Wharerangi also raised the possibility of exchanging land in the Waipaoa block for land near the reserve. 'What we propose is this: that we should surrender one portion to the Government, making the whole [Waipaoa] block Government land, in exchange for land which belongs to the Government, and which we want.'⁴²⁷ As we explained in chapter 7, Seddon's 1894 visit to Lake Waikaremoana demonstrated how inadequate the reserves set aside for Tuhoe and Ngati Ruapani from the four southern blocks were. In response to this situation, the local leaders clearly identified the central issue that confronted them: a long-established community on the remaining land south of the lake needed more and better land to keep it viable.

By the time the Waikaremoana block came before the first Urewera commission in the late 1890s, significant alienations in adjacent lands had already taken place. The people's experience of title-determination before the two Urewera commissions – as with their experience in the Native Land Court – placed an added burden. The events leading to the alienation of the four southern blocks saw the emergence of a 'boundary' dispute between Tuhoe and Ngati Kahungunu, which meant that the two tribes increasingly sought to define a hard-line boundary in these and other fora, especially in describing their respective rights to the Waikaremoana block. Although both were large iwi, with main settlements elsewhere in the region, the Waikaremoana lands were of traditional importance and neither tribe was willing to concede to the other in fora that required clear delineation of rights.

Ngati Ruapani, however, had few alternatives: Waikaremoana was their only home. They emerged from the Urewera commissions aligned to Tuhoe, but with an increasingly distinct identity that would become stronger over time. Ngati Ruapani identity and relationships were a matter of considerable debate before us. We are aware that there was a sizeable group of people who described themselves as a distinct Ngati Ruapani group at the time of the consolidation scheme, and continue to do so today. These distinctions are important in unravelling the complex history of the Waikaremoana block transaction. But as the record also indicates, most Waikaremoana people identified as Tuhoe, Ngati Kahungunu, or Ngati Ruapani (and are affiliated with more than one group). When the awards

426. 'Pakeha and Maori: A Narrative of the Premier's trip through the Native Districts of the North Island', 1895, AJHR, 1895, G-1, pp 79–84

427. *Ibid*, p 84

were finalised in 1907, 906 individuals were listed as owners of the Waikaremoana block, and 729 owners were either of Tuhoe or of Ngati Ruapani descent (or of both). After the second commission, 117 Ngati Kahungunu names were added to the list.⁴²⁸

By the mid-1920s, therefore, Maori owners of the Waikaremoana block – Tuhoe, Ngati Ruapani, and Ngati Kahungunu – had experienced half a century of land loss which had only made them more inclined to keep their remaining land. The local communities actually needed more and better land to improve their material circumstances, not less. But tensions had also been raised between these groups on account of successive title-determination processes. It was in this context that the Crown began developing plans which ultimately led to the block's inclusion in the Urewera Consolidation Scheme.

14.7.3 How was the Waikaremoana block included in the scheme?

The Crown's plans to acquire the remaining lands adjacent to Lake Waikaremoana emerged from the very earliest identification of the lake and its surrounds as a site of scenic beauty, one that was worthy of preservation. But protecting the forests that traversed the foreshore of the lake up to the skyline was also increasingly discussed in association with concerns about the need to protect all Te Urewera forests. Such protection was seen as essential to prevent floods in surrounding regions, especially the settler farmlands of the Bay of Plenty. The land to the north-west of the lake took on further importance when plans to construct a hydro-power station took shape at the beginning of the twentieth century: in order to ensure the success of the power scheme, the lake's water levels had to remain the same.

By the 1910s, these factors combined to the extent that officials and other interested parties made a series of recommendations in favour of the Crown taking a portion of the block under the scenery preservation laws. The 1913 royal commission on forestry recommended reserving the land from the edge of the lake to the skyline in order to preserve 'the great beauty of the scenery'. In November 1913, the Lands Department submitted proposals to the Minister of Lands to acquire 14,280 acres of the Waikaremoana block, but excluding Maori cultivations and settlements.⁴²⁹ This area was 19.3 per cent of the block. The following year, both the Auckland and the Hawke's Bay branches of the Scenery Preservation Board recommended acquiring the same area. According to Vincent O'Malley, although these proposals received considerable support from organisations in surrounding regions, the Crown refused to take any action because by this stage plans had been made to resume purchasing in the reserve; the Crown did not want to inflame relations with Maori owners by acquiring some of their land by compulsion.⁴³⁰

There was good cause for the Crown to remain cautious. In 1914 and 1915, Waikaremoana owners submitted two separate petitions, both of which opposed

428. O'Malley, 'Waikaremoana' (doc A50), pp 45–46

429. Ibid, p 65

430. Ibid, p 66

any form of Crown acquisition in the block.⁴³¹ In 1916, ignoring these petitions, the Under-Secretary for Lands made another proposal for compulsory acquisition of 14,280 acres of the block. O'Malley says this recommendation was again rejected for the same reasons as in 1914.⁴³² By this time, William Bowler had begun calling for the Crown to extend its purchasing into the remaining reserve blocks, including the Waikaremoana block. But Herries confirmed in July 1917 that the Crown would not begin purchasing there, because of its unsuitability for settlement and the costs that would be involved in 'opening' the land. Herries rejected yet another recommendation from Bowler in 1918, observing that it was not worth tying up the Crown's money 'indefinitely' in such low-value land, and that the 'question of the ownership of the lake comes in too'. On the latter point, Herries was referring to the Native Land Court decision in June 1918, awarding the lakebed to lists of Tuhoe, Ngati Ruapani, and Ngati Kahungunu individuals, against which the Crown had just lodged an appeal.⁴³³ Tuhoe and Ngati Ruapani owners also appealed the decision, objecting to the inclusion of Ngati Kahungunu owners in the title.⁴³⁴

Further petitions followed as the Crown's purchasing programme extended into Ruatahuna: first from Te Wao Ihimaera and 16 others in August 1918; then, in May 1919, from Te Amo Kokouri and 121 others.⁴³⁵ The Waikaremoana block, they thought, should be withheld from sale, and kept as an area 'upon which we could live'.⁴³⁶ Commenting on this petition, Herries noted that 'it was not proposed to touch the Waikaremoana blocks at present'.⁴³⁷ The Crown had not acquired all of the interests in any other block in the reserve, and it had yet to rule out the option of acquiring the part that was needed through the Scenery Preservation Act.

By the time the Waikaremoana block came into focus again in 1921, the Crown was in the early stages of planning for a consolidation scheme. The lake had just been confirmed in its potential as the source of a hydro-power scheme. On 4 May 1921, shortly before Coates and Guthrie went to Ruatoki, the Scenery Preservation Board made another recommendation for the compulsory acquisition of the land on the north-west shore of the lake 'extending to the skyline' for 'scenic purposes'.⁴³⁸

A few weeks later, at the May 1921 hui at Ruatoki, Maori owners and Ministers began discussing what would happen to the Waikaremoana block. Ngata introduced the issue by arguing that the object of a consolidation scheme was to pool the 'scattered' interests of Maori owners from around the reserve: 'the Ruatahuna

431. *Ibid*, p 67

432. *Ibid*, p 71

433. *Ibid*, pp 71–73; Emma Stevens, 'Report on the History of the Title to the Lake-bed of Lake Waikaremoana and Lake Waikareiti' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1996) (doc A85), p 22

434. Stevens, 'Lake Waikaremoana and Lake Waikareiti' (doc A85), p 22

435. O'Malley, 'Waikaremoana' (doc A50), pp 74–76

436. Te Amo Kokouri and 121 others to Native Minister, May 1919 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 1110)

437. O'Malley, 'Waikaremoana' (doc A50), pp 74–77

438. *Ibid*, p 83

natives will endeavour to consolidate their interests which are scattered as far as Waikaremoana'. Takurua Tamarau agreed that it was better to include the block in the scheme so that they could increase their land holdings in places such as Ruatahuna and Ruatoki: there was 'no reason why we who are interested in the land [in the Waikaremoana block] and are living here [at Ruatoki] should oppose that matter'.⁴³⁹ Guthrie signalled that it was the Government's definite intention to acquire the Waikaremoana block for a combination of preservation purposes: in particular, conserving the rainfall (as he put it) and maintaining the level of the lake for a hydro-power scheme (see sidebar over). For Guthrie, the only question that remained was how the Crown would obtain the block. He mentioned two possibilities: by means of exchange (in the consolidation scheme); or to 'treat' with its owners 'in other ways'.⁴⁴⁰ Although he took the matter no further on the day, Guthrie was raising the spectre of renewed Crown purchase of individual interests, even though those who had assembled at the hui were those who had staunchly opposed Crown purchasing.

The Crown's next step towards acquiring the Waikaremoana block became tangled up with the ownership of the lakebed. Coates traveled to Waikaremoana after the May hui to advance the Crown's agenda for acquiring the land with the people there, who evidently had not been at the Ruatoki hui. The *New Zealand Times* reported that the Crown remained anxious 'to retain the country surrounding the lake in order to conserve the scenery and the water for power'.⁴⁴¹ Maori owners said that they wanted to resolve what would happen with the Waikaremoana block before the Crown could proceed with its appeal against the lakebed decision. According to Emma Stevens, they were concerned that further land loss would affect their recently awarded rights in the lake.⁴⁴²

From the Crown's perspective, this was in fact a reason to delay its appeal. By acquiring the block, or a portion of it immediately adjacent to the lake, the Crown might gain an advantage in arguing its case to the title of the lakebed; and Maori owners had clearly become aware of this. In his June 1921 plan for consolidation, Knight cited public statements to this effect by the Attorney-General, Sir Francis Bell. In Bell's opinion, the recent arrangement for the Crown to acquire 'practically all of the fore-shore of Lake Waikare Moana' (which he believed had been achieved at the May hui at Ruatoki and Waikaremoana), would 'bring to an end the litigation in respect of that Lake': 'It is possible for that reason that the proposed argument of the Waikare Moana case will be postponed'.⁴⁴³

Knight proposed two courses of action:

439. 'Disposition of Urewera Lands', 18 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 131, 134)

440. *Ibid*, p 137

441. 'Urewera Country: Big Settlement Scheme', 31 May 1921, *New Zealand Times* (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 552)

442. Stevens, 'Lake Waikaremoana and Lake Waikareiti' (doc A85), p 23

443. Sir Francis Bell, quoted in Knight to Under-Secretary for Lands, 21 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 147)

The Importance of the Waikaremoana Block to the Crown

In his speech at the Ruatoki hui on 22 May 1921, the Minister of Lands, David Guthrie, stated:

In regard to Waikaremoana: it is absolutely necessary in the interests of all concerned that we should preserve the bush and keep it as it is today. If we allow the whole of the bush around the Lake to be felled, the result will be that the level of the Lake will fall. It would cease to be the great source of power that it is going to be when the hydro-electric scheme is carried out. We want to conserve the rainfall, so that the level of the Lake will not drop. What we want from the Natives is either to exchange land round the Lake for other land, or treat with them in other ways. I understand from the information that has come to me that it is considered by the Natives that the establishment of the works would be in their interests as well as in the interests of the Europeans.¹

1. Disposition of Urewera Lands', 18 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 137)

First, to omit the block from the areas to be consolidated, and to leave it to the Crown to take as much as may be necessary for lake protection purposes under the Scenery Preservation Act, or else instruct the Native Land Purchase Officer, either by a meeting of owners or by acquiring individual interests to commence purchasing operations. And, secondly, if the whole or part of the block is acquired by the Crown during the consolidation process to admit that such action will not prejudice the Natives' claim to the bed of the lake.⁴⁴⁴

The Maori owners' appeal was still set down for mid-August 1921, and Knight argued that some owners wanted to make an arrangement for both the block and the lakebed at the same time. Stevens says that, after the hui at Waikaremoana and consulting with Bell, Coates gave an instruction to delay the Crown's appeal from June until August. The hearing was then delayed again until March 1922. As we shall discuss in chapter 18, further delays to all the appeals followed; they were not heard until 1944.⁴⁴⁵

Once the consolidation scheme got under way, Knight either was given instructions to exclude Waikaremoana from the consolidation scheme or chose this course himself. As we have seen, the officials at the Tauarau hui in August 1921

444. Knight to Under-Secretary for Lands, 21 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 147)

445. Stevens, 'Lake Waikaremoana and Lake Waikareiti' (doc A85), pp 23-30

proposed to limit the scheme to the 44 blocks in which the Crown had purchased interests, which automatically excluded Waikaremoana. Whoever made this decision, the Crown's agenda was such that it would invariably acquire some or all of the block, either through compulsory acquisition or through the commencement of purchasing. Knight had thought this was the path of least resistance but the reaction of Maori owners at Tauarau was the opposite. In his report on the hui, Balneavis recorded: 'There was great disappointment expressed when Mr Knight announced that the Waikaremoana Block would not be included in the Consolidation Scheme.'⁴⁴⁶ But what may have appeared as disappointment to Balneavis was rather a growing realisation that the consequences of the block's exclusion from the scheme were two-fold: they would not be able to use the interests to increase the size of their main settlements; and the Crown would instead acquire parts of Waikaremoana through other means. The largely unsettled area of the Waikaremoana block was one of the biggest bargaining chips for many Maori owners in the reserve lands.

The key action taken by the Crown during this period occurred during the Tauarau hui, as a result of which the Crown was able in a series of transactions to acquire the whole block. On 6 August, Balneavis sent a telegram to Coates advising him that the Crown should reverse its decision to exclude the Waikaremoana block from the scheme. There were, Balneavis reported, a large number of owners who were willing to exchange their interests in the block. Including it in the scheme would not significantly decrease the amount of land awarded to the Crown in other parts of the reserve, because the block had a lower valuation than most others. Balneavis suggested that taking this action would also advantage the Crown's lakebed case – 'giv[ing] the Crown without any friction a footing in the forest area north of the lake' – and asked the Ministers for their authorisation.⁴⁴⁷

Two days later, Guthrie sent a telegram to Coates giving his support to Balneavis' recommendation. It remained 'very desirable' for the Crown to acquire 'native interests in forest covered northern shores of Waikaremoana':

Any provisional scheme of exchange between Crown interests in Urewera and native interests on shores Waikaremoana would receive my immediate and sympathetic consideration. Any such provisional scheme must be met with Mr Knight's concurrence. Am advising Mr Knight accordingly.⁴⁴⁸

It is possible that Knight intervened in support of his original recommendation to exclude the block, because Coates then sent a telegram to the Crown's representatives at the hui, confirming the Government's intention to acquire a portion

446. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 189)

447. Balneavis to Coates, 6 August 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 506)

448. Guthrie to Coates, 10 August 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 509)

of the block under the Scenery Preservation Act. Although we were not supplied with a copy of the telegram, Balneavis reported the reaction of the assembled Maori owners:

when your message arrived conveying the intimation that the requirements of the Crown so far as the forest area on the Waikaremoana foreshore was concerned would be satisfied by the application of the Scenery Preservation Act, the whole Consolidation Scheme was endangered. The Native representatives intimated that they would proceed no further with it.⁴⁴⁹

Crown counsel quoted from a telegram Coates sent to Guthrie on 13 August, which included a message from Ngata advising against the approach he had adopted: 'if the Crown insists on compulsion in that respect all other Urewera matters will have to be dropped.'⁴⁵⁰ Based on this advice, the Ministers agreed to include the block in the scheme.

Balneavis described what happened next:

The subsequent decision . . . to proceed by exchange of Waikaremoana interests for Crown interests in the Urewera Blocks cleared the air at once, and in one evening proposals affecting 25,030 acres of the blocks were submitted and tentatively included in the Consolidation Scheme.

Balneavis noted that the deal was conditional on Maori getting a higher value for their Waikaremoana interests, entitling them to more land elsewhere in the reserve than they would otherwise have received. They asked for 7s 6d per acre and ultimately received six shillings, which was twice the valuation given to the block by Wilson and Jordan back in 1915; we discuss issues surrounding this valuation below.⁴⁵¹

By the end of the Taurarau hui, nine-tenths of the interests of Tuhoe owners had been distributed around consolidation groups in eight different areas throughout the reserve. A further group transferred their interests to Crown land outside the reserve and two more were listed as 'probable sellers.'⁴⁵² In total, these interests amounted to the equivalent of 26,167 acres, or 35.5 per cent of the block. The interests of the remaining group of Tuhoe owners – totalling the equivalent of 2,893

449. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp189–190)

450. Coates to Guthrie, 13 August 1921 (Crown counsel, closing submissions (doc N20), topics 18–26, p73)

451. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p189)

452. In descending order (from the most number of interests to the least) these were: Ruatahuna (406,334 shares), Ruatoki (238,374 shares), Te Whaiti (218,671 shares), Maungapohatu (162,146 shares), Waimana (142,120 shares), Tarapounamu (76,874 shares), Hikurangi–Horomanga (45,651 shares), Ohaua (7,752 shares). A further group transferred their interests out of the scheme to the Hereheretau B2 block (31,977 shares), and two more were listed as 'probable sellers' (1,292 shares).

acres – were set aside and eventually dealt with alongside the interests of Ngati Ruapani owners. It is likely that this group of owners had close affiliations with Ngati Ruapani, and signaled a preference to receive alternative land at the lake, which was the outcome that Ngati Ruapani owners achieved during the negotiations at the Tauarau hui (see below). Bar the formalisation of the arrangements (which occurred in the Consolidation Scheme Report and the Urewera Lands Act), the Crown's acquisition of the Waikaremoana block – so far as Tuhoe were concerned – was complete.

In our inquiry, the Crown said that it did not threaten compulsory acquisition in order to acquire the block or include it in the scheme. Rather, Tuhoe owners had asked for the block to be included and have it subject to exchange.⁴⁵³ Counsel for Wai 36 Tuhoe agreed: many Tuhoe owners had asked for an exchange of land.⁴⁵⁴ For this reason, O'Malley says, Coates' stated intention to use compulsory acquisition was 'dangerous in threatening to undermine the general support for the proposed consolidation scheme'.⁴⁵⁵ But counsel for Wai 144 Ngati Ruapani recognised that the owners had only signalled their 'great disappointment' when the block was initially excluded; when the Crown said it would take the land by compulsion, the owners threatened to withdraw from the scheme:

As the land could be taken anyway under the legislation, at least if it was included in the consolidation awards, it could be included in the proportion of the lands that were to go to the Crown. Effectively the chiefs of Urewera were forced into a choice – lose Waikaremoana and fewer other lands or lose Waikaremoana and more other lands.⁴⁵⁶

We agree with counsel for Ngati Ruapani. Guthrie and Coates had made the Crown's determination to acquire Waikaremoana very clear. The choice seemed indeed, as counsel put it, to 'lose Waikaremoana and fewer other lands' if they took land elsewhere in the reserve in exchange for their interests, or to 'lose Waikaremoana and more other lands' if individual interests were acquired in the usual manner (whether compulsorily or by Crown purchase).

This was both a threat and an opportunity. The block remained the Maori owners' biggest bargaining chip: the Crown only decided to include the block in the scheme when they threatened to withdraw. The serious nature of their threat demonstrates their strong belief that if they had to lose more land, they should at least gain some back around their main settlements. It would not be going too far to say that they sacrificed their interests at Waikaremoana to save as much land as possible near their main settlements. Compulsory acquisition would have resulted in monetary compensation, but this was not good enough for Maori owners who had repeatedly opposed Crown purchasing. Tuhoe owners would not have wanted

453. Crown counsel, closing submissions (doc N20), topics 18–26, pp 72–73

454. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 121

455. O'Malley, 'Waikaremoana' (doc A50), p 89

456. Counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), app A, para 147

to lose any further land, but in the circumstances they had to make the difficult choice to surrender their interests in the Waikaremoana block. This was a sacrifice made necessary by the extent of Crown purchasing throughout the reserve as a whole, which had threatened to reduce the size of their main settlement and development areas, such as in the river valleys, and at Ruatahuna and Maungapohatu. The inclusion of their interests from the Waikaremoana block meant that the severity of this loss would be diminished, even if they acknowledged that their rights in the lakebed might be placed in jeopardy. Had the UDNR Act been properly implemented, this entire set of circumstances would never have come about.

14.7.4 How did the Crown acquire the interests of Ngati Ruapani and Ngati Kahungunu and was the price paid to them fair?

The arrangements for the Crown to acquire the interests of Tuhoe owners had important consequences for Ngati Ruapani and Ngati Kahungunu, as the Crown had now decided to acquire the whole block immediately as part of these arrangements. Within a few weeks of the Tauarau hui, the Crown had concluded separate negotiations at Wairoa and Waikaremoana. One issue for the Tribunal is whether these negotiations and their outcomes were fair to Ngati Ruapani and Ngati Kahungunu.

Balneavis had noted that the inclusion of Waikaremoana in the consolidation scheme was 'conditional' on further arrangements with Ngati Ruapani. 'Special consideration' was needed 'for the claims of the Ngati-Ruapani Tribe, who occupy small clearings on the northern lake frontage and at Kokako [Te Kopani] settlement near the outlet to the lake'. He said that 'provision of other lands [was needed] for them near to the said Kokako settlement'.⁴⁵⁷ The interests of Ngati Ruapani owners amounted to the equivalent of 31,607 acres, or 43 per cent of the Waikaremoana block.⁴⁵⁸ Once Tuhoe owners had secured the inclusion of their interests in the scheme, the Crown was determined to acquire the remaining interests in the block and discussed the issue with the Ngati Ruapani representatives who were at the hui. Those representatives could have resisted the Crown's plans, and retained their last substantial area of land, which would have also helped to protect their recently awarded title to the lakebed. But Ngati Ruapani still faced the same dilemma which they had raised with Seddon in 1894: they needed more useable land. The Crown however needed the forests, not the small clearings on the lake front: so long as those clearings could be preserved, and Ngati Ruapani could be given other useable land in their rohe, alienating their interests in the Waikaremoana block appeared to be a reasonable compromise.

Once it was apparent that the Crown was eager to acquire the whole block, Ngati Ruapani representatives pushed the Crown to acquire alternative land for them near their settlement at Te Kopani on the southern shore, similar to the type of exchange Hori Wharerangi had proposed without success in 1894. By the 1920s,

457. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 189-190)

458. O'Malley, 'Waikaremoana' (doc A50), p 93

Ngati Ruapani were even more determined to acquire good land within their rohe. Like their fellow Tuhoe owners, they wanted land, not small cash payments to individuals. They were only prepared to give up their remaining interests on the northern side of the lake if they obtained more land near their main settlement to the south. They achieved a provisional agreement to this effect at the Tauarau hui; Balneavis indicated that a subsequent meeting with the owners at Waikaremoana would finalise the deal.

Balneavis also noted that the Crown's acquisition of the whole block depended on further arrangements with Ngati Kahungunu owners, who were 'prepared to sell' their interests outright. He acknowledged that this was only his 'understand[ing]', which suggested that Ngati Kahungunu owners – who owned the equivalent of 13,000 acres, or 18 per cent – were not represented at the hui. He proposed holding a brief 'enquiry' at Wairoa, which would 'ascertain as far as possible who are willing to sell and the procedure of assent by assembled owners may clinch the matter so far as they are concerned'.⁴⁵⁹

Under cross-examination by counsel for the Wai 621 Ngati Kahungunu claimants, Leah Campbell noted that a Ngati Kahungunu owner was a member of the committee selected to represent all Maori owners at the Tauarau hui.⁴⁶⁰ It is possible, therefore, that some Ngati Kahungunu owners were present and indicated that they were prepared to sell their interests, as Balneavis had suggested. Yet Belgrave, Deason, and Young noted a lack of evidence about how Ngati Kahungunu owners viewed the sale of their interests in the block.⁴⁶¹ The Crown submitted that there is no evidence to suggest Ngati Kahungunu owners did not understand the proposed transaction, but that they were offered no land exchanges or alternative land, which had featured as part of Tuhoe's and Ngati Ruapani's deal.⁴⁶² In fact, one group of Ngati Kahungunu owners did take up a block of Crown land at Wairoa in exchange for their interests.⁴⁶³ We have no information as to how or why this exchange was negotiated. Counsel for Wai 621 Ngati Kahungunu submitted that the Crown 'forced the sale of Kahungunu interests in Waikaremoana Block lands'.⁴⁶⁴

In the absence of robust evidence, it is difficult for us to arrive at any firm conclusions about the particular circumstances in which Ngati Kahungunu owners at

459. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p190). Balneavis said that the interests of Ngati Kahungunu owners amounted to some 17,000 acres, but Knight gave the more accurate breakdown of the relative interests in September 1921: see Knight to Guthrie, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p524).

460. Campbell, under cross-examination by counsel for Wai 621 Ngati Kahungunu, Mataatua Marae, Ruatahuna, 29 June 2004 (transcript 4.7, pp 52–53)

461. Michael Belgrave, Anna Deason, and Grant Young, 'The Urewera Inquiry District and Ngati Kahungunu: An Overview Report on Issues Relating to Ngati Kahungunu' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003) (doc A122), p51

462. Crown counsel, closing submissions (doc N20), topics 18–26, pp 73–75

463. Knight and Carr to Guthrie and Coates, 6 August 1923, AJHR, 1923, G-7, p 2

464. Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), p 8

Wairoa sold their interests in the block. Given the context, however, we are satisfied that an element of compulsion was employed. Ministers had made it clear at the May 1921 Ruatoki hui that the Crown intended to acquire the Waikaremoana block; the only question for them was *how*. At the Tauarau hui in August of that year, at which perhaps only one Ngati Kahungunu representative was present and appointed to the committee of owners, Coates made it clear that his preference was to take what the Crown needed compulsorily using the scenery preservation legislation. Guthrie and Knight, however, were prepared to include Waikaremoana in the consolidation scheme, which was Tuhoe's strong demand in preference to compulsory takings or renewed purchase of individual interests. Once the Crown had made known its determination to acquire Waikaremoana, and once the block had been included in the consolidation scheme, Ngati Kahungunu owners were on the back foot and their only real option was to sell their interests. They could not exchange interests for other land in the reserve because their only other lands in the former reserve (Paharakeke and Manuoha) were outside of the scheme. But nor could they reasonably hope to retain their interests, since the Crown had raised the spectre of compulsory acquisition, Tuhoe had negotiated an exchange, and Ngati Ruapani had already agreed to sell. Thus, although we do not know all the particulars of Ngata's negotiations with the Kahungunu owners at Wairoa, we are satisfied that they had little option but to sell their interests, and set about obtaining the highest price possible in their negotiations with Ngata.

The responsibility for arriving at terms with Ngati Ruapani and Ngati Kahungunu fell to Knight and Ngata. At this point, Ngata appears to have gone beyond his Tauarau mandate to represent the owners; he seems to have represented the Crown to Maori as well as Maori to the Crown, especially when he met with the owners alone and then negotiated later with Knight. Ngata thus travelled to Waikaremoana and Wairoa in early September 1921 to carry out the negotiations, fairly soon after the conclusion of the Tauarau hui.

As noted, we do not have a detailed account of Ngata's negotiations with Ngati Kahungunu, other than his report that they had requested £1 an acre but agreed – on Ngata's urging – to accept a minimum of 16 shillings an acre in the form of debentures. We have a little more detail about Ngata's discussions with Ngati Ruapani. At first, the lakeside community asked for more than had been agreed at Tauarau, seeking an exchange of land on an acre-for-acre basis: 31,000 acres of land. Then, when Ngata could not agree to that, they asked for £1 per acre, but – as with Ngati Kahungunu – Ngata negotiated them down to a minimum of 16 shillings. In his report to Coates, Ngata made it very clear that Ngati Ruapani were making what he considered a sacrifice for the public good. Europeans, he told Coates, would have asked 'for more than the Waikaremoana owners are now asking, *not because they wish to part with their ancestral land, but because they are persuaded they must give way to the public interest*' (emphasis added).⁴⁶⁵ As we shall

465. Ngata to Coates, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 475)

see, Ngati Ruapani were not so much persuaded that they must give way to the public interest as sacrificed in that interest, given the eventual outcome of these negotiations. Again, as with Ngati Kahungunu, only one or two owners wanted cash and the community agreed to be paid in debentures.

These negotiations revealed that a key part of the deal so far as both Ngati Ruapani and Ngati Kahungunu were concerned was the price they would receive for their interests and the form of the payment. Knight reported that of the 44,000 acres worth of interests remaining in the block, he and Ngata had agreed that half had a significantly greater value than either that given by Wilson and Jordan in 1915 (three shillings per acre) or the enhanced value assigned to the interests of Tuhoe owners at Tauarau (six shillings per acre). Knight and Ngata took into account the 'special value' of the area 'as the feeding ground of Lake Waikaremoana . . . which it is necessary to preserve to ensure a constant and regular supply of water for the Waikare Taheke River which flows from Waikaremoana Lake, and upon which the hydro-electric station will depend for its power'. A price of £1 per acre, Knight believed, would represent a 'fair and reasonable' value for the interests in this half. Coates queried why the Crown would want to acquire any interests that would not form part of the watershed. Knight responded that cutting an area out and leaving it in Maori ownership would require 'a particularly expensive survey', which would add to the costs and would complicate the process of consolidation, as well as interfering with 'the conservation of the land for climatic purposes'.⁴⁶⁶ As far as Knight was concerned, once Tuhoe owners had agreed to exchange their interests in the block, the Crown's only option was to acquire all of it.

Ngata had been instrumental in securing Ngati Ruapani and Ngati Kahungunu owners a higher price than either the current valuation (three shillings) or the valuation assigned to Tuhoe owners at Tauarau (six shillings). Tuhoe owners had in fact asked for a higher exchange value of 7s 6d per acre, but Balneavis said that they accepted six shillings per acre on 'Mr Ngata's advice'.⁴⁶⁷ This sum was twice the existing valuation but more in line with the value of similar land into which Tuhoe owners were transferring their interests; 'most of which', Ngata said, 'was of practically the same nature as Waikaremoana'.⁴⁶⁸

By contrast, Ngata told Coates that Ngati Kahungunu 'were accustomed to the high values of the Coast lands', and Ngati Ruapani owners knew that one of their reserves on the southern shore of the lake was valued at £1 per acre in 1910, and would be reluctant to accept less now. Because the Crown had determined that 'such a magnificent asset should be under public control', Ngata said he was 'anxious that any compromise arrived at should be in the public interest, and that not only no injustice be done to the Native owners but that that interest should in this case be specially conserved'. The question was the 'method and terms' by which an

466. Knight to Guthrie, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), pp 524-525)

467. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 190)

468. Ngata to Coates, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), pp 471-478)

agreement could be reached. Ngata thought that the Crown had purchased interests in the reserve at a 'less than fair value' and that they were the 'only lands in the Dominion or for that matter in the British Empire which took no notice whatever of the war and of the appreciation of land values during the war'. The UDNR Act meant that the owners could not alienate to private interests: 'The value is placed on the land by the Crown for its own purposes.' The owners had also been prevented from properly utilising the foreshore because of the Crown's interest in preserving it for 'scenic or water-conservation purposes', which may have led to an appreciation of value. The standing forests on the block, though of a low importance in the eyes of the farmer, were 'a very great asset just now'; and because those forests remained, the owners deserved a higher price for their interests.⁴⁶⁹

Ngata reported that he and Knight disagreed over what would be the fairest overall value for the interests of the Ngati Ruapani and Ngati Kahungunu owners. Knight supported 13 shillings per acre but Ngata thought that 15 shillings was more reasonable. As we have seen, Ngata's negotiations at Wairoa and Waikaremoana had revealed that both groups of owners were reluctant to accept less than £1 per acre but had agreed to 'accept a minimum of 16/- an acre.'⁴⁷⁰ Despite what appears to have been a fairly definite agreement between the owners and Ngata, Knight lowered the price to 15 shillings, which Ngata did consider reasonable. As we shall see below, this drop below their minimum price was not referred back to the owners for their consent, which calls into question Ngata's role in these negotiations. He told Coates:

I found it most difficult to persuade the Ngati-Ruapani and Ngati-Kahungunu to come down to a value basis at all [instead of an exchange of land, acre per acre] and they eventually agreed to submit £1 an acre as the price for 44,607 acres which is their proportion of the block. After further argument they authorised me to accept a minimum of 16/- an acre.⁴⁷¹

Having bargained hard on behalf of the Crown in this initial negotiation, and while acknowledging the 'limit set by the Natives I represent', Ngata advised Coates: 'I take the responsibility of reducing their claim . . . to 15/- an acre.'⁴⁷² He was not authorised to depart from the agreements made at Wairoa and Waikaremoana, and the owners later objected to this fait accompli when they finally discovered it in 1922.

The terms of all these different arrangements were set out in schedule 1 of the Consolidation Scheme Report. The Tuhoe owners, who held the equivalent of 29,060 acres, were recorded as having exchanged their interests with other land inside the scheme on the basis of six shillings per acre, and these interests had been included in various consolidation groups. The report noted that the

469. Ibid

470. Ibid, p 476

471. Ibid

472. Ibid

remaining interests of the Ngati Ruapani and Ngati Kahungunu owners would be purchased 'on the basis of approximately 15s. an acre'. These owners were divided into four groups. One group, consisting of 317 owners, was described solely as 'Ngati Ruapani'. We acknowledge that many owners in this group would have affiliated to Tuhoe and Ngati Kahungunu as well; but this description certainly reflects the increasingly independent stance Ngati Ruapani had adopted at this time, and in these circumstances. Reserves in the Waikaremoana block would be set aside for this Ngati Ruapani group, as well as other land that the Crown would purchase and deduct from the total value of their interests. The remaining amounts would be paid in cash (as determined by the consolidation commissioners) or debentures – a form of Government debt that paid out interest at 5 per cent per annum.⁴⁷³ Three Ngati Kahungunu groups of owners, representing the interests of 234 owners, would also receive cash or debentures.⁴⁷⁴

As we have seen, Ngati Ruapani and Ngati Kahungunu owners came away from their negotiations with Ngata under the impression they would be paid a minimum of 16 shillings per acre, but this was not the eventual arrangement reached between Ngata and Knight. The Consolidation Scheme Report recorded Knight's revised valuation of 15 shillings per acre. At Knight's rate, the value of interests in the Ngati Ruapani list should have amounted to £23,435 10s 5½d. This was made up of £22,567 5s 7½d of debentures (calculated at the agreed rate of 15 shillings per acre) for Ngati Ruapani owners, and the interests of the remaining Tuhoe owners at the lower rate of six shillings per acre, which totalled £868 4s 10d, and were included in the Ngati Ruapani list.⁴⁷⁵ But the true value of Ngati Ruapani debentures was not revealed in the Consolidation Scheme Report. Instead, their interests were given in schedule 2 as £9,895 3s 1d – which was just over six shillings per acre, not the 15-shilling rate which they had negotiated.⁴⁷⁶ Ngati Ruapani owners registered their obvious displeasure when they received their copy of the report. At the consolidation commission's first hearing at Waikaremoana, in February 1922, they threatened to withdraw from the scheme, giving the revised price as one of two reasons.⁴⁷⁷ This remained an ongoing concern.

In March 1923, Ngata and Ngati Ruapani negotiated a second time, this time at a consolidation commission hearing and with Balneavis involved as well. Again, Ngata seems to have been representing the Crown to Maori rather than the

473. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, pp 9–12

474. *Ibid*, p 12

475. The Crown's offer of 15 shillings per acre was for the 44,607 acres deemed to be held by Ngati Ruapani and Ngati Kahungunu. Consequently, this capped the value of Ngati Ruapani and Ngati Kahungunu debentures at £33,455 5s. The difference between this figure and the total value of Waikaremoana interests (specified in the Consolidation Scheme report as £34,323 9s 10d) comes to £868 4s 10d: see Knight, Carr, and Balneavis, 'Urewera Land Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, pp 9, 12, 14; Ngata to Coates, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 476)

476. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 36

477. O'Malley, 'Waikaremoana' (doc A50), p 106

other way around. Matamua Whakamoe later explained that the Ruapani owners accepted 15 shillings per acre at Ngata's insistence – one shilling below their minimum negotiating price of 16 shillings – so as 'to assist the Electric Light Scheme'.⁴⁷⁸ According to Ngati Ruapani's account of this agreement, they won some concessions from the commissioners in return: first, the 607 acres of reserves would now be paid for by the Crown along with the rest of the Waikaremoana lands and then returned to Ngati Ruapani free of charge, including no charge for the survey of the reserves; and, secondly, 'no rates to be charged'.⁴⁷⁹ The scope of the rating agreement is unclear but the commissioners certainly confirmed the new arrangement that 607 acres of reserves would now be purchased and then returned.⁴⁸⁰

This compromise arrangement – a payment for the 607 acres at 15 shillings an acre – amounted to less than one-third of what Ngati Ruapani would have received if their original agreement with Ngata had been kept. We find it difficult to see this 1923 'agreement' as a free and fair agreement on the part of the Ruapani owners, who had to either accept the Government's price or withdraw from the transaction altogether. As we have seen, their plight at Te Kopani was such that they could not afford to withdraw. Nor is it clear that they *could* lawfully withdraw: the Urewera Lands Act included the Waikaremoana block in the consolidation scheme and gave legal force to the 'agreements' recorded in the Consolidation Scheme Report. The consolidation commissioners had absolute power to enforce those 'agreements' as they saw fit.⁴⁸¹

The confusion around the specifics of the transaction continued until 1928, when RN Jones, the Under-Secretary for the Native Department, made inquiries about who was paid what and how. Carr reported that different values had been adopted for different groups of owners, 'but it would be unwise to adopt this illustration any further lest it be mis-used by parties who are still irreconcilibles'.⁴⁸² Although it is unclear who Carr considered were still 'irreconcilibles' by 1928, he seems to have been intent upon disguising the different valuations if possible. A similar approach might have been taken in the Consolidation Scheme Report back in 1921 but it is more likely that there was simply an error in the schedule. As we will see, the commissioners clarified the concerns of Maori owners to the point that they no longer threatened to withdraw from the scheme, but not so that all parties were clear about the wider arrangements.

The Crown's position in our inquiry was that the arrangements made between the various owners of the Waikaremoana block were transparent and fair. Relying on Ngata's arguments about why Ngati Kahungunu and Ngati Ruapani might

478. Matamua Whakamoe to Native Minister, ca July 1926 (Vincent O'Malley, comp, supporting papers to 'The Crown's Acquisition of the Waikaremoana Block, 1921–25', 3 vols, various dates (doc A50(c)), vol 3, p 585)

479. Matamua Whakamoe to Native Minister, 30 March 1925 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 514)

480. O'Malley, 'Waikaremoana' (doc A50), p 116

481. Urewera Lands Act 1921–22, sch 1

482. Carr to Jones, 12 April 1928 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(c)), p 567)

expect a higher price, Crown counsel commented: ‘One of the factors that influenced the agreed price was that land to the south-east [of the lake] was more expensive to purchase, and had a higher value than the lands in the northern portion of the reserve.’⁴⁸³ These factors were considered in the context of a commercial arrangement, negotiated between the parties:

It would appear that the differences in the value attached to those who were to relocate to the north (6 shillings per acre) with the value attached to those who were to purchase lands and/or receive cash or a debenture (15 shillings per acre) reflected a pragmatic solution on complex matters to ensure an equitable outcome for these two groups. There is no evidence that the Crown forced Maori into one category or the other. It is reasonable to assume that individual Maori made their own choice as to which category they wished to go into.⁴⁸⁴

But the evidence shows that Maori owners were never given an opportunity to conduct negotiations in a fair and transparent manner. The Crown should have ensured a proper valuation of the Waikaremoana block in 1921 when it contemplated the block’s acquisition, just as all of the blocks in the reserve should have been properly valued. As we have discussed in chapter 13 and earlier in this chapter, the valuations of the majority of the reserve blocks – including the Waikaremoana block – were in fact not valuations but rather assessments of value by officials who had been designing a scheme for settlement. Ngata presented some compelling reasons why the value of the Waikaremoana block should have been higher compared with similar lands; as did the surveyor Tai Mitchell, who concluded in 1922 that the Waikaremoana block was worth at least a pound an acre. Stirling concluded that the Crown should have paid at least that much, given its interest in hydroelectric developments.⁴⁸⁵ But Ngata and Mitchell were not trained valuers. Their opinions are not conclusive evidence that the land should have been valued higher; only a proper process of valuation would have demonstrated this conclusively. But they saw the value of the land and the lake to the Crown.

Had a proper valuation been made and disclosed to all parties, the Crown could have then proceeded with separate negotiations. But, instead of seeking a new valuation, the Crown made its own assessment of the value of each group’s interests, which was based more on their circumstances in relation to the transaction than the inherent qualities of the land. Given that Tuhoe, Ngati Ruapani, and Ngati Kahungunu were all tenants in common who held undivided interests in the block, they were entitled to the same increase of value, if any was in fact considered appropriate. Instead, the Crown essentially exercised its monopoly powers to determine that Tuhoe owners were deserving of only a slightly higher value (for exchange purposes) because the rest of their land was of a similar value. Similarly,

483. Crown counsel, closing submissions (doc N20), topics 18–26, p 79

484. *Ibid*, p 73

485. Bruce Stirling, ‘Te Urewera Valuation Issues’ (commissioned research report, Taneatua: Tuhoe-Waikaremoana Maori Trust Board, 2005) (doc L17), p 147

once Knight and Ngata had agreed that Ngati Ruapani's and Ngati Kahungunu's interests were not worth more than 15 shillings per acre, this price was simply recorded in the Consolidation Scheme Report and then imposed on those communities of owners. As with other aspects of the scheme, these were not equal negotiations.

The Dubious Valuation of the Waikaremoana Block

How did Ngata and Knight arrive at a price of 15 shillings per acre for the interests of Ngati Kahungunu and Ngati Ruapani in the Waikaremoana block? First, Knight and Ngata arrived at an entirely artificial conclusion that exactly half of the land (22,000 of the 44,000 acres) owned by these groups was close to the lake and therefore worth a lot more (in terms of its value for watershed conservation and hydroelectricity) than the other half. Secondly, they arbitrarily decided that the value of the 22,000 acres further away from the lake was six shillings an acre. This was the value that had been settled upon for Tuhoe interests at the Taurau hui. Thirdly, they disagreed about the value of the lake frontage half, which Knight 'assesse[d]' at £1 an acre, giving an average price for the 44,000 acres of 13 shillings per acre. Ngata, on the basis that the Maori owners had set a minimum price of 16 shillings an acre, decided that the more valuable land would have to be worth 26 shillings an acre to secure that price. Then, he took 'the responsibility', as he put it, for 'reducing their claim from 26/- to 24/- for the 22,000 acres frontage,' thereby 'reducing the average price for the 44,000 acres to 15/- an acre.'¹ And that is how the price of 15 shillings per acre was calculated.

Some of the underlying reasoning was sound: south frontage land had been valued at £1 an acre back in 1910, and Knight and Ngata rightly dismissed the 1915 valuation of the Waikaremoana block (three shillings an acre) as out of date and out of step with post-war values in general. But the process by which the price of 15 shillings per acre was calculated was opportunistic and clearly deeply flawed, since it was a post-facto justification for a commercial transaction rather than an independent analysis of the land's value. Similarly, the process by which Tuhoe interests were limited to six shillings an acre was also flawed. First, the value of six shillings was entirely arbitrary, and secondly it could only stand up relative to the 15 shillings an acre if all Tuhoe interests had been located well away from the lake, which cannot have been the case. Ngata, having specifically warned Coates against the trap of the Crown using its monopoly powers to value land that it wanted to purchase, allowed himself and Knight to fall into the same trap and in the very same report in which he warned Coates about it.

1. Ngata to Coates, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 476)

Nor is it correct for the Crown to say that individual owners had a choice of either taking land elsewhere in the reserve at the lower value or opting to have land south of the lake (with debentures or cash) at more than double that value. Arrangements were made with Tuhoe first and then separate, quite different arrangements were made later with Ruapani and Kahungunu. As evidence for this, the small group of Tuhoe owners who were included in the Ngati Ruapani list only received six shillings per acre, not the higher rate negotiated later.

Although the Crown believed it was appropriate to acquire interests at different valuations in this context, Crown counsel did concede that its subsequent purchase of interests from some Ngati Ruapani owners at six shillings per acre – considerably below the ‘agreed’ 15 shillings per acre – was ‘unconscionable and inappropriate’.⁴⁸⁶ Throughout 1922 and 1923, Knight purchased interests from owners who wished to receive cash instead of debentures, mainly from among the Ngati Ruapani owners. As we have seen, a complaint from Ngati Whare chief Wharepapa Whatanui in May 1922 saw Knight’s purchasing activities come under scrutiny from Coates, who said that ‘a promise was distinctly made to the Urewera Natives that further purchasing would be stopped’.⁴⁸⁷ Knight defended his actions by noting that the Waikaremoana block was ‘in a totally different position from any acquisitions or purchases for adjustment in the balance of the Urewera Lands’.⁴⁸⁸ In other words, the purchase of Ngati Ruapani and Ngati Kahungunu interests in the Waikaremoana block was a pre-approved part of the scheme (see schedule 1 of the Consolidation Scheme Report), and the commissioners had discretion to agree to payments in cash rather than debentures.

As we have seen, the Crown adopted two different prices for those who were exchanging their interests for land in the northern part of the reserve, and those who were selling their interests in return for cash or debentures (plus additional land south of the lake for Ngati Ruapani). Knight explained that these various arrangements worked ‘either by transferring the owners to Groups in other localities on a 6/- per acre basis or by purchasing at 15/- per acre’. Knight, however, took a very controversial view of the latter arrangement, explaining that purchasing some Ngati Ruapani interests immediately with cash would save the Crown money: ‘The interests set out in the report have been computed on a 6/- per acre basis and it is, therefore, obvious that by transferring them to the sellers Group and purchasing now, the Crown will be saving the difference between 6/- and 15/-’.⁴⁸⁹

In reaction to criticism that the Crown was destabilising the scheme by purchasing interests in the middle of consolidation, Coates established a new regime (explained above), which required the commissioners to seek prior approval from the Ministers before acquiring any new interests. Initially, Knight did seek approval for each transaction. But by late 1923, he had abandoned this approach

486. Crown counsel, closing submissions (doc N20), topics 18–26, p 71

487. Coates to Guthrie, 1 July 1922 (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(b)), p 457)

488. Knight to Under-Secretary for Lands, 7 July 1922 (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(b)), p 455)

489. *Ibid*

and was organising the purchase of interests for cash without approval.⁴⁹⁰ In October 1923, he and Carr reported to the Native Department on their achievements: ‘interests in the Waikaremoana Block are being offered by the owners for sale to the Crown at 6/- per acre – the price at which the shares given in the report were computed, and that anticipating your consent to their purchase at this price now instead of issuing debentures at 15/- per acre later on we have purchased the interests offered.’⁴⁹¹ It is not clear why Knight thought that the 15 shillings per acre agreement with Ngati Ruapani only applied to debentures and not to payments in cash. We can see no reason for it in the evidence before us.

These purchases were approved in early November 1923. As O’Malley noted, it is surprising that the Government did not comment on this clear violation of the rule it had only just established.⁴⁹² In total, the Crown purchased the equivalent of 1,863 acres at six shillings per acre. Admittedly, this was cash the owners received immediately, but it was also a saving to the Crown.⁴⁹³ The Crown made further savings when a number of owners in the Ngati Ruapani group chose to transfer their interests into the scheme after the promise of alternative land south of the lake fell through (we discuss this further below). The interests transferred were the equivalent of 4,099 acres. The majority of this group is likely to have been made up of the remaining Tuhoe owners, whose interests amounted to the equivalent of 2,893 acres, at the rate of six shillings per acre. But the remaining interests would have come from the Ngati Ruapani group, and on these interests the Crown would have made a saving, since it required Ruapani to transfer at a rate lower than the 15 shillings per acre they had earlier negotiated.⁴⁹⁴ It appears that while Ngati Ruapani did have some choice about what they could do with their interests (as Crown counsel suggested), the Crown’s decision to acquire the whole Waikaremoana block meant they were still forced into alienating their interests by some means.

But we do not accept the Crown’s distinction between the purchasing of Ngati Ruapani’s interests at a low rate – which it called ‘unconscionable and inappropriate’ – and the valuing of Tuhoe interests in Waikaremoana at six shillings per acre instead of the 15 shillings per acre for those receiving debentures. Both were determined on the basis of the owners’ relative bargaining positions, and had very little to do with the value of the land. This was one of the Crown’s few concessions in respect of the Urewera Consolidation Scheme, yet it is evident that many more could have been made in the Waikaremoana block transaction alone.

For both Ngati Kahungunu and Ngati Ruapani, much depended on the successful administration of the debentures, on which they placed great hopes for

490. O’Malley, ‘Waikaremoana’ (doc A50), p 114

491. Knight and Carr to Native Under-Secretary, 22 October 1923 (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(b)), p 440)

492. O’Malley, ‘Waikaremoana’ (doc A50), p 115

493. Urewera minute book 1 (doc M29), pp 139, 141; Urewera minute book 2A (doc M30), pp 44, 60–64, 68, 163, 167, 180

494. Together, the sale and transfer of shares had reduced the value of the Ngati Ruapani debentures by 1924 to £19,293 13s 1 1/2d.

a sustainable income. For Ngati Ruapani, the success of the transaction also depended on how quickly they would be able to take up the land promised to them: more land around their settlement on the southern shore of the lake, and reserves in the Waikaremoana block.

14.7.5 Did the Crown fulfil its promise to set aside sufficient land for Ngati Ruapani as part of the Waikaremoana block transaction?

The promise of acquiring more land in the south for their immediate use is, we think, what decided Ngati Ruapani owners to alienate their interests in the Waikaremoana block. Sadly, Ngati Ruapani never received this promised land. Fourteen small reserves from land that they had owned anyway, on the northern shore of the lake, hardly compensated. On top of this, they actually *lost* land in the south because two of their reserves from the ‘four southern blocks’ went into Crown ownership. All of this happened through the Urewera Consolidation Scheme, which Ngati Ruapani had hoped would improve their material circumstances.

The terms of Ngati Ruapani’s land exchange were established by Ngata during his visit to Waikaremoana in September 1921. In the first instance, Ngati Ruapani asked for an exchange of land on an acre-per-acre basis – that is, they wanted 31,000 acres elsewhere in their rohe. This went far beyond the initial agreement at Tauarau and Ngata refused to accept it. Nonetheless, he investigated their circumstances quite thoroughly and told Coates that ‘the chief need of the Ngati-Ruapani was for land suitable for cultivation.’ To meet this need, Ngata proposed that the Crown purchase 800 acres of private land adjacent to the Te Kopani settlement (which was also known as Kokako). This land had been acquired by the Crown when it obtained the four southern blocks, but it had been sold to private interests and developed as a farm. It was owned by Mr Tapper, and we refer to it as ‘Tapper’s farm.’ Once the Crown had purchased the land from its owner, Ngata said, the cost would be deducted from the value of the interests of Ngati Ruapani owners, who would in turn be given ownership of the land.⁴⁹⁵

In order to assist in paying for this land, Ngata said that Ngati Ruapani were willing to sell the Crown two of the four southern block reserves, Whareama and Ngaputahi. Although these reserves were meant to be inalienable, the people who lived on the lake shore presumably accepted the alienation of their two less accessible reserves in favour of acquiring better land next to their main kainga. Under the legislative regime in place before 1909, the alienation restrictions might not have been lifted because the owners did not have sufficient land to allow any form of alienation. But all alienation restrictions on reserves were lifted under section 207 of the Native Land Act 1909. This meant that the owners could suggest selling two of their reserves to the Crown, with the money contributing to the purchase of Tapper’s farm. Ngata noted in his report that the price they would have received for

495. Ngata to Coates, 19 September 1921 (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(b)), pp 471–478)

the reserves would be used for that purpose. A 1910 valuation of Whareama put its worth at 20 shillings per acre, which Ngata and Knight accepted. Ngata added that the Crown was asked to pay 'outstanding' rates on these reserves to the Wairoa County Council. The payment of the rates was not to be deducted from the purchase money.⁴⁹⁶ Ngata also noted that 607 acres of the Waikaremoana block would be reserved for Ngati Ruapani out of 'their clearings on the lake foreshore'.⁴⁹⁷ Thus, Ngati Ruapani would retain less than 2 per cent of their land in the Waikaremoana block, while Tuhoe and Ngati Kahungunu would retain nothing at all.

The terms of these arrangements were then set out in the Consolidation Scheme Report, which recorded lists of owners for 11 reserves in the Waikaremoana block. The report stated that suitable land would be found adjacent to Te Kopani and purchased for owners in Residue 1 (Ngati Ruapani), 'the cost thereof [to be] paid by the Crown and deducted from the proportion of purchase-money to which such Natives are entitled'. The report also noted the Crown's acquisition of the two reserves in the four southern blocks, Whareama and Ngaputahi; but nothing was said about payment for the reserves: 'The Crown shall receive two of the Urewera Reserves – namely Whareama and Ngaputahi – and shall pay the local rates due by the Native owners on these blocks.'⁴⁹⁸

In late 1921 or early 1922, the Lands Department purchased Tapper's farm (883 acres). But for reasons unknown, the land was acquired at twice the valuation; instead of £4 per acre, the Crown purchased the land for approximately £9 per acre, a total of £7,514.⁴⁹⁹ If Ngati Ruapani accepted this land, it would cost them 32 per cent of the amount owed to them for their interests in the Waikaremoana block. In February 1922, at a hearing of the consolidation commission at Waimako, Ngati Ruapani indicated their opposition to acquiring Tapper's farm at such a high price, and threatened to withdraw from the Waikaremoana block transaction entirely: 'Matamua Whakamoe stated he had been deputed to state that on reconsidering [the] matter they had decided to have nothing to do with the scheme & did not wish to proceed further.'⁵⁰⁰ But the Urewera Lands Act 1921–22, only just passed into law, gave the commissioners the authority to proceed with the arrangements described in the Consolidation Scheme Report. This was the same report that Maori owners had been given little chance to understand. The minutes of the hearing at Waimako note: 'all present complained of the report being printed in English only.'⁵⁰¹ It was not until the end of 1922 that it was printed in Maori, in the wake of complaints such as those from Ngati Ruapani.⁵⁰²

496. Ibid

497. Ibid, p 476

498. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 8

499. O'Malley, 'Waikaremoana' (doc A50), p119

500. Urewera minute book 1, 17 February 1922, fols 25–26 (doc M29, pp 60–61)

501. Ibid, p 61

502. Campbell, 'Land Alienation, Consolidation and Development' (doc A55), p72

Between 1923 and 1926, Ngati Ruapani leaders disputed the terms of the transaction in an attempt to clarify exactly what they expected to receive from the scheme. In March 1923, they met with the commissioners and Ngata at 'Windy Point', on the shores of the lake. The commissioners reported that Ngati Ruapani were 'firm in their refusal to accept Tappers land at the price paid by the Crown.'⁵⁰³ The parties arrived at a new agreement, the terms of which were outlined in petitions from Matamua Whakamoe and others sent to the Government in 1925 and 1926.⁵⁰⁴ Ngati Ruapani agreed that they would receive the entire amount owing to them from the sale of their interests in the Waikaremoana block in the form of debentures at 15 shillings per acre (Tapper's farm was thus abandoned). For its part, the Crown agreed that the value of the reserves to be set aside in the Waikaremoana block would not be deducted from the total price paid to Ngati Ruapani. No rates would be charged on the reserves and they would be surveyed free of charge.

But these terms were also later disputed: in March 1925, Matamua wrote that Ngati Ruapani would 'repudiate the agreement to sell the Waikaremoana block.'⁵⁰⁵ Their protest at this time was not about Tapper's farm, which they still rejected; instead, they threatened to withdraw because they feared their debentures would be issued at less than the agreed rate of 15 shillings per acre. As discussed above, Ngati Ruapani continued to think that they would be paid at six shillings per acre, no doubt influenced by the inaccurate information supplied in the Consolidation Scheme Report and the prices being paid by the commissioners for the direct purchase of individual interests. In July 1926, Matamua and others submitted another petition outlining their objections to the price paid for their interests in the block.⁵⁰⁶

By 1925, disagreements between the commissioners and Ngati Ruapani had also emerged over the amount of land that would be reserved for them. At the February 1922 hearing, the commissioners noted that they 'would proceed & define [the] boundaries of Reserves themselves on Saturday.'⁵⁰⁷ Eleven reserves had been nominally set aside by March 1923, and requests for three more had been made and approved. In August 1923, Knight and Carr said that 14 reserves had been located and defined on the ground, but still awaited survey.⁵⁰⁸ In 1925, however, Ngati Ruapani objected to the amount of land that was being set aside for them. In pointing out the boundaries of the reserves to surveyors, they sought reserves that totalled 3,220 acres. But the commissioners noted at their February 1925 hearing that an agreement had already been reached, which they could not

503. Urewera minute book 1, 9 March 1923 (doc M29), p 288

504. Matamua Whakamoe to Native Minister, ca July 1926 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(c)), p 585); Matamua Whakamoe to Native Minister, 30 March 1925 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 514)

505. Matamua Whakamoe to Native Minister, 30 March 1925 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 514)

506. Matamua Whakamoe to Native Minister, ca July 1926 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(c)), p 585)

507. O'Malley, 'Waikaremoana' (doc A50), p 107

508. *Ibid*, p 117

depart from. In March 1923, they said, Ngati Ruapani had agreed that only 600 acres would be set aside as reserves:

With respect to the areas of the Reserves. It was originally arranged [in 1921] that the N Ruapani should reserve for themselves from the sale to the Crown 607 acres, disposing of 31000. Subsequently [in 1923] it was arranged that the N Ruapani having reduced the price at which they would sell to 15s per acre, that the Crown would pay for the total area 31607 and return to the N Ruapanis 600 acres to include their reserves & cultivations.⁵⁰⁹

Noting the request for 3,220 acres, the commissioners said: 'This the Commrs [commissioners] consider unreasonable and see no reason why the original agreement to return 600 acres should not be adhered to.'⁵¹⁰

Crown counsel suggests that Knight and Carr had resolved all outstanding issues by May of that year.⁵¹¹ Knight and Carr wrote:

A misunderstanding by the natives in regard to the areas of the reserves on the shores of Lake Waikaremoana returned by the Crown to the natives as part of the consideration for the block made it necessary for the Commission to meet the natives on the ground, as the boundaries pointed by them to the surveyor included far bigger areas than previously arranged, the matter was amicably disposed of and the surveys have now been completed.⁵¹²

As we see it, Ngati Ruapani likely thought that, since the key part of the agreement for them had been the acquisition of more land south of the lake (now abandoned), that they could not survive with just the small amount of land to be reserved for them north of the lake. Hence, they sought a relatively modest increase of their reserves in the Waikaremoana block. But the commissioners stood firm, as the law empowered them to do.

In any case, Ngati Ruapani remained concerned about the terms of the agreement; these were only enhanced by the Crown's quiet acquisition of Whareama and Ngaputahi in 1924. Matamua's 1925 petition – in which a number of Ngati Ruapani concerns were set out – made no mention of the Whareama and Ngaputahi reserves. With the Tapper's farm deal off the table, they presumably believed that the two reserves would remain in their ownership. This is understandable, since the sole reason for relinquishing them was to top up the amount of money available to pay for the proposed replacement land south of the lake (namely, Tapper's farm). But in fact the terms set out in the Consolidation Scheme Report stood: the Crown would 'receive' the two reserves and pay the rates due

509. Urewera minute book 2A, 22 February 1925 (doc M30), p 228

510. Ibid

511. Crown counsel, closing submissions (doc N20), topics 18–26, p 22

512. Knight and Carr to Native Under-Secretary, 20 May 1925 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(c)), p 593)

on them.⁵¹³ This meant that the two reserves would still go into Crown ownership, even though no other land had been made available for Ngati Ruapani.

That Ngati Ruapani emerged from this transaction with *less* land south of the lake rather than *more* was unconscionable. Nor could the Crown have argued that the loss of the two reserves was offset by its payment for 600 acres north of the lake, which it then returned to the Maori vendors. This was supposed to have compensated Ngati Ruapani for their belated agreement to accept 1 shilling an acre less than their minimum price, not for the uncompensated loss of Whareama and Ngaputahi.

Tuhoe owners – who were also owners in the four southern block reserves – got wind of the transaction and made their own protests. In mid-1922, Tikareti Te Iriwhiro and 175 others from Ruatahuna submitted a petition on a broad range of matters relating to the scheme. The petitioners objected to the transfer of interests in the reserves to other parts of the scheme: ‘We maintain that those reserves should be left to us and also Waikaremoana Block.’⁵¹⁴ This followed shortly after similar protests made by Wharepouri Te Amo at the first hearing at Ruatahuna in February 1922, who said ‘Waikaremoana interests were to remain there and were not to be brought northwards.’ The commissioners responded that ‘the time for raising the objections stated by Wharepouri had passed. Wharepouri was a member of the Ruatoki Committee & should have voiced his grievances then.’⁵¹⁵ Pomare commented similarly at Ruatahuna in April 1923: ‘We will not evacuate from Waikaremoana.’⁵¹⁶

In September 1924 – two years after Te Iriwhiro’s petition had been submitted – Knight and Carr commented on it in blunt terms:

Whareama and Ngaputahi are small reserves out of earlier Crown purchases. They are completely surrounded by Crown lands and are without access, neither are they occupied by the owners. It was to the owners benefit that they should evacuate and build up their other interests elsewhere. It is assumed that the petitioners were owners in these blocks. As to the Waikaremoana Block, the Tuhoe owners agreed at the Ruatoki meeting to take their interests on a 6/- per acre basis, where their main holdings were and the Commissioners have carried out and completed this agreement.⁵¹⁷

The commissioners’ response revealed their general lack of understanding about the details of the transaction. We have seen no evidence to suggest that the interests of Tuhoe owners in the Whareama and Ngaputahi reserves were included in consolidation groups elsewhere in the scheme, as occurred with their interests in

513. Knight, Carr, and Balneavis, ‘Urewera Lands Consolidation Scheme’, 31 October 1921, AJHR, 1921, G-7, p 8

514. Tikareti Te Iriwhiro and 175 others, ca September 1922 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 219)

515. Urewera minute book 1, 22 February 1922 (doc M29), pp 31–32

516. Urewera minute book 1, 17 April 1923 (doc M29), p 306

517. Knight and Carr to Native Under-Secretary, 10 September 1924 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp 220–221)

the Waikaremoana block. Knight's response also did disservice to Ngati Ruapani, who had rejected the Tapper's farm exchange because it was too expensive. No other land had been found for them, so it could not be said at all that it had been to the 'owners benefit' and had built 'up their interests elsewhere'. But based on this advice, Coates decided to take no action on the petition.⁵¹⁸

By the time Knight wrote his response to the petition, Whareama and Ngaputahi had effectively been transferred to the Crown's ownership. The Urewera Lands Act 1921–22 allowed the consolidation commissioners to proceed with the implementation of the scheme outlined in the Report. Arrangements for transferring title to Whareama and Ngaputahi began in April 1924. The commissioners recorded that the reserves were vested in the Crown 'by way of exchange', even though nothing had been exchanged for them.⁵¹⁹ Two people occupying Ngaputahi were awarded £30 for improvements.⁵²⁰ The reserves were gazetted as Crown land on 8 January 1925.⁵²¹ The notice stated that the 'purchase of [the Whareama and Ngaputahi blocks] has been duly completed by or on behalf of the Crown under the authority of the Native Land Act, 1909, and its amendments'.

The Crown says that once the owners of the reserve 'made the decision to include the blocks, they negotiated hard and made a bargain so that the consideration passing to them would not be diminished or abated by outstanding rates.'⁵²² We do not know what rates existed on the reserves and whether the Crown paid them. But this point aside, the evidence indicates that the Crown did not pay or exchange anything in order to acquire the reserves. The entire amount that the Maori owners received in the form of debentures totalled their interests in the Waikaremoana block at 15 shillings per acre minus approximately £4,000 for the Crown's additional purchases during the implementation of the scheme. If the Crown had paid for the reserves, we would expect to see an increase of the total amount paid to Ngati Ruapani proportional to what they would have received for those reserves. We have not seen any evidence that this happened. While it is possible the Crown paid the rates, it seems that it acquired the two reserves without paying for them. There is certainly no evidence to suggest Ngati Ruapani made some kind of bargain after the Tapper's farm arrangement was abandoned. Given this evidence, we can only agree with Mr Nikora's conclusion that the Crown effectively confiscated the two reserves, though – as with much of the Urewera Consolidation Scheme – this acquisition was by virtue of a side-wind.⁵²³ In other words, the Crown did pay for Tapper's farm but then it kept that as well.

While the Crown should never have acquired the reserves without paying for

518. Campbell, 'Land Alienation, Consolidation and Development' (doc A55), p 81

519. Craig Innes, 'Report on the Tenure Changes Affecting Waikaremoana "Purchase Reserves" in the Urewera Inquiry' (commissioned research report, Wellington: Waitangi Tribunal, 2003) (doc A117), pp 54, 56

520. Innes, 'Waikaremoana "Purchase Reserves"' (doc A117), pp 53–54

521. 'Proclaiming Native Land to Have Become Crown Land', 8 January 1925, *New Zealand Gazette*, 1925, no 1, p 5

522. Crown counsel, closing submissions (doc N20), topics 18–26, p 75

523. Nikora, 'Urewera Consolidation Scheme' (doc E7), p 40

them, it should equally never have acquired them without providing Ngati Ruapani with alternative useable land. Their pressing need had been identified as early as 1894, when they had requested a land exchange of Seddon. Ngata had also clearly identified the need for more useable land 'suitable for cultivation'. The Urewera Consolidation Scheme thus failed Ngati Ruapani in a most basic way. By 1930, land in Maori ownership in the Waikaremoana region had been reduced to a few small pockets. Of the 291,195 acres that was in Maori ownership in 1875, only 12,580 acres or 4.3 per cent remained some 55 years later. The remaining land consisted of the two Tuhoe and Ngati Ruapani reserves and the Ngati Kahungunu reserves in the four southern blocks, as well as the 14 small reserves in the Waikaremoana block and any remaining land in the Waipaoa block. Thus, all that Ngati Ruapani and Ngati Kahungunu owners had to hope for from their part of the Waikaremoana block transaction was the regular income promised through the debentures, by which the Crown acknowledged its debt for acquiring their land. We turn to that matter next.

14.7.6 Were the terms of the Ngati Ruapani and Ngati Kahungunu debentures met?

Ngati Ruapani and Ngati Kahungunu expected that the debentures would provide them with a sustainable income. But during the depression, when the people most needed the income, the terms of the debentures, including the amount of interest paid, were changed. Ultimately, no capital was paid until 1957, 25 years later than originally agreed. Both Ngati Ruapani and Ngati Kahungunu claimants contend that the Crown 'failed to honour its commitment to make regular debenture payments owing to the hapu of Waikaremoana for their alienated interests in the Waikaremoana block'.⁵²⁴ The Crown acknowledged that the failure to pay the debentures 'caused hardship', but said that this was 'an action of the Maori Trustee rather than the Crown'. Further, the reduction in interest rates was an action taken across government at the time as a necessary response to the circumstances of the depression.⁵²⁵

Shortly after his meeting with the people at Wairoa and Waikaremoana in September 1921, Ngata reported that the owners could take the majority of the interests in the form of debentures. Apart from one or two individuals, the communities wanted land (which was part of the Ngati Ruapani deal) and debentures. This meant that the Crown would not have to front up with a large amount of cash in order to acquire the Waikaremoana block. Under section 10 of the Urewera Lands Act 1921–22, the commissioners could determine that some or all of the Crown's payment for land would be in debentures rather than cash. The debentures would be issued to the Native Trustee, who would hold them on behalf of the beneficiaries. The debentures eventually issued were valued at £29,323, which represented the combined value of Ngati Ruapani and Ngati Kahungunu interests in the Waikaremoana block at 15 shillings an acre. They had a 10-year term from

524. Waikaremoana claimants, statement of claim, 3 March 2003 (claim 1.2.1, SOC 1), p 103

525. Crown counsel, closing submissions (doc N20), topics 18–26, p 80

1 October 1922, with interest set at 5 per cent per annum tax free.⁵²⁶ Initially, there were between 400 and 500 beneficiaries; numbers increased over time as some died and others inherited their interests. By 1931, the Native Trustee put the number of beneficiaries at 'over 600'.⁵²⁷

The Government paid the debenture interest, totalling £1,466 per annum, in twice-yearly instalments to the Native Trustee, who held it on behalf of the beneficiaries. The trustee would then distribute this income once a year.⁵²⁸ Since the UDNR Act had been repealed, the vendors had no opportunity to use a Waikaremoana 'local committee' to administer these payments, nor could they establish an incorporation committee for land that they no longer owned. Thus, the law made no provision for them to exercise any collective authority in deciding how this money should be distributed or spent, and no special arrangements were made or authorised; interest payments were thus scattered by the one corporate entity that did exist, the Government's Native Trustee, in small amounts across hundreds of individuals. We have no way of knowing whether this was an arrangement to which the Waikaremoana and Wairoa communities had deliberately agreed.

By the time the depression was biting hard in the early 1930s, the trustee had begun defaulting on his payments to the beneficiaries. By March 1932, Ngati Ruapani and Ngati Kahungunu were owed £4,175.⁵²⁹ The difficulties faced by the trustee were not due to a fault on the part of the Treasury, which continued to pay funds to the Native Trustee as required.⁵³⁰ Rather, the problem arose because of the way trustee operated. The trustee had been set up in 1920 to administer Maori interests formerly administered by the Public Trustee. His main functions were to administer native reserves on behalf of owners, act as a banker for the Maori land boards, and administer the estates of those deemed incapable by virtue of youth or disability.⁵³¹ All income was paid into the Native Trustee's Account. The trustee was empowered to lend this money, mainly to Maori, for property purchase and improvement, or to invest it in a variety of securities.⁵³² There was thus a potential conflict between the duty to engage in long-term investment such as mortgage lending on the one hand, and the need to have ready cash available for obligations such as payments on the Waikaremoana debentures on the other.

This conflict became apparent when the trustee did not pay out interest to the debenture beneficiaries in the 1930s. In 1925, the trustee had been required to take over the administration of the Maori Soldiers' Trust. This included interests in three large stations that were having financial difficulties, which the trustee then

526. O'Malley, 'Waikaremoana' (doc A50), pp 128–129

527. Native Trustee to Native Minister, 25 August 1931 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(c)), p 714)

528. 'Report of the Native Affairs Commission', AJHR, 1934–35, G-11, p 144

529. O'Malley, 'Waikaremoana' (doc A50), p 135

530. Public accounts for the years 1928–29, 1929–30, 1930–31, and 1931–32 in AJHR 1929–33, B-1.

531. Graham V Butterworth and Susan M Butterworth, *The Maori Trustee* (Wellington: Maori Trustee, 1991), p 31

532. *Ibid.*, pp 30–31; Native Trustee Act, 1920, s 21 (and amendments)

also took over.⁵³³ Two other stations were vested in the trustee in the 1920s. The trustee was empowered to manage and develop these farms at the height of the depression, rather than just administer their finances, thus exposing his operations to a major commodity price risk.⁵³⁴ As a consequence, the stations acquired large debts in the early 1930s.⁵³⁵ The depression also resulted in a number of defaults within the trustee's mortgage lending portfolio.⁵³⁶ The short point is that the Native Trustee intermingled the debenture funds with other funds, and when the financial blizzard struck, it defaulted. Had the debenture funds been kept separate and paid out regularly, the problem would not have arisen. The Native Trustee should have been simply a conduit for the moneys from the Crown to the owners.

The Native Trustee had a deteriorating financial position to which the Waikaremoana debenture-holders fell victim. Other victims included the beneficiaries of the West Coast settlement reserves,⁵³⁷ who only received a portion of the rents they were due in 1932. The trustee was also struggling to meet his obligations to the Maori Land Boards. Advances from Treasury helped resolve the situation to some extent, but not before hardship had already been caused to beneficiaries who relied on annual distributions.⁵³⁸ As an attempt to rescue the situation, the Native Purposes Act was passed in November 1931, vesting the debentures in the Tairawhiti Maori Land Board. But the Board had difficulty getting the interest arrears from the Native Trustee, who paid just £1,000 with the help of an advance from the Treasury.⁵³⁹ The Board eventually came to an arrangement that amounted to an interest-free loan to the Trustee, so that the Board could meet its obligations to the beneficiaries. On 1 October 1933, the Board paid the remaining interest owing up until that year.⁵⁴⁰ The beneficiaries were never compensated for the delay in interest payments.

Meanwhile, the Ngati Ruapani and Ngati Kahungunu beneficiaries were hit by another consequence of the depression. To help out farmers and homeowners facing unemployment and falling incomes, the Government brought down interest rates in 1931 and 1932 and made foreclosure more difficult. Other action included legislation which forced down public sector salaries, interest rates, and rents, and imposed a 10 per cent stamp duty on all future interest payments on Government securities, including debentures. Finally, in the Native Purposes Act 1931, the Ministers of Native Affairs and Finance were authorised to jointly alter the terms and conditions under which the debentures were issued.⁵⁴¹ The Waikaremoana

533. Butterworth and Butterworth, *The Maori Trustee*, pp 32–34

534. *Ibid*, pp 33–35

535. Kieran Schmidt and Fiona Small, 'The Maori Trustee, 1913–1953' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1996) (Wai 1200 RO1, doc A61), pp 181–186

536. *Ibid*, p 181

537. These were the reserves set aside for Maori during the Taranaki confiscation, which had ended up vested in the Native Trustee.

538. 'Report of the Native Affairs Commission', AJHR, 1934–35, G-11, pp 144–145

539. Native Under-Secretary to registrar, Tairawhiti District Maori Land Board, 20 July 1932 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(c)), p 683)

540. 'Report of the Native Affairs Commission', AJHR, 1934–35, G-11, p 144

541. O'Malley, 'Waikaremoana' (doc A50), p 135

debentures were to have matured in October 1932, which coincided with the height of the depression, when the Government was most strapped for cash. In late September of that year, Ministers unilaterally extended the term of the debentures for 10 years, again at 5 per cent. Acting Finance Minister Forbes had wanted an extension for 17 years, but Ngata held out for 10.⁵⁴² Once the owners found out that this had happened, without their knowledge or consent, their solicitors wrote to the Government in protest: 'We appreciate the difficulties of the times, but a further term of ten years appears to us to be an extraordinarily long extension.'⁵⁴³ They, too, needed money.

In 1933, the New Zealand Debt Conversion Act reduced the interest rates payable on all money owed internally by the Government. All debentures held by the Tairāwhiti Māori Land Board were subject to this reduction, including the Waikaremoana debentures.⁵⁴⁴ These were converted into Government stock paying 4 per cent interest, maturing on a variety of dates. The 10-year term for the debentures therefore no longer applied.⁵⁴⁵ In the end, the capital was not actually returned to the debenture-holders until January 1957. In the meantime the stock was reinvested at maturity at the prevailing interest rate of the day, usually less than 4 per cent per annum. After 1937, some of the interest became subject to income tax under the provisions of the Debt Conversion Act.⁵⁴⁶ In 1954, the Māori Affairs Department noted that the owners had continued to request the principal 'from time to time', but that 'the past policy has been to retain the capital intact.'⁵⁴⁷ In other words, despite the wishes of the debenture holders and without their consent, the temporary crisis of the 1930s had turned into a long-term policy of not paying out the principal, still in place by the mid-1950s.

In the next chapter, we look at how the delayed interest payments and lack of capital return had a significant effect on the peoples of Waikaremoana, particularly during the Depression. In 1958, Tui Tawera and others petitioned the House of Representatives for compensation for unpaid interest on the debentures. The petition asked that the full 5 per cent interest rate specified in the original consolidation agreement be applied to the period 1932 to 1957.⁵⁴⁸ A Treasury report dismissed the petition on the basis that the consolidation agreement stated that the 5 per cent interest rate would only apply for 10 years.⁵⁴⁹ Parliament's Māori Affairs committee declined to make a recommendation on the petition, which

542. *Ibid*, pp 135, 139–140

543. *Ibid*, p 140

544. *Ibid*, p 143

545. Debenture holders could opt out of this conversion, but they would then be subject to a 33 per cent tax under the Finance Act 1932–33.

546. Draft report to Māori Affairs Select Committee, 1959 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(c)), pp 810–811)

547. O'Malley, 'Waikaremoana' (doc A50), p 141

548. Tui Tawera and others, petition, 1958 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(c)), pp 817–818)

549. Secretary for Treasury to Secretary for Māori Affairs, 1 October 1958 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(c)), pp 815–816)

made no reference to the delays in interest payments by the Native Trustee.⁵⁵⁰ The following year, Ngati Ruapani representatives approached Prime Minister Walter Nash, complaining about the lack of consultation over changes to the terms and interests rates payable on the debentures. During a hui at Ruatahuna in December 1959, Nash dismissed the claims, saying that all interest rates had been reduced as a result of the Depression, not just those relating to the debentures.⁵⁵¹ Nash did not address the beneficiaries' concerns about the extension of the term of the debentures without consultation. (Private debtors, of course, cannot unilaterally extend the time in which they have to repay their debt – let alone for 25 years – and cannot unilaterally set the rates of interest that they will pay in the meantime.)

Crown counsel's submissions on these issues echo Nash's comments, though Nash himself did not go so far as conclude that the actions of the Native Trustee were not those of the Crown. When considering whether the Native Trustee was an agent of the Crown, the Te Whanganui a Tara Tribunal found that 'the trustees have not, as a matter of law, been acting by or on behalf of the Crown in the performance of their statutory responsibilities as trustees'.⁵⁵² That Tribunal's finding applied to situations where a statutory body (the Native Trustee) was holding estates in trust for Maori and collecting rents on those estates from third parties. In the case of the Waikaremoana debentures, the Trustee similarly held the debentures and any interest moneys as a trustee for the beneficial owners, as was specified in section 10 of the Urewera Lands Act 1921–22. As we see it, however, the Crown was in effect using the Native Trustee as its intermediary to effect payment to Maori, making payments to the Trustee as scheduled. This was similar to the Trustee's role in distributing public works compensation moneys, simply because it was an existing administrative agency with the means to make payments to scattered Maori beneficiaries. But the Crown could not escape responsibility if its intermediary did not pay; the Crown was still liable. In the case of the Waikaremoana block debentures, the Crown was the debtor. In such situations, it was the debtor's responsibility to pay the owners, or to ensure that the owners were paid. If the owners were not paid, the debtor could not avoid the responsibility of this failure. This was particularly egregious given that the owners were without any significant assets, and were known to be living in poverty. Although the interest was eventually paid, they were deprived of a significant portion of income when they could ill afford it.

But both Nash in 1959 and Crown counsel today dismissed the concerns raised by the beneficiaries and their descendants (the claimants in this inquiry) that the unilateral extension of the term and reduction in interest rate was a necessary and widespread action taken by the Government during the depression. We note, however, that the Depression was only the beginning of lower interest rates. After

550. 'Reports of the Maori Affairs Committee, 1959', AJHR, 1959, I-3, p 4

551. Extracts from Representations to the Minister at Ruatahuna, 11 December 1959 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(c)), pp 808–809)

552. Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District* (Wellington: Legislation Direct, 2003), p 377

the economy had recovered, interest rates for the debentures continued at less than 4 per cent in violation of the original agreement. The Crown could not (as the Maori Affairs Department did) defend its record on the basis that 5 per cent interest had only been promised for 10 years, when it was the Crown itself which had unilaterally extended the term as well as permanently lowering the interest rates. Nash accurately noted that the debenture-holders were subject to legislation that applied to all lenders to Government. But both the extension of the term and the reduction of interest were decisions taken in a situation where the Crown was a debtor, and should at least have ensured adequate compensation for the changed terms at a later point.

The beneficiaries were disadvantaged by not having access to the capital at a time – the depression – when it may well have had a significant effect on their living standards. When the capital was finally paid out in 1957, the country was in much more prosperous times, its value was diminished by inflation, and the number of beneficiaries had considerably increased. The payment was years too late, and with no acknowledgement from the Crown that it had failed to deliver yet another promise made to Maori in the Urewera Consolidation Scheme.

14.7.7 Conclusions – Waikaremoana lands

It is significant that one of the last remaining pieces of land in Maori ownership in the Waikaremoana region is at Te Kopani, on the southern shore of the lake near Onepoto, where the Crown commenced its relationship with the people of the lake by engaging them in battle in 1866. In many ways, this land symbolises the cumulative impact of Crown actions in Te Urewera: first through rapid alienation of the land encircling what became the reserve; a process that was then repeated in the reserve itself. Nowhere in Te Urewera was the extent of land alienation felt more keenly than at Waikaremoana, where only 4.3 per cent of the original land encircling the lake remained in Maori ownership by 1930. What had once been one of the most remote places in New Zealand when Crown forces arrived there in 1866 was by this time almost fully within the Crown's ownership (the lakebed aside – issues concerning which we examine in chapter 18). But Te Kopani also represents the last act of defiance against the Crown's encroachment into the region and against its unequal and dishonoured agreements with the Waikaremoana peoples.

The owners of the Waikaremoana block had hoped the Urewera Consolidation Scheme would improve the circumstances in which land alienation had left them. But the Crown saw the Waikaremoana block as an important area of forested land (adjacent to that significant natural resource, the lake) that needed to be protected, and the scheme provided the opportunity to acquire all of it. It is a particular indictment on the Crown that not only did it come away from the scheme with the entire block, partly because it had purchased so many interests elsewhere in the reserve (forcing Tuhoe owners to relocate their interests from Waikaremoana to save their main settlements), but it also then failed to deliver on most of the promises it had made to the former Maori owners: promises of alternative land and sustainable income in the form of debentures. In sum, the Crown virtually compelled Ngati Ruapani and Ngati Kahungunu to sell at its price (15 shillings

per acre). It then underpaid a significant number of Maori vendors by nine shillings an acre, an action which the Crown concedes today was unconscionable. Ultimately, cash and debentures were the only payment made or offered because the Ngati Ruapani owners could not afford to accept Tapper's farm at the price the Crown had paid for it. Thus, the main benefit they sought from the scheme – extra farmland south of the lake – came to nothing. To add insult to injury, the Crown still took two of their four reserves from the four southern blocks in part payment for Tapper's farm, without ever paying for them. Finally, the terms of the debentures were altered unilaterally and Maori were ultimately underpaid in terms of both interest and capital. This is a litany of broken and dishonoured agreements which left Ngati Ruapani virtually landless.

One of the few promises the Crown kept was the redistribution of Tuhoe interests to other lands of ancestral importance in the former reserve, which had been subject to Crown purchasing. Even then, Tuhoe only marginally increased their holdings; and their minimal gains were then offset by the Crown's takings in land for significant survey and roading costs that the Crown took in the form of land. We turn to the issue of surveys and survey costs in the next section of this chapter.

14.8 WHAT AGREEMENTS WERE REACHED ABOUT TITLES AND HOW WAS THE COST OF SURVEYS MET?

SUMMARY ANSWER: The Crown promised that all new titles emerging from the Urewera Consolidation Scheme would be registered in the land transfer system. This was intended to provide protection to land owners, and required accurate but expensive survey methods to meet its requirements. Having emerged from two decades of uncertainty about their titles to the reserve blocks, which was compounded by Crown purchasing of individual interests in nearly all of those blocks, Maori owners wanted to know which land was theirs (which did not require high definition theodolite surveys), and to be able to borrow against the security of their land, most of which was multiply owned and would not have attracted finance under any conditions. Ngata recommended that the Crown should provide the financial assistance itself. In order to finalise its plans for opening the reserve for settlement, the Crown required title for 'settlement' conditions, which meant title that would be registrable in the land transfer system. However, officials never resolved existing obstacles to registering Maori land in the system.

Maori owners were led to believe that registration of titles in the land transfer system was the only means of achieving certainty about which land they owned. Acting on the assurances made to them by the Crown's representatives at the Tauarau hui, Maori owners accepted that new surveys would be required (because the surveys of the reserve blocks could not be used for the purposes of redefining the boundaries of the new blocks) and that these would be paid for in land (a good investment, because of the benefits they would derive). The Crown's representatives did not explain how much the surveys would cost or that land would be deducted from each block; these matters were only decided after the hui had finished. Maori owners thus accepted the Crown's proposal without understanding

either how much the surveys would cost or the limitations of the titles they were poised to acquire. The dubious and uninformed nature of Maori consent to the consolidation scheme is aptly demonstrated if the question is asked: 'what would have been the response had Maori been told that these surveys would consume almost one acre in five of the land to be awarded to them?'

The methods and process adopted for surveying in the scheme between 1922 and 1926 favoured the Crown's original plans for the land, and this is reflected in the outcomes. Surveying regulations meant that certificates of title registered in the land transfer system could only be issued for blocks that had been surveyed by theodolite, which was slow and expensive. Chief Surveyor H M Skeet initially proposed the use of cheaper magnetic surveys, but the proposal was overruled on the grounds that magnetic surveys would be too inaccurate for the purposes of defining the Crown's settlement blocks. In 1923, in an attempt to settle the stand-off with *te taha apitihana* (whose opposition to the scheme extended to survey costs), the Government passed legislation that allowed the use of existing magnetic surveys to make orders for the Maori-owned blocks. Accordingly, early magnetic surveys were used to produce a compiled plan for some of the blocks in the Ruatahuna series, so that orders could be made. The Crown deducted less land from the owners of these blocks, partly because its survey costs were considerably less, but also to placate *te taha apitihana*. In fact, the external boundaries of all the Maori-owned blocks were surveyed by theodolite, but this was done only so that the Crown's award could be registered in the land transfer system. The approach to surveying adopted by the Crown meant that Maori owners of all the blocks that were subject to full deductions paid for the cost of surveying the Crown's land.

Despite the efforts to ensure the proper survey of the Crown's award, Skeet's original proposal was effectively implemented for the Maori-owned blocks, because all the plans accompanying the orders for them were topographical ones. Such plans were in clear contravention of the Urewera Lands Act 1921–22 as they did not meet the requirements of the land transfer system. The real problem, however, was with the Act itself, which did not chart a clear path for full registration of Maori awards in the system. Because the topographical plans that accompanied the block orders meant that the titles could not be registered in the system, they remained at the Native Land Court in Rotorua where they were sent. The Crown's award, by contrast, was accompanied by a full survey plan and was subsequently registered. These facts were noted in 1957, but nothing was done even then to ensure Maori titles were registered in the system. The Crown thus failed to deliver on one of its cornerstone promises to Maori owners in the scheme. To our knowledge, these titles remained unregistered until many of them were overtaken by amalgamations in the 1970s.

Although Maori owners did not see a single title registered in the land transfer system, they still bore the full costs. The actual costs of surveying the land cannot be known, but the consolidation commissioners adopted a rate of 2s 6d per acre to establish how much land should be taken from each of the 183 new Maori-owned blocks. (This did not apply to the 27 *papakāinga* and *urupa* reserves on account of their small size.) This rate was well above the average rate for surveys of all

rural and Maori land at this time, possibly because of the terrain and the number of blocks to be surveyed. The Crown's next major error was to apply an inaccurate method to calculate the area to be taken from each block. The result was that Maori owners of about half the blocks paid not only for the survey of the land they would retain but also for the survey of the land that was taken from them to pay for that survey. The Crown thus acquired an extra 4,000 acres. Although this error was noticed at the time, it stood uncorrected.

In total, the Crown acquired approximately 31,500 acres for the cost of surveying the Maori-owned blocks. We are unable to establish the exact figure because surveyors were instructed to cut boundaries along 'good fencing lines', and not pay strict attention to the estimated area that the commissioners had calculated to account for survey costs for each block. This meant that the size of each block after the survey was usually different from the estimate. The total amount of land taken for survey costs then formed part of the Crown's award (the 482,300-acre Urewera A block). On average, 18 per cent of the land to which Maori owners had been entitled on entering the scheme was taken. After the blocks were surveyed and orders confirmed, 106,287 acres remained in Maori ownership.

Given the incompatibility of the land transfer system with multiply owned Maori land, and given the outcomes of the surveys, cheaper magnetic methods could have been used to survey the Maori-owned blocks, even though the existing regulations required otherwise. The Crown disregarded a legitimate alternative solely to advance its plans for settlement – which were discarded as early as 1924 – and was the primary beneficiary of the surveys that resulted, given that its award alone was registered in the system. On the back of the Crown's failures in the reserve and its subsequent purchasing, 31,500 acres was far too much for Maori owners to pay for the survey of what were the remnants of their lands, when the resulting plans were inadequate to deliver the registrable titles they had been promised.

14.8.1 Introduction

The Crown acquired a substantial amount of land to account for the cost of surveying the blocks awarded to Maori owners in the Urewera Consolidation Scheme. Between 1922 and 1926, 183 new blocks were surveyed under the process set out in the Urewera Lands Act 1921–22. In total, the Crown acquired approximately 31,500 acres, which comprised a series of deductions from each of the 183 blocks. The area for these deductions was calculated before the surveys began and then excluded from each final surveyed block. These excluded areas ultimately formed part of the Crown's award, which was surveyed and gazetted as the vast 482,300-acre Urewera A block. The 31,500 acres amounted to 18 per cent of the land retained by Maori owners at the end of Crown purchasing, after they had decided on the location of their blocks in the implementation of the scheme.⁵⁵³

553. The total size of the Maori-owned blocks calculated by the commissioners at the end of the implementation of the scheme was 176,488 acres, which includes the amount of land that was ultimately taken for the cost of building the arterial roads.

In the claimants' view, such an extensive amount of land should never have been taken for the surveys because cheaper surveying methods could have been used. The expensive methods used in the scheme, claimant counsel submitted, were unnecessary for the purpose of defining the boundaries of the new Maori-owned blocks, and were only employed to meet the Crown's objectives for the land. Maori owners sought security for their remaining land but had not understood the arrangements for titles and surveys that had emerged from the negotiations in 1921; nor would they have given their consent had they known how much land they would lose. Maori owners bore the full cost of surveying in the scheme, claimant counsel submitted, including the cost of surveying common boundaries between Crown and Maori land. Finally, the claimants were no better off anyway as a result of the most expensive type of surveying: the surveys never achieved their purpose because certificates of title under the land transfer system were never issued.⁵⁵⁴

The Crown rejected most of these points. Expensive surveys were necessary, Crown counsel submitted, because of the requirements of registering titles in the land transfer system, which the Crown had promised would be the outcome of the scheme. Although Maori owners likely had little knowledge of the potential costs involved, they nevertheless gave their consent to both the type of title proposed for the scheme and the resultant costs. The Crown also questioned many of the conclusions the claimants had reached from the research. In its view, the evidence does not reveal how much the surveys cost or even how much land was actually taken.⁵⁵⁵

Many basic facts, therefore, remain in dispute between the parties: who conducted the surveys and for which land, how much the surveys actually cost, how the amount that would be taken from each block was calculated, and how much land was actually taken.

In this section, we ask how it was that Maori owners of the reserve paid such a high price in land for the survey of the very lands they had fought to retain in the face of aggressive Crown purchasing. In our view, the key issue is not so much the surveys themselves, but rather the type of title the Crown promised Maori owners. The consolidation commissioners and Lands and Survey officials proceeded on the basis that surveys of a certain quality were required for titles to be fully registered in the land transfer system. As we have explained earlier in the chapter, Maori owners went into the scheme on the assumption that they would finally achieve title that would guarantee their remaining land. The Crown's motive, however, was primarily to establish the conditions for setting up settler sheep farms, and then to purchase more Maori land, although both Coates and Guthrie stressed their intention to do justice to Maori and protect their interests. As with other aspects of the scheme, Maori owners and the Crown had developed different and diverging understandings about the purpose of titles by the time the scheme commenced.

554. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 114–117

555. Crown counsel, closing submissions (doc N20), topics 18–26, pp 56–66

14.8.2 What expectations had Maori owners of the reserve developed regarding titles and surveying by 1921 and how did this differ from the Crown's approach?

Surveying is a cornerstone practice of colonisation. British colonies, including New Zealand, enthusiastically divided land into discrete blocks for settlement. Titles to land required plans which recorded block boundaries, and which were produced by qualified surveyors whose time and equipment were costly. Technological developments in the nineteenth century resulted in the more precise location of boundaries and more accurate surveys, which provided greater certainty. These developments played out in the colonisation of New Zealand, affecting Maori owners as their lands were surveyed to define blocks that passed through the Native Land Court. As we have outlined in chapters 8 and 10, this process had reached the outskirts of Te Urewera by the 1870s. It is a continuing theme in nineteenth century New Zealand that the cost of surveys was paid for not by those who benefited from the surveys, but by those who were dispossessed of the land.

Te Whitu Tekau maintained an opposition to surveying as one of its foundation policies, as part of a general opposition to all practices associated with the Native Land Court (see chapter 8). Surveyors were seen as the active agents of colonisation, and were among the first Crown officials to enter any area new to settlers. Charges for the survey of blocks passing through the court were expensive, resulting in high debts and liens which Maori usually had to pay in land; news of these consequences had filtered through to Te Urewera by the early 1870s. When the court came to the rim blocks – in the face of Te Whitu Tekau's opposition – these concerns were found to be justified. Up to 1930, Maori were forced to alienate a total of 30,968 acres of the 11 rim blocks to cover the cost of surveys. In chapter 10, we found that Maori owners should not have been expected to pay more than 5 per cent of these costs, as surveys were primarily for the benefit of the purchaser and the colony itself. Instead, in many cases, owners of the blocks essentially paid for their own colonisation.

Te Whitu Tekau leaders protested against the presence and activities of surveyors in Te Urewera through this period, until the Government recognised the need to negotiate with them. This resulted in the creation of the reserve (see chapter 9). Surveys continued to provoke opposition, most notably at Ruatoki in 1893 when Ngati Rongo, a Tuhoe hapu at Ruatoki, supported a survey; others continued to adhere to Te Whitu Tekau policies and opposed it. Te Whitu Tekau sought legal recognition so as to manage the land and control the speed of any land alienation and their integration into the colonial economy, and were not opposed to economic development. From their perspective, the Native Land Court represented the loss of Maori control, and the presence of surveyors on the land without their consent supported their belief. During his tour of Te Urewera in 1894, Seddon gave assurances to Te Urewera leaders that they would be given control, but that they had to make tradeoffs in order to integrate into the colonial economy. These included adopting a form of land title that would in fact provide them with added security. At Ruatoki, Ruatahuna, Te Whaiti, and Waikaremoana, he said that the people needed to have their land defined by survey and awarded a Crown-created

title. Though optimistic about the proposed arrangement, Te Urewera leaders reminded Seddon that they were still concerned about the ruinous costs associated with surveying land. Te Wharekotua said: 'We want our boundary confirmed, and our titles to the land indorsed, without a survey if possible'.⁵⁵⁶

As we discussed in chapter 9, surveys were a crucial part of the compromise negotiated with the Crown in 1895, which later became enshrined in the UDNR Act. Progress towards a formal agreement between the Crown and the peoples of Te Urewera threatened to unravel during the 'small war' of April 1895, which occurred when Seddon decided to push through a road line survey from Te Whaiti after surveyors (who were conducting a triangulation survey of the wider Te Urewera region) had been turned away from Ruatahuna. James Carroll successfully negotiated a compromise which allowed surveyors to complete the triangulation survey, including the erection of trig stations throughout the region. This was part of a nationwide triangular survey, carried out for the purpose of gaining a more precise understanding of previously unmapped parts of New Zealand.⁵⁵⁷ By September 1895, Te Urewera leaders had negotiated an agreement with the Crown that saw the complete exclusion of the Native Land Court from 650,000 acres of their land, and the creation of the reserve as a self-governing native reserve.

The specific nature of this agreement – insofar as it concerned the kind of titles to be issued and the kind of block surveys required before title determination could proceed – had considerable bearing on later events in the Urewera Consolidation Scheme. The UDNR agreement, unlike the scheme, required the Crown to pay the cost of surveying the blocks that were created under the Act. Section 7 of the UDNR Act allowed for blocks to be 'determined on a sketch plan prepared and approved by the Surveyor-General as approximately correct'. The cost of these sketch plans would be 'borne by the Government'. Carroll explained in Parliament that it was 'necessary for scientific purposes in relation to the colony that a triangulation of the district should be made', and that such a survey 'would have to be done in any case at the cost of the colony'.⁵⁵⁸ Surveyors would produce sketch plans through the use of compasses, taking magnetic bearings from the trig stations that had been erected in 1895. This was instead of using theodolites, which were generally considered to be much more accurate surveying instruments but which made surveys more expensive.

By the early twentieth century, however, the use of compasses was increasingly frowned upon. Surveying regulations published in 1907 stated: 'No magnetic bearings are admissible unless for filling in topographic detail work, and then very sparingly, and with permission only'.⁵⁵⁹ These regulations applied to the survey of all land, including Maori land. But, in 1896, the Crown and Te Urewera leaders agreed that sketch plans were sufficient for the purposes of defining the bound-

556. 'Pakeha and Maori: A Narrative of the Premier's Trip through the Native Districts of the North Island', 1895, AJHR, 1895, G-1, p 76

557. Robertson, 'Te Urewera Surveys' (doc A120), p18

558. Carroll, 24 September 1896, NZPD, vol 96, p172

559. 'Regulations for Conducting the Survey of Land in New Zealand', 29 August 1907, *New Zealand Gazette*, 1907, no 77, p 2736

aries of the reserve blocks. As Maori owners would retain the land, higher quality surveys would only be necessary if and when the owners considered that any specific pieces of land should be alienated to the Crown. Robertson observes that ‘the survey of Maori land was inextricably connected to land purchase as, in general terms, no other motivation existed to survey Maori land.’⁵⁶⁰ When the Crown and Te Urewera peoples agreed that the reserve would remain in Maori ownership, magnetic compass surveys were considered sufficient. But as the Crown increasingly saw it as desirable to ‘open’ Te Urewera to large-scale Pakeha settlement, its perspective began to change. Only surveys suitable for ‘settlement conditions’ were considered adequate for defining new blocks in the Urewera Consolidation Scheme.

While the process for surveying blocks in the reserve and the resultant titles differed from what happened in the scheme, the UDNR surveys and titles were important to the scheme’s origins. The Crown kept its initial part of the arrangement and paid for the surveys, which were completed in 1902.⁵⁶¹ But, as we saw in chapter 13, Ngata told the Maori owners in 1908 that they would have to repay the cost of surveying. He reported to the Governor (along with his fellow commissioner, Robert Stout) that the ‘Tuhoe Tribe recognises its liability for survey and other charges, amounting to over £7000.’ The cost for surveying the land was in fact recorded in 1903 as £4,243 13s 2d, out of a total expenditure of £6,138 19s 8d.⁵⁶² This averaged at just over 1.5 pence per acre for the survey of the 656,000-acre reserve.

As we showed in the last chapter, the way Ngata brought these costs to the attention of Maori owners was one of the factors that prompted Numia Kereru to offer portions of the reserve for lease to the Crown. Kereru’s offer was then met by a rival offer of sale from Rua Kenana, and it was in this context that the Crown developed plans to begin purchasing in the reserve. At the same time, Maori owners emerging from the process of two Urewera commissions were beginning to realise that they still had no real security of title; a state of affairs that was confirmed when purchasing of shares began from individual owners. Noone knew what land still belonged to Maori owners or what land the Crown had acquired, and no owner or group of owners could point to a specific piece of ground and assert an incontrovertible title to it.

Although titles under the UDNR Act promised to meet the needs of the reserve’s owners had the Act been implemented properly, the Crown came to consider reserve titles deficient; like all titles to Maori land, they should now be registered in the land transfer system, which it was hoped would cover all land in New Zealand. The land transfer system was developed in the mid-nineteenth century by Sir Robert Torrens, South Australia’s chief land administration officer and, later,

560. Robertson, ‘Te Urewera Surveys’ (doc A120), p 22

561. Judith Binney, ‘Encircled Lands, Part 2: A History of the Urewera, 1878–1912’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A15), p 236

562. ‘Urewera Commission (expenses in connection with)’, 21 August 1903, AJHR, 1903, G-6A; Stout and Ngata, ‘Native Lands and Native-Land Tenure: Interim Report of Native Land in the Urewera District’, 13 March 1908, AJHR, 1908, G-1A, p 2

its Premier. He attributed the defects in the British land title deeds system – uncertainty, complexity, expense, and delay – to its dependence on the common law rule that no person could confer on another a better title than that which he or she possessed. This rule meant that a person who wanted to acquire an interest in land was responsible for verifying their vendor's title, which could only be done by searching out all previous transactions relating to the land. Those transactions would be recorded in deeds but, in the absence of a reliable repository for title deeds, a purchaser might discover too late that a prior deed existed that overrode or reduced his or her own supposed rights. The land transfer system aimed to render immune from attack the registered title of a purchaser or mortgagee who transacted in good faith and for valuable consideration ('bona fide and for value'). That quality of immunity, which is guaranteed by the state, is called 'indefeasibility' of title. It comes into being upon registration of a person's (the registered proprietor's) interest in land on the land transfer register. The act of registration is thus no mere formality but is the culmination of a process designed to ensure the certainty of the facts that registration ordinarily guarantees – namely, the size and location of the land and the ownership of interests in it.⁵⁶³

The Torrens system was introduced to New Zealand in the Land Transfer Act 1870, which made it compulsory for all 'European' land to be registered under it. There was an inevitable transition period, since titles usually came into the system for the first time when they were altered or transferred. Maori land titles continued to be administered in the Native Land Court through its own system but by the early twentieth century the Crown had begun to bring Maori titles into the land transfer system. This was partly in response to events like the Waiohau fraud, which (as we showed in chapter 11) revealed the potential results for Maori owners who were not protected by indefeasible title in the late nineteenth century, and how the system could be used to validate fraudulent transactions, even where it was known that title had been acquired from Maori owners improperly. The 1909 Native Land Act allowed for orders of the Native Land Court (and Appellate Court) to be registered under the Land Transfer Act 1908, but registration was not compulsory until 1924, when the Land Transfer (Compulsory Registration of Titles) Act 1924 was passed.⁵⁶⁴ Crown counsel told us that at this time the Crown had also developed a general policy to bring all Maori land into the system.⁵⁶⁵

But having established this policy, the Crown did not eliminate the obstacles that prevented Maori land from being registered, and then conducted slow and poor monitoring of its progress throughout the twentieth century. The Central North Island Tribunal explained that these obstacles came in two forms.⁵⁶⁶ The system could only allow blocks to be fully registered if there was a certain type of survey, which defined a block's boundary with great accuracy and involved heavy

563. GW Hinde, NR Campbell, and Peter Twist, *Principles of Real Property Law* (Wellington: LexisNexis, 2007), pp 205–207

564. Crown counsel, closing submissions (doc N20), topic 27, p7; Frederic Brookfield, brief of evidence, 20 February 2004 (doc C2), p 5

565. Crown counsel, closing submissions (doc N20), topics 18–26, p 65

566. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 770

costs. The district land registrar could choose not to transfer a block order from a provisional register to a main register, and issue a certificate of title, until satisfied that surveys had been conducted according to requirements set out in regulations. Throughout the twentieth century, the high costs of such surveys were an added disincentive to Maori owners. The central North Island Tribunal concluded: 'Maori may have reacted to a title system they disliked by resisting registration.'⁵⁶⁷

The system's second failing was that it could not accommodate multiple ownership, in which the majority of Maori land was held. Every single owner had to apply for registration before a block could be placed on the main register and issued with a certificate of title, which was simply not practicable in most cases. Under the 1907 survey regulations, titles registered in the land transfer system required all accompanying plans 'to be signed by the proprietor of the land in each case, or by his lawfully authorised attorney or agent.'⁵⁶⁸ This meant that all the owners of a block (or an individually authorised representative of each owner) had to sign the survey plan before it was eligible for registration. This proved difficult in cases where survey plans were sent directly to the Native Land Court, particularly where there were many owners in a block. In any case, registration of titles in the land transfer system gave no added protections against title fractionation and fragmentation, which simply continued as before through successions and partitions.

The resumption of Crown purchasing in Te Urewera in 1915 meant that even though provision had been made to bring the UDNR titles into the land transfer system (in line with Government policy), no attempt was made to carry it out. The UDNR Amendment Act 1909 made all reserve block titles 'Native freehold land . . . subject to the Land Transfer Act, 1908'. But officials realised that to register the titles in the system another survey of reserve blocks would be needed. In 1914, Chief Surveyor HM Skeet commented that the plans for the reserve blocks were 'only sketch plans and not sufficient for the issue of titles.'⁵⁶⁹ The Consolidation Scheme Report noted that a 'comprehensive and very expensive survey of the whole territory' would have been needed at the Crown's expense, which it was unwilling to consider.⁵⁷⁰ At no point did officials raise the possibility of asking Maori owners to pay for another survey of their land, undoubtedly because the upgrading of their titles for registration was not something they had sought or to which they had agreed. Officials also took the view that it would be impractical to register the titles before the appeals to the awards of the second commission had been resolved. But the decisive point came with the resumption of Crown purchasing in 1915. Any remaining thought of re-surveying the blocks was shelved because the Crown would eventually have to cut out its award at some future point, at which time a fresh survey would be needed. Coinciding with this development, officials

567. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 770

568. 'Regulations for conducting the Survey of Land in New Zealand', 29 August 1907, *New Zealand Gazette*, 1907, no 77, p 2745

569. Nikora, 'Urewera Consolidation Scheme' (doc E7), p 28

570. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 3

also increasingly took the view that the UDNR titles were inferior to other titles, even other titles to Maori land. In part, the Crown had created what was now seen as an ‘inferior’ form of title for the reserve, in the belief that it would eventually need to be replaced when the peoples of Te Urewera were ready to make commercial use of their lands. James Carroll, it will be recalled from chapter 9, had told Parliament during the debate on the UDNR Bill that certificates issued under the Act would be an ‘interim’ title, not a full title under the Land Transfer Act.⁵⁷¹ He meant by this that it would be interim in the sense that all Native Land Court titles had been interim before the Native Land Court Act 1894, which, he maintained, now granted full ‘Land Transfer titles’. As we noted in chapter 9, Carroll saw the UDNR titles as a halfway point in that direction – full land transfer titles were not needed because the land was to become a reserve and was not to be alienated.⁵⁷² He anticipated a time when these ‘provisional’ titles would be turned into ordinary land titles.⁵⁷³ But such a transformation could not take place on the basis of the kind of surveys paid for by the Crown in the reserve. There were ‘imperfections’ in the reserve block titles, as Crown counsel submitted, which were due in large part to the inexactness of the survey.⁵⁷⁴ Nonetheless, the Crown did not even hesitate to purchase just over half of the reserve on the basis of these imperfect titles. It did, however, need something better for the settlers to whom it envisaged transferring title.

These same circumstances increased Maori owners’ expectations of the titles they might receive from a consolidation scheme, as they sought a way to end two decades of uncertainty about their land holdings. For the Maori owners, that uncertainty had not arisen from any defects in their surveys but rather from the long period during which their titles were incomplete (from the time of the first Urewera commission orders to the final resolution of appeals in the Native Appellate Court), and years of Crown purchasing during which they were denied the right to partition out their interests. Te Whaiti owners, it will be recalled, were not even allowed to chop down any trees since nobody could say which trees belonged to them and which to the Crown. As we have noted earlier in this chapter, Maori owners reacted increasingly to the Crown’s purchasing programme in the late 1910s by first seeking a partition of their remaining interests through the Native Land Court, and then (when the Crown closed off that avenue) by petitioning the Government for another process to define their interests. Above all, they demanded a guarantee from the Crown that their remaining land would be left in their ownership, and that they would be able to develop that land.

By 1921, these efforts had transformed into an increasingly strong and coherent call for a consolidation scheme, which they had come to believe would provide the necessary solution. Fred Biddle spoke for many when he said: ‘We wish to know where our land is’. A new and different kind of title was needed to assure them of

571. Carroll, 24 September 1896, NZPD, vol 96, p 159

572. Carroll, 24, 25 September 1896, NZPD, vol 96, pp 159, 195

573. Carroll, 24 September 1896, NZPD, vol 96, p 159

574. Crown counsel, closing submissions (doc N20), topics 14–16, p 62

certainty: ‘The young people want to see some document evidencing their titles, to have something tangible to indicate their ownership of a defined piece of land.’⁵⁷⁵

By the time the Crown began making plans for a consolidation scheme, Maori owners of the reserve were thus receptive to suggestions that they would be guaranteed security of title for their remaining land. But the land transfer system was no solution. It was still incompatible with Maori land in the 1920s: the underlying problems that prevented Maori land from being registered had not been rectified in the lead up to the scheme, most notably multiple ownership and the cost. Nonetheless, the Crown’s own assumptions about the kinds of titles and surveys needed were shaped by its determination to deliver a large part of the reserve to settlers, complete with surveyed land transfer titles. From the Crown’s perspective, this was compatible with some of what Maori were requesting – certainty of title – but not with their hope that they would retain all that they possessed going into the consolidation scheme.

14.8.3 What promises did the Crown make to Maori about titles and surveys in 1921 and how far did Maori understand the implications of the Crown’s proposals?

The Crown’s planning in preparation for the consolidation scheme was based on its underlying assumption that the land could be cut up for hundreds of settlers’ sheep farms. This proved to be a total misconception, as was revealed in 1922, but its insistence on creating land transfer titles was strongly influenced by this assumption. Nor did the Government do anything to dispel Maori owners’ belief that the scheme would see an end to Crown purchasing (and therefore a truly final definition of their land). In any case – motivated also by its desire to bring all New Zealand titles into the system – land transfer titles were one of the Crown’s main objectives in the scheme. The expense of surveys for this kind of title, and whether the Maori owners really needed it or not to achieve their desired economic development, never came under discussion during the Tauarau hui.

The Crown’s promise of land transfer titles initially raised suspicions at the Tauarau hui, because it referred to ‘land transfer’ and seemed to be associated with remarks that they should give up their ancestral connections to particular sites and lands. But the Maori owners were persuaded of its benefits by the Crown’s representative. From the evidence available to us, however, they were not given enough information to make an informed choice or to understand the consequences of the proposal they were about to accept. Most of the details for how the process would play out were in fact finalised after the Tauarau hui, when Knight, Carr, and Balneavis transformed the provisional agreements at the hui into the Consolidation Scheme Report, and the Urewera Lands Bill was drafted.

The question of whether Maori owners really needed land transfer titles, and therefore the kind of expensive survey that such titles entailed, could have been dealt with in principle at the Ruatoki hui in May 1921. At that hui, the owners gave

575. ‘The Urewera Lands’, *Whakatane Press*, 19 February 1921 (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(b)), p 559)

their general consent to a consolidation scheme. In his speech to the people, Ngata stated:

What should be arrived at immediately, is the basis upon which the consolidation should proceed. We began with a magnetic survey in the nineties, which show the approximate areas of these blocks. Your officers, Mr Guthrie, will advise you of the nature of those surveys, which were adequate for the purposes of the commissioners who investigated the titles. They were assumed to be sufficient when the Government undertook the purchase of these lands in 1910, and those areas have been adopted by the Native Land Purchase Department as the basis up to the present. I see no difficulty in accepting those areas as sufficient. When one considers the [low] price which the Crown paid for the Urewera lands, I think there is plenty of room for give and take.⁵⁷⁶

The fundamental point, therefore, on which Tuhoe agreed to consolidation in principle was that the present surveys were adequate for the job. But did Ngata mean that the existing surveys were also adequate for new titles? That is not clear, and the Ministers neither agreed nor disagreed with him, nor carried this matter any further. In fact, the question of whether new surveys might be required – and who would pay for them – never came up. The most that could be said is that Ngata reminded everyone that the Crown had paid for the reserve surveys, because Seddon and Carroll had recognised the necessity of this in the unique circumstances of Te Urewera. ‘Other natives,’ he said, ‘have not been so fortunate.’⁵⁷⁷ While this might have appeared ominous, Ngata did not suggest that Crown payment for surveys would not be repeated; rather, he went on to suggest that the people should make a contribution towards roads. Guthrie agreed with that suggestion. Coates and Guthrie then acted on the understanding that Maori owners had accepted the general principle of having a scheme, and planned for another hui at which Maori were notified that the ‘details’ of the scheme would be considered.

Knight was the first to state clearly that a substantial number of new blocks would emerge from the scheme, and new surveys of the land would therefore be necessary; and he was the first to propose that Maori should pay for them. His June 1921 proposal stated that the titles issued under the UDNR Act (which he called ‘useless titles’) should be cancelled and replaced with fresh title orders. Two types of Maori-owned land would emerge from the scheme: lands ‘suitable for subdivision on settlement lines,’ and the remaining land that was unsuitable for settlement, which would all be left in one large collectively owned block. Maori owners would ‘reimburse the Crown for the cost of these subdivisional surveys.’⁵⁷⁸

576. ‘Meeting of Representatives of the Urewera Natives with the Hon DH Guthrie, Minister of Lands, and the Hon JG Coates, Native Minister, at Ruatoki, on the 22nd May, 1921; 18 June 1921, MA 1 29/4/7A, Archives New Zealand, Wellington (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp131–132)

577. *Ibid*, p133

578. Knight to Under-Secretary for Lands, 21 June 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p148)

This suggestion became the Crown's policy: at no point was it ever considered that the Crown might pay for the surveys, even though it was the Crown that had brought about the necessity for another survey by virtue of its purchasing in the reserve. Instead, the plan was that Maori owners would bear a proportionate cost of surveying the new blocks (as co-owners of the land), probably in the form of one large area of land taken from 'useless lands' that were mountainous and unfit for settlement. Knight thought it was a 'very unlikely' scenario that there might not be enough 'useless lands' to cover the cost of surveying, but if that were to happen 'then the Crown will have to be awarded supplementary areas in the Native sections'.⁵⁷⁹

Even though he thought it would not happen, Knight foreshadowed the way costs were in fact accounted for in the scheme, but only because he had underestimated the extent of Crown purchasing in the reserve, which ultimately meant that the Crown had to take land from each of the new blocks. Despite his mistaken assumption, Knight still thought that the scheme allowed the Crown an opportunity to acquire more land. In his early view (which changed later) he thought that further purchasing should wait until after the consolidation scheme was completed. 'Purchasing operations in the useless lands', he said, 'should not be undertaken until the surveys are finished, and the Crown's award for the cost incurred defined'.⁵⁸⁰

Meanwhile, Maori owners had their own (quite different) hopes for the scheme. Back in February 1921, Fred Biddle had explained to the Parliamentary delegation that their land was not cultivated because the owners had 'no title in the pakeha sense'; and even if they did have title, 'we have no money and the banks and other lending institutions will not lend to Maoris'.⁵⁸¹ In July 1921, Coates remarked to Guthrie: 'the underlying principle of consolidation of interests is the extinction of existing titles and the substitution of another form of title which knows no more of ancestral rights to particular portions of the land'.⁵⁸² Land transfer titles, in his view, were superior because the remnant ancestral connections would be removed and owners would consolidate their interests into small farm holdings, which would finally allow them to utilise their land. To that extent, there was some alignment between how Biddle and Coates each saw the effects of a consolidation scheme. Coates made no reference, however, to any obstacles in the way of bringing Maori land into the land transfer system; he may not have been aware of them. Ngata, however, knew that more than a land transfer title was required before Maori could get development finance, and he made special recommendations about it to the Government in the Consolidation Scheme Report (which we discuss below).

579. Knight to Under-Secretary for Lands, 21 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 148)

580. Ibid

581. 'The Urewera Lands', *Whakatane Press*, 19 February 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 559)

582. Coates to Guthrie, 28 July 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 146)

At the Taurarau hui, the Crown's proposal met with initial opposition, possibly because the Maori owners were confronted with the words 'land transfer' (whakawhiti whenua) as the form of the title. Knight told them that through the scheme 'the existing titles and surveys and tribal boundaries [would] be cancelled and abolished, and new titles issued to the non-sellers for properly surveyed and roaded sections under the Land Transfer Act'.⁵⁸³ Balneavis reported at the end of the hui that the 'abolition of existing Native land titles and tribal boundaries, and the substitution of Land Transfer titles for defined sections, sounded revolutionary enough to the Ureweras'.⁵⁸⁴ But, he said, they were won over when it was explained that 'land transfer' meant an improvement on their inferior UDNR titles, greater security, and potential use for development:

But it was explained that in practice the non-sellers would be allocated to existing blocks at the approximate areas and values obtaining for these blocks, but that on actual definition by survey the lines of the magnetic surveys would be disregarded in favour of fencing lines, and boundaries more in accord with settlement conditions. This interpretation they readily acquiesced in.⁵⁸⁵

But did the Maori owners really need land transfer titles to solve their problems?

Counsel for Wai 36 Tuhoe drew on the evidence of Mr Nikora, who advanced the case that magnetic surveys would have been sufficient for the purposes of Maori owners in the scheme.⁵⁸⁶ As noted earlier in the chapter, Mr Nikora was a professional surveyor: as the only qualified practitioner to give evidence to the Tribunal on this issue, his arguments in support of the adequacy of magnetic surveys must be taken seriously. In essence, he argued that magnetic compass surveys were less accurate than surveys by theodolite, but cheaper, and suitable for owners who did not wish to trade in their lands. Theodolite surveys were only necessary for 'highly valuable land' (see sidebar over). The magnetic surveys of the reserve blocks, he explained, 'were only intended for internal hapu divisions, and not for the purpose of land sales.' By the time of the Urewera Consolidation Scheme, Maori owners were seeking some measure of security so as to retain their remaining land. They did not need their titles to be registered in the land transfer system because their land was not 'highly valuable' and was not intended to be a commodity and thus for sale.⁵⁸⁷ Mr Nikora said: 'If the Rohe Potae was still owned by

583. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 4. Balneavis recorded the same proposal as: 'The abolition of existing Native Land titles and tribal boundaries, and the substitution therefore of Land Transfer titles for areas consolidating the interests of families or hapus to be ascertained later as part of the Urewera Consolidation scheme.' See Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 182-183).

584. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 188)

585. Ibid

586. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 116-117

587. Nikora, 'Urewera Consolidation Scheme' (doc E7), pp 11, 27-28

The Significance of Land Transfer Titles for Maori Owners in the Scheme

IN CONCLUSION, we venture the opinion that among the younger Natives of the Urewera country there is a strong and a genuine desire to be put in a position to farm some of their lands. They have been hampered in the past by the unsatisfactory nature of the titles, which, as will have been noted from a perusal of this report, have been in a state of turmoil since 1896, formerly during successive investigations and litigation, and later in the confusion occasioned by the Government purchases. The Urewera Natives were moved to agree to the consolidation proposals chiefly by the consideration that out of the scheme would emerge for the non-sellers defined sections, ready surveyed and accessible by or handy to arterial roads; that these sections would be free of the old-time restrictions, and owned not tribally or by hapus, but by compact families, with eyes looking forward, and whose only link with the past would be that the sections comprise the homes and cultivations of their ancestors.'

Knight, Carr, and Balneavis¹

1. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 7

Tuhoe today then magnetic surveys would still be sufficient for internal subdivisions.⁵⁸⁸ We consider this evidence further below. Here we note that Maori owners were never given the opportunity to consider whether their new blocks could be surveyed using magnetic compass methods. They were encouraged to think that only one kind of title was sufficient for their needs, and were never presented with the consequences of what that form of title would entail in terms of survey costs.

As we see it, it was not beyond the ability of officials or Ministers to have contemplated a cheaper survey in Te Urewera, and one paid for by the Crown. As noted above, Ngata had just reminded everyone of how the Crown had paid for the old magnetic surveys, and why those had been sufficient for the unique circumstances of Te Urewera. Nonetheless, officials seem to have taken it for granted that land transfer titles were needed in Te Urewera, as they were everywhere else in the country. As will be apparent from our earlier discussion, they were blinded by the determination that Te Urewera must be cut up and opened for settlement on a large scale. It was not until the following year (1922) that such thinking underwent a revolutionary shift, and officials started conceptualising Te Urewera as an enormous forest for production and watershed conservation purposes. That proved too late to shift the scheme out of the groove of land transfer titles.

588. Nikora, summary of 'Urewera Consolidation Scheme' (doc E8), p 11

Needing More than Land Transfer Titles

‘THE concluding remarks of the report [quoted immediately above] dealing with the utilization by the Ureweras of the lands remaining to them cannot be too strongly emphasized. I go further than the officers in urging that the State should inaugurate in this district a special scheme for rendering financial and other assistance to the young Urewera farmers. The human material is good. The men are good bushmen, efficient in all that relates to work in bush country. They require not only financial assistance but above all business assistance. It would not be sufficient – in fact, it would be risky – merely to lend them money on the security of their lands. There must be business guidance as well to see the money is applied to the best use to secure the best return . . . We have the dearly bought experience of Bay of Plenty farmers in handling bush farms in that district. We have on the East Coast the example of what Maoris can do with their lands if intelligently assisted, financed, and organized. We should be able to benefit by a combination of such talent and experiences in the handling of the last important land problem of the North Island.’

Apirana Ngata¹

1. Ngata, memorandum to Minister of Lands and Native Minister, [October 1921], AJHR, 1921, G-7, p 7

In terms of the surveys themselves, the Maori owners were never given the opportunity to assess the promised outcome of the scheme against the likely cost. Balneavis said that, unlike the roading contribution, the ‘contribution for surveys cannot be so easily ascertained, although the Natives are prepared to pay for that in land also’. As the Maori owners were not presented with any other choice but to pay for the surveys themselves, it is likely that they indicated a preference to pay in land because of their previous experience with survey debt in the rim blocks. Balneavis also revealed that the extent of the costs and the exact form of the land taking had yet to be determined: ‘whether the cost of survey should be fixed at a definite lump sum, to be compensated by a block of land to be defined now, or whether the assessment for the purpose should be made as the surveys proceed is a question that was left for determination later.’⁵⁸⁹ Maori owners would have had little idea of the costs involved, or the significance of having their titles registered in the land transfer system, beyond the assurances they were given.

Had the Maori owners known of the likely costs at this stage, they would have had an opportunity to organise the consolidation of their interests in different

589. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p188)

Tamaroa Nikora's Evidence on Magnetic Surveys

I WISH to comment on magnetic and theodolite surveys. Magnetic (or compass) surveys were adopted under the UDNRA to produce the sketch plans. A magnetic survey simply entails the surveyor taking his bearings by compass and then measuring between points. This pattern is continued until the area is surveyed. Magnetic surveys are a lot cheaper to undertake and are more flexible than theodolite surveys. They are less accurate but were sufficient for the purpose of defining hapu blocks as part of the UDNRA. Most people will understand the manner in which a theodolite survey is undertaken. A theodolite is used to accurately measure survey points to a level of accuracy of plus or minus .02 metres. It is a costly method of survey which is necessary where there is highly valuable land, but not so in respect of land such as in Te Urewera. Both magnetic surveys and theodolite surveys can be checked against triangulation points.'

Tamaroa Nikora¹

1. Tamaroa Nikora, 'The Urewera Consolidation Scheme' (doc E7), p 27

ways. They were encouraged to organise their holdings into small family units with fewer owners. Most of the blocks were consequently small. By the end of the hui, they had organised themselves into 99 different consolidation groups with a total of 183 blocks. While this was their choice, had the owners been aware that the consequence of a larger number of block boundary lines was an increased survey cost, they might have organised their holdings otherwise. The number of groups and blocks had other implications as well. Because Maori owners chose to locate their interests primarily in their settlement lands down the river valleys, there was not enough 'useless lands' to provide for a combined area to pay for the total cost of surveying the blocks. That, it will be recalled, had been Knight's theory of how it would work. This meant that all the Maori land would be surveyed because the blocks would be 'settlement' blocks and not in the 'useless' area. It also meant that each of these blocks would diminish in size; the land that Maori owners did choose to retain would be eaten away at the edges to pay for the surveys. The consequences of these decisions were never spelt out to Maori owners at the hui, and officials likely did not grasp them until afterwards when they worked out the details in the Consolidation Scheme Report.

All of these details – how the land in the scheme would be surveyed and the process by which title would be awarded – were decided after the Taurau hui, in the absence of Maori owners. Knight, Carr, and Balneavis recorded their proposals in the Consolidation Scheme Report, and other provisions were added in what became the Urewera Lands Act 1921–22. The draft scheme was not referred

back to the owners for discussion and approval, as Mr Nikora suggested should have been the case in his principles for a sound consolidation scheme.

The Consolidation Scheme Report stated that the Crown would survey all land in the scheme. The amount of land to be taken from each Maori-owned block for the survey costs would be estimated beforehand, though it was not specified who would do the estimating or how the estimates would be made. The equivalent amount of land would then be taken from each block or taken in the form of 'scenic or water conservation or forest conservation areas'.⁵⁹⁰ Under Section 17 of the Urewera Lands Act, the chief surveyor was to 'procure a survey of that land in accordance with the tenor of the requisition, and to prepare a sufficient plan of the land so surveyed'. Surveys were to be 'carried out in accordance with the directions of the Chief Surveyor, either by officers of the Lands and Survey Department or by any other duly authorised surveyor'.⁵⁹¹ Section 8(2) of the Act also said that all orders made by the commissioners should be accompanied by 'a plan sufficient for the purposes of the Land Transfer Act, 1915', under which the Surveyor-General made regulations 'for insuring the accuracy of plans and surveys required under this Act'.

All of these provisions came to bear on how the surveys would eventually be conducted in the scheme. The most recent regulations remained those published in 1907: all surveys would be conducted by theodolite; no magnetic bearings could be used unless for filling in details on topographical maps. The consequence of these regulations in terms of their cost will be discussed below but at this point Maori owners were in no position to assess the potential costs, for those costs had yet to be established.

Despite the fact that the new blocks would be surveyed so that they could be registered in the system, the Urewera Lands Act provided no definite mechanism by which this could occur. Section 8 set out the process by which the orders of the commissioners became Maori freehold land under the Native Land Act 1909. Orders would have the effect of vesting land 'in the persons named therein for an estate of fee-simple in possession, and, if there are more than one, as tenants in common'. The chief judge could then ('may') forward a duplicate of the order to the district land registrar, who would place the order on the provisional register. The district land registrar could 'retain the title on the provisional register so long as the number of owners named in such title exceeds ten' (section 8(5)). Ninety-five of the blocks had more than 10 owners.⁵⁹² Already, the district land registrar could keep just over half of all the Maori-owned blocks on the provisional register, which meant that they would not get a proper land transfer title. (Successions, of

590. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 8

591. The Urewera Lands Act 1921-22 said that the provisions of part XXI of the Native Land Act 1909 applied to the survey of land in the scheme. This quote is taken from section 396(2)-(3) of the Native Land Act 1909.

592. For number of owners listed on block order awards see 'Urewera Consolidation Block Order Files (Ahiherua to Owaka)' (doc M12(c)); 'Urewera Consolidation Block Order Files (Paemahoe to Wharepakaru)' (doc M12(d)).

course, would mean that numbers of owners in all blocks would increase.) Yet, the Maori owners had left the hui under a quite different impression. 'Instead of being the most backward', Knight, Carr, and Balneavis noted in the report, their titles 'will be as far advanced as the best Native titles in any part of the Dominion.'⁵⁹³

The Consolidation Scheme Report contains many of the Crown's broader assumptions about surveys and title, which really developed out of its plans for settlement; many of these assumptions unraveled as the scheme proceeded. Knight, Carr, and Balneavis presented savings on costs as one of the key benefits of the scheme. But these were savings primarily to the Crown. According to the officials, the 'chief stumbling-block' for obtaining land by partition through the Native Land Court 'was the fact that in order to make such partition orders effective and registrable it was necessary to undertake a comprehensive and very expensive survey of the whole territory'. Proceeding with a consolidation scheme, it was argued, would make such a survey unnecessary. Elsewhere in the report, they explained that the chief saving would be through surveying the land using modern techniques: 'Useless and expensive surveys will be obviated, because there is now no need to re-establish and redefine the old magnetic surveys. The surveys necessary to complete our scheme will be Land Transfer surveys done once to enable the issue of certificates of title.'⁵⁹⁴ Following this reasoning, the surveys 'done once' in the scheme would be cheaper than redefining older magnetic surveys, as well as more accurate. There was very little evidence to support this point, as later developments proved.

Crown counsel says that there is 'some evidence that Urewera Maori agreed to surveys as they would thereby obtain a secure title.'⁵⁹⁵ Counsel added: 'One of the many complaints in respect of Maori land is the inability to raise finance on it. If the land had title sufficient for coming under the Land Transfer system – that problem would be obviated.'⁵⁹⁶ But, as we shall see in chapter 17, the land transfer system did not solve these problems for North Island Maori: so long as their blocks were vested in multiple owners, Maori owners would still find it difficult to raise finance on their land. It took state lending through Ngata's development schemes for any form of finance to be raised on much of this land. In 1921, Ngata himself foreshadowed this necessity when he said that the provisions of the proposed consolidation scheme would not be enough to produce successful farming enterprises in Te Urewera.⁵⁹⁷ In his view, Crown finance and business management assistance ought to be an integral part of the consolidation scheme. Without it, the peoples of Te Urewera could not succeed, even with new titles. Ngata's advice on this point was disregarded. The Crown proceeded on the false assumption that land transfer title was needed for its own purposes, and that this would also solve many of the existing problems facing Maori owners in the reserve. Maori owners

593. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 6

594. *Ibid*, pp 3, 7

595. Crown counsel, closing submissions (doc N20), topics 18–26, p 65

596. *Ibid*

597. Ngata, memorandum, no date, AJHR, 1921, G-7, p 7

accepted these assurances at face value, including the guarantee that they would be able to raise finance on their newly re-titled land. In these circumstances, Maori owners were more likely to accept the idea that they should meet the cost of paying for new surveys to get these new titles.

14.8.4 How were the surveys conducted and were cheaper methods available?

Preliminary work for the surveys in the scheme began in late 1921 on the premise that all blocks would be surveyed according to the standards of the land transfer system. But a number of developments took place early on in the scheme which meant that the survey of the Maori-owned blocks did not in fact meet these standards. The process adopted by the consolidation commissioners immediately departed from the terms of the Act: Maori-owned blocks would be surveyed before each of the Crown's blocks instead of after, which was not the order specified in the Act. Then, as the surveyors revealed that the Crown's plans for settlement were based on grossly exaggerated assessments of how much land was suitable for sheep farming, the commissioners decided to wait until the very end of the scheme and make a single award to the Crown in a single block. Meanwhile, the extent of survey takings in the Maori-owned blocks prompted a number of protests, led by leaders of *te taha apitihana*. These protests gave rise to a special amendment to the Urewera Lands Act, which allowed for the use of cheaper magnetic surveys in the issuing of awards in the scheme. These developments meant that by the time the final survey was completed in 1926, all of the Maori-owned blocks had topographical plans insufficient for registration in the land transfer system; the Crown's award, by contrast, had a full survey plan. At the heart of these developments are two of the main issues raised by the claimants: whether cheaper survey methods could have been used in the scheme; and that they never received their promised land transfer titles.

The commissioners worked out their process for surveying the blocks in consultation with departmental surveyors, in anticipation of what would be set out in the Urewera Lands Act 1921–22. This Act, it will be recalled, was passed in February 1922 after the commissioners had begun their hearings. The Act established that costs had to be estimated before surveys began and that those costs could then be taken in the form of land from each block or in the form of a scenic reserve. Within these broad parameters, the commissioners decided to adopt a standard rate of 2s 6d per acre as the basis of their estimates for all blocks. Later in this section, we explain how the commissioners arrived at this rate and how it was applied throughout the scheme. By adopting a standard rate, the commissioners were able to instruct surveyors in advance about how much land would actually require surveying (after the deduction had been made) and also how much land could be taken by the Crown to account for the cost.

The realities of settling the claims of Maori owners in each part of the scheme meant that the commissioners were quickly forced to abandon the order in which awards were to have been made, as set out in the Urewera Lands Act 1921–22. Under sections 5 and 7 of the Act, the Crown award was to be made first, followed by the Maori-owned blocks. In December 1921, Under-Secretary for Lands

TN Brodrick instructed HM Skeet – who, at this point, was both chief surveyor and commissioner of Crown lands – to assist the commissioners immediately in ‘the most urgent parts of the scheme’ by sending a team of surveyors.⁵⁹⁸ As we have explained above, Ngata had raised understandable concerns about the award of land to the Crown first, which could see the Crown ‘complete its own titles first and place settlers on the areas awarded to it, leaving Native claims in the air’. Instead, he advised, ‘exploration and definition of the Native areas should proceed *pari passu* with that of the Crown awards’.⁵⁹⁹

But surveyors were confronted with a different reality when they went out into the field. Reporting to Skeet in December 1921, surveyor HD Armit stated a fact that altered the entire course of the scheme’s implementation: ‘I consider it will first be necessary to locate the native blocks in order to see where the Crown land is situated.’⁶⁰⁰ The commissioners adopted this as the core of the process for setting out each of the areas in the scheme: Maori-owned blocks would be set out first; the rest of the land would be the Crown’s by default. This was an immediate departure from the terms of the Act, one that would have crucial implications for the titles that emerged from the scheme.

The consequences of these changes played out as surveyors began preparing preliminary topographical plans in the north of the former reserve in late 1921 and 1922, in preparation for the commission’s first hearings. Although the Consolidation Scheme Report had noted that some of the ‘Tauarau arrangements were ‘complete and definite enough for immediate execution of surveys’, no immediate surveys took place. The commissioners decided that all the land in the scheme essentially required ‘further inquiries’ (in particular to fix boundaries), which meant ‘preliminary topographical surveys’ would be carried out through-out the scheme.⁶⁰¹

This decision set a precedent that saw all of the surveys conducted according to a two-step process. First, surveyors would go out to the general area under consideration by the commissioners and Maori owners, and produce topographical plans by compass. These plans would then be used by the commissioners and the Maori owners to establish provisional boundaries for the blocks. After the provisional boundaries had been established, the commissioners informed the surveyors of the final size of the blocks, after the deduction, and where the consequent boundary lines ought to run.⁶⁰² The surveyors would then return to the land and cut the boundaries of the blocks using theodolites. The surveyors were instructed

598. Brodrick to Skeet, 18 November 1921 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 116)

599. Ngata, memorandum, no date, AJHR, 1921, G-7, p 7

600. Armit to Skeet, 8 December 1921 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 117)

601. Knight, Carr, and Balneavis, ‘Urewera Lands Consolidation Scheme’, 31 October 1921, AJHR, 1921, G-7, p 8

602. See, for example, Knight to Barlow, 28 January 1922 (Paula Berghan, comp, supporting papers to ‘Block Research Narratives of the Urewera, 1870–1930’, 18 vols, various dates (doc A86(h)), vol 8, pp 2588a–2588b).

to cut boundaries along ‘good fencing lines’, which meant that they were required to follow the final calculated area in approximate terms only. As we will see below, this two-step approach had other consequences for the way that the surveyors went about their business.

The focus of the surveyors’ activities initially remained on opening the Crown’s award as soon as possible, even if the Maori-owned blocks were set out first. By establishing which land would be awarded to Maori owners, the Department of Public Works hoped to advance the early work on the arterial roads. Also, the Department of Lands and Survey wanted to place at least a portion of the Crown’s award on the market. Despite their common goals, the process set for surveying different areas of the former reserve meant that the departments occasionally came into conflict over whose survey would occur first: the Department of Lands and Survey worked mainly on provisional topographical plans to assist the commissioners in hearing the Maori owners’ claims and later cutting the boundaries of their blocks, which needed to be set out before the location of the Crown’s land could be determined. Road lines, in the same way, were located and surveyed (by Public Works surveyors) with a view to defining the Crown’s award.⁶⁰³

As part of their deliberations about how to make the survey of blocks in the scheme work in practice, Lands and Survey officials discussed whether cheaper magnetic compass methods could be used instead of more expensive theodolite surveys. Skeet established in October 1921 that the earlier magnetic surveys of reserve blocks could not be used as the basis of defining new block boundaries in the scheme. But this was not – as the authors of the Consolidation Scheme Report would have it – because ‘present-day Natives [were] unacquainted with the location of the named places on the boundary-lines’, thus rendering the boundaries ‘in many cases impossible to redefine on the ground.’⁶⁰⁴ As Mr Nikora noted, Maori ‘did know of the location of the named places on the boundary lines – even the Natives of today still know of these places.’ The reserve surveys could have been used in the scheme so long as the ‘surveyors had kept adequate field books’, because most boundaries ‘actually followed ridge lines.’⁶⁰⁵ But the records of the original survey turned out to be inadequate for this purpose. Skeet confirmed that these records were inadequate: the survey plans did not show ‘bearings and distances, also traverse lines’; and because the work was ‘done by compass and as the field books numbers given on the plans do not correspond with those in this office, it is impossible to trace information.’⁶⁰⁶ Robertson noted that ‘surveyors such as Armit had to start from scratch.’⁶⁰⁷

But Skeet only took issue with the type of information recorded on the survey plans for the reserve blocks and the department’s failure to keep adequate records,

603. Robertson, ‘Te Urewera Surveys’ (doc A120), pp128–129

604. Knight, Carr, and Balneavis, ‘Urewera Lands Consolidation Scheme’, 31 October 1921, AJHR, 1921, G-7, p 2

605. Nikora, ‘Urewera Consolidation Scheme’ (doc E7), p 28

606. Chief surveyor to Under-Secretary for Lands, 19 October 1921, 20/201, vol 2, Land Information New Zealand, Hamilton (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 120)

607. Robertson, ‘Te Urewera Surveys’ (doc A120), p 124

not with the method of surveying by compass itself. In fact, Skeet instructed surveyors to prepare survey plans with the use of compasses, not theodolites. This instruction went against the existing regulations, which said that 'no magnetic bearings are admissible unless for filling in topographic detail work, and then very sparingly, and with permission only'.⁶⁰⁸ As chief surveyor, Skeet had the authority to grant such permission. In February 1922, he told Brodrick, Under-Secretary for Lands, that compass surveys would be sufficient for both Crown and Maori-owned blocks: 'I think the whole country should be dealt with on a topographical compass survey. This would locate the boundaries and the areas would be well within a settlement degree of accuracy.' Such a survey would be cheaper and quicker, and would enable the Crown to sell sections on the market as soon as possible, which was signalled in both the Act and policy statements as the scheme's main priority. 'To make complete theodolite surveys at the start would, I consider be unduly costly and slow.' Full surveys by theodolite could be done later if needed. 'Where it is essential to give complete titles to Native interests a fuller survey would be made. Much land has been settled in New Zealand on these lines and I think in this rough Urewera country it would prove sufficient for the time being.'⁶⁰⁹ In the meantime, Skeet had given verbal instructions to surveyors, who began provisional work 'by compass and chain'.⁶¹⁰

Brodrick, however, rejected Skeet's recommendation immediately, instructing him to carry out all of the surveys by theodolite. The Department of Lands and Survey, he said, 'has an extensive experience of the preliminary compass survey method, and it has in all cases proved disastrous and a great addition to cost of survey. We cannot repeat the experience.' Brodrick explained that his main concern was not with Maori land but rather in creating the proper conditions for settlers to take up lots sold by the Crown:

In nearly all cases a settler put on his selection must finance at once; this cannot be done on compass surveys, as the titles cannot issue till theodolite surveys are finished. The Urewera surveys must be made in accordance with the regulations, by theodolite, not by compass, from the first. Please instruct the field staff accordingly.⁶¹¹

Brodrick said nothing of what was required to fulfil the promise made to Maori owners in the scheme; his focus was on opening the land according to the Crown's plans. Skeet cautioned Brodrick that carrying out surveys by theodolite would 'necessitate doubling the staff and cause delay in getting the land ready

608. 'Regulations for conducting the Survey of Land in New Zealand', 29 August 1907, *New Zealand Gazette*, 1907, no 77, p 2736

609. Commissioner of Crown lands to Under-Secretary for Lands, 7 February 1922 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), pp 121–122)

610. Barlow to chief surveyor, 27 February 1922 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 126)

611. Under-Secretary for Lands to commissioner of Crown lands, 14 February 1922 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 123)

for settlement'.⁶¹² These concerns were echoed by field surveyor P W Barlow, who wrote that he had been told to 'make a provisional scheme of as large an area of suitable land for settlement as possible' in the Tauranga and Waimana Valleys. Changing to theodolite surveys meant that there was 'very little chance of us having any area ready for settlement before the winter sets in'.⁶¹³ Skeet told Brodrick that he acknowledged the 'difficulty of giving a permanent title on a compass survey', but 'when such title may not be wanted for much of the country it is a question whether the benefit of a costly survey is warranted'.⁶¹⁴ Skeet had come to this conclusion because surveyors going out on the land had begun to reveal that much of the land that would be awarded to the Crown was in fact unsuitable for settlement, which raised doubts about whether a full survey by theodolite was necessary.

Did Skeet's recommendation to survey all of the blocks with cheaper magnetic compass surveys represent a missed opportunity on the part of the Crown to reassess its undertakings to Maori owners? Crown counsel argued that Skeet only considered how magnetic compass surveys could be used in the Crown's plans to open the land for settlement: 'It is not appropriate to extrapolate Skeet's preference for a cheaper survey method for certain categories of Crown land onto how Maori land should have been surveyed'.⁶¹⁵ But Skeet said such surveys could be used for 'the whole country' (the former reserve), which included both Maori land and Crown land. As chief surveyor and commissioner of Crown lands, Skeet had conflicting responsibilities, and juggled the requirements of opening the Crown's land as quickly as possible with the need to set standards for surveying all blocks in the scheme. Brodrick, in contrast, only considered the effect compass surveys would have on the Crown's award.

Crown counsel similarly submitted that '[m]agnetic surveys were not appropriate when land was to be farmed or used for settlement purposes'. It was not until 1924, counsel said, that more inexact survey plans could be used to issue certificates of title registered in the system (recorded as 'limited as to parcels'); even then, a full survey plan was necessary for full registration.⁶¹⁶ In particular, the Crown's argument was that Maori needed land transfer titles for farming, because without such titles they would never be able to raise development finance.⁶¹⁷ As we noted above, Ngata had already refuted that theory in 1921: nothing short of Crown financial assistance and business expertise would enable the Maori owners to set up successful farming in Te Urewera, no matter what their titles. As we shall see in chapter 17, land transfer titles were not necessary for *the Crown* to lend

612. Chief surveyor to Under-Secretary for Lands, 22 February 1922 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p124)

613. Barlow to chief surveyor, 27 February 1922 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), pp126, 128)

614. Chief surveyor to Under-Secretary for Lands, 22 February 1922 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p124)

615. Crown counsel, closing submissions (doc N20), topics 18–26, p 65

616. Crown counsel, closing submissions (doc N20), topics 18–26, p 65

617. *Ibid*

money for farming. Indeed, state development schemes deliberately ‘stepped over’ title problems. Skeet, therefore, had identified a reasonable alternative; one that was only rejected because it did not suit the Crown’s objectives. Having said that, the Crown was required to fulfil the promise it had made to the Maori owners unless it sought to renegotiate as a result of altered circumstances, so Brodrick’s intervention should have meant that Maori owners still got their titles registered in the land transfer system, for which they were paying in the form of substantial amounts of land.

Some of the Crown’s assumptions about the necessity for land transfer titles were exposed with the revelation in 1922 that much of the land it would acquire from the scheme was not of a settlement quality; this was one of the most crucial developments during the scheme’s implementation. The Crown’s plans had been based on Wilson and Jordan’s 1915 report, which suggested that 370,000 acres could be opened for pastoral farming. When the surveyors began laying out blocks in the Waimana Valley in 1922, in some of the highest quality land for farming in the whole area, some false assumptions were quickly revealed. In July 1922, Barlow noted the inaccuracies of the Wilson and Jordan report for the former Tauranga block: ‘I beg to state that I disagree entirely with Mr Wilson’s opinion of this country and find the country to be generally very broken with precipitous faces falling on either side to the river.’ Barlow recommended ‘the postponing of any scheme’ to sell the Crown land on the market.⁶¹⁸ In August, Armit reached a similar conclusion about the rest of the land in the valley, which was ‘not very great on account of the steep loose nature of the surface.’⁶¹⁹

Based on these assessments from his surveyors, Skeet was soon moved to report to Brodrick that the land Maori owners were to take up along the river fronts faced a serious risk of erosion if they were de-forested, which would increase the likelihood of flooding of the ‘low-lying’ areas of the Rangitaiki plain. Given this, he recommended that the Crown ‘purchase their interests, as I am convinced that neither the Natives or Europeans can make any profitable use of this land’. Also, in his view, the few blocks of Crown land that had been prepared should not be placed on the market. The inevitable – but remarkable – recommendation followed: ‘the question now arises as to whether, in view of the established facts, it would not be advisable to abandon the settlement scheme.’⁶²⁰

The detailed work of the surveyors signalled the first major shift away from the Crown’s plans for settlement and towards a new focus for the land: water and soil conservation. Although retaining some of the land for conservation purposes had been factored into the Crown’s planning from the beginning of purchasing, and flagged in Wilson and Jordan’s 1915 report, this was the first time that Crown officials seriously contemplated the wholesale abandonment of the settlement scheme

618. Barlow to chief surveyor, 18 February 1922 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), pp 28–29)

619. Armit to chief surveyor, 1 August 1922 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 134)

620. Commissioner of Crown lands to Under-Secretary for Lands, 16 August 1922 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), pp 135–136)

in favour of retaining the entirety of the Crown's award in its present condition. In April 1923, Skeet (and other authors) further confirmed their assessment, which he reported to Brodrick: 'I think the inspection of the Urewera only shews that much settlement cannot be expected.'⁶²¹

In March 1924, 28,564 acres in the Waimana and Whirinaki Valleys was subdivided into 18 sections and placed on the market. Robertson says that only four applications were received and all were rejected by the Auckland Land Board.⁶²² Three further sections were prepared for the Waimana Valley (totalling 3,322 acres), in the former Parekohe block, but no applications were received and they were withdrawn.⁶²³ Despite extensive advertising, only three leases were taken up, and in July 1924 the decision was made that it was best to withdraw all of the Crown's remaining bush-covered sections from the market.⁶²⁴ Alexander McLeod (Guthrie's successor as Minister of Lands) announced the following year that it was unlikely any further land would be made available to the public. It would instead be retained for conservation. The *New Zealand Herald* commented, 'far from any progress having been made toward the utilisation of the Urewera land, the last 12 months has seen a retrogression in policy.'⁶²⁵ This did not mean, however, that its Te Urewera lands appeared any less valuable to the Crown. As we noted in chapter 13, the Director of Forestry was very enthusiastic in 1923, urging that the national interest would be well served by 'a permanent forest, to be used for timber-crop production, water conservation, stream-flow regulation, subordinate sylvo-pastoral settlement by Europeans and Maoris and for national recreational and sporting purposes.'⁶²⁶ Although the Crown's priorities were changing, the land was no less valuable to it.

621. Commissioner of Crown lands to Under-Secretary for Lands, 24 May 1923 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p140); Skeet, Murray, and Roberts to Under-Secretary for Lands, 10 April 1923 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), pp137–139)

622. Robertson, 'Te Urewera Surveys' (doc A120), p135

623. Commissioner of Crown lands to Under-Secretary for Lands, 18 February 1924 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p145); Carr to Native Under-Secretary, 30 May 1925 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(c)), p283)

624. Cleaver, 'Urewera Roding' (doc A25), p77; Klaus Neumann, "'... That No Timber Whatsoever Be Removed': The Crown and the Reservation of Maori-owned Indigenous Forests in Te Urewera, 1889–2000' (commissioned research report, Wellington: Waitangi Tribunal, 2001) (doc A10), p57. One lease at Te Whaiti was taken up by the local policeman and postmaster HM McPherson, while two settlers acquired some of the Crown land in the Waimana Valley. In 1935, an unforested part of another Te Whaiti section was bought by the Presbyterian Church: see Peter Clayworth, 'The Te Pahou Blocks: A Report on the Wai 725 Claim' (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A19), p35; Jeffrey Sissons, *Te Waimana: The Spring of Mana: Tuhoe History and the Colonial Encounter* (Dunedin: University of Otago Press, 1991) (doc B23), p274; Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), p473.

625. 'Urewera Settlement', *New Zealand Herald*, 6 April 1925 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(c)), p278)

626. L MacIntosh Ellis, Director of Forestry, to Minister for Forestry, 3 May 1923 (Paula Berghan, comp, supporting papers to 'Block Research Narratives of the Urewera, 1870–1930', 18 vols, various dates (doc A86(j)), vol 10, p3422)

Before the flaws in the Crown's pastoral settlement plans were revealed, even as the surveyors completed the first plans that accompanied orders for Maori-owned blocks (in the Waimana series), officials departed from the process for surveying that was laid down in the Act. Following Brodrick's intervention, Skeet had instructed field surveyors in February 1922 'to make all surveys by theodolite in the Urewera Country'.⁶²⁷ But later in March, Skeet decided that to survey the Maori-owned blocks with the least possible risk (for fear that some boundaries might need to be revisited), it would be safest to begin with preliminary topographical surveys by compass, before cutting boundaries by theodolite. 'Much of the preliminary [work] was necessary to know where permanent boundaries should be, in fact I think you will find it best to have topographical [work] well ahead to avoid heavy work being run in the wrong places.' By avoiding 'unnecessary theodolite work', the Crown would save on costs.⁶²⁸ This instruction confirmed that surveying in the scheme would follow the two-step process that the commissioners had adopted in hearing Maori claims to land. All of the Waimana series blocks were signed off by the commissioners on 10 April 1922. Having conducted preliminary topographical plans for the purposes of the commission's hearings, the surveyors then went back out to the land to survey the boundaries of the blocks by theodolite. On completing these surveys, orders were then made that were sent to the chief judge of the Native Land Court, and signed between March and June 1924.⁶²⁹ This much was in keeping with what was set out in the Urewera Lands Act 1921–22.

Although surveyors did return to the land to cut the boundaries using theodolites, in accordance with Brodrick's instructions, the resultant plans that accompanied the block orders did not meet the requirements of the land transfer system (as set out in both the 1907 and the 1923 regulations). The survey plans produced for the Waimana series blocks – in fact, for all the Maori-owned blocks in the scheme – were topographical plans, based on the preliminary topographical plans prepared for the blocks by compass. Some of the plans had additional survey information added to them, namely the 'chainages' that indicated the distance between each measurement as marked out on the ground. But they failed to show some of the information required under the regulations, including traverse lines, which indicate how the position of boundaries was located. These plans were signed off by Skeet (as chief surveyor), the surveyor who had produced the plan, and at least one of the consolidation commissioners.⁶³⁰ Having refined his instructions to surveyors about how they were to carry out preliminary topographical plans, Skeet

627. Chief surveyor to Armit and Barlow, 20 February 1922 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p124)

628. Robertson, 'Te Urewera Surveys' (doc A120), p128

629. 'Urewera Consolidation Block Order Files (Ahiherua to Owaka)' (doc M12(c)); 'Urewera Consolidation Block Order Files (Paemahoe to Wharepakaru)' (doc M12(d))

630. For plans attached to block orders, see 'Urewera Consolidation Block Order Files (Ahiherua to Owaka)' (doc M12(c)); 'Urewera Consolidation Block Order Files (Paemahoe to Wharepakaru)' (doc M12(d)).

then clearly accepted these plans as sufficient for signing off awards. It is possible that Skeet and the commissioners believed they had the authority under the Urewera Lands Act to sign off on blocks using topographical plans only, because the commissioners could make orders for awards based on such plans. But proper survey plans (following the regulations) would still be needed for certificates of title under the land transfer system. Unless the surveyors returned to the land and produced new survey plans, the orders for the Maori-owned blocks would merely remain with the Native Land Court when they were sent there.

As the awards for these first blocks were made, the reality of how much land was being taken for the cost of surveying became apparent to Maori owners. Protest first emerged from Wharepouri Te Amo, who along with two others had submitted the first petition against the operation of the scheme in October 1921. In that petition, he had focused on the Crown's acquisition of land for the cost of constructing the arterial roads.⁶³¹ Survey costs soon came into his focus. At the first sitting of the consolidation commission at Ruatahuna in February 1922, Te Amo listed five main points of objection, one of which was the fact that the 'payment of survey costs [was] not discussed at Ruatoki'. The commissioners recorded their blunt response: 'Natives were advised that the time for raising the objections stated by Wharepouri had passed. Wharepouri was a member of the Ruatoki Committee and should have raised his grievances then.' On the issue of survey costs, the commissioners recorded: 'Costs were payable either in money or land. The scheme contemplated the latter method of payment.'⁶³²

Another petition originating in Ruatahuna, from Tikareti Te Iriwhiro and 175 others, included survey costs as one of their main points of objection: 'The Crown further proposes to take over areas of land to defray costs of partitioning the Maori sections, we are averse to such land being taken over for partitioning areas for the different groups and subdividing areas for the different families.'⁶³³ The commissioners' response, written two years after the petition, again indicated that in their opinion the only issue was whether the costs were met in money or land:

It is considered that it was to the Native interests that Survey costs should be liquidated by a payment in cash. Opportunity was given to all to pay costs for their surveys. Two were known settlers and groupheads did express their desire to pay cash and gross areas were accordingly set apart for them. They subsequently reconsidered their decisions and were only too pleased to be able to keep their money to assist in the development of their holdings.⁶³⁴

631. Wharepouri Te Amo, Te Wharekiri Pararatu, and Pomare Hori to Parliament, 5 October 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 201–202)

632. Urewera minute book 1, 22 February 1922 (doc M29), pp 31–32

633. Tikareti Te Iriwhiro and 175 others to Parliament, [circa September 1922] (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 219)

634. Carr and Knight to Native Under-Secretary, 10 September 1924 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 220)

What these petitions underline is that the Maori owners had never had an opportunity to consider or consent to the extent of the survey costs, and now they were confronted with the reality of their new blocks as they were laid out on the ground. Not unnaturally, much alarm was felt about the extent of land going to the Crown to pay for the surveys. As we discussed earlier, opposition to losing land for surveys had a long history in Te Urewera. It had only been 15 years since two-thirds of Matahina c and c1 went to the Crown to pay for survey costs (see chapter 10).

The commissioners faced their biggest resistance from Ruatahuna. Te taha apitihana leaders threatened a total withdrawal from the scheme because of the number of things they had not been made aware of at Tauarau, including survey costs. In November 1922, Pihi Te Pika – one of the Ruatahuna leaders who supported the scheme – told the commissioners that te taha apitihana had (at a large hui at Ruatahuna) ‘determined not to receive the Comm[ission] until their petitions are definitely dealt with.’⁶³⁵ As we have seen earlier, te taha apitihana leaders then refused to submit their claims to the commissioners for consideration, beginning a stand-off which lasted for the duration of 1923.

The solution arrived at by the commissioners sought to remove this point of contention. In the course of writing our report, we discovered a previously unnoticed amendment to the Urewera Lands Act, passed in August 1923, which we recently put to the parties for comment. The Native Land Amendment and Native Land Claims Adjustment Act 1923 allowed the commissioners to make orders for Maori-owned blocks based on ‘a compiled plan certified by the Chief Surveyor as sufficiently accurate for the purpose.’⁶³⁶ Section 17 of the Urewera Lands Act was amended so that the commissioners could direct surveyors to undertake surveys ‘for the purposes of this Act’. In its response to our call for submissions, the Crown included evidence from Land Information New Zealand, explaining that compiled plans are ‘prepared from data currently held within the cadastral record, using direct adoption and/or calculation between *existing* positions’ (emphasis in original).⁶³⁷ In other words, existing survey information was used to produce a compiled plan.

Apirana Ngata explained in Parliament in August 1923 that the purpose of the amendment was to allow cheaper surveying methods so as to end the standoff with te taha apitihana:

it is recognized that the position with regard to the Ruatahuna Natives is a difficult one; but I am sure we have in the clauses before us all that can be done at the present time to meet their requirements. One of their chief troubles was the claim made by the [Consolidation] Commission to take a further area of land on account of the surveys.

635. Bassett and Kay, ‘Ruatahuna’ (doc A20), p 143

636. Native Lands Amendment and Native Land Claims Adjustment Act 1923, s10(1)

637. Land Information New Zealand, ‘Cadastral Survey Guidelines: A National Manual for all Registered Surveyors’, 2nd ed, May 1999, p 14 (Crown counsel, memorandum, 13 February 2012 (paper 2.905), app c)

The 1923 Amendments to the Urewera Lands Act

8. Operation of orders—(1) . . .

(2). The order as so drawn up shall have endorsed thereon or annexed thereto a plan sufficient for the purposes of the Land Transfer Act, 1915, *or a compiled plan certified by the Chief Surveyor as sufficiently accurate for the purpose*, and shall be authenticated by the signature of at least one Commissioner, and countersigned by the Chief Judge of the Native Land Court, and sealed with the seal of that Court.

17. Crown to survey—The Crown shall, on the requisition of any Commissioner or of a Judge of the Native Land Court, undertake all surveys required for the completion of any order under this Act. Any requisition heretofore made in anticipation of this Act coming into force shall be deemed to have been made under this Act. Any plan prepared may be approved by a Commissioner or Judge, and the provisions of Part XXI of the Native Land Act 1909, shall apply in all other respects as if the requisition for survey had been made under that Act. *Where the Commissioners think it expedient they may authorize any surveyor to undertake a survey required for the purposes of this Act.*

[The words in italics in section 8(2) and section 17 were inserted by section 10(1) and section 10(3) respectively of the Native Land Amendment and Native Land Claims Adjustment Act 1923.]

That was due to the requirements of the Urewera Lands Act with regard to the issue of Land Transfer certificates to the family groups, whose interests were aggregated and allocated. The Commission suggested that to meet that difficulty a compiled plan might be used for the purposes of issuing the title; and the provisions in clause 10, so far as the Ruatahuna Natives are concerned, will mean the saving for them of about five-eighths of their area. The surveys will cost them very little, if anything, and they will be enabled to get their titles as soon as the other groups of Natives, who are getting proper plans prepared for endorsement on their titles.⁶³⁸

Ngata thus concluded that the compiled plan would be cheaper than a full survey and that this would overcome one of te taha apitihana's main points of opposition.

Crown counsel submitted that this amendment was made specifically for the purposes of settling the stand-off with te taha apitihana, and not to provide cheaper surveying methods throughout the scheme. Counsel also disputed Ngata's interpretation of the amendment, implying that the cheaper process of compiling a plan for the Apitihana block was just an interim step for the purpose of

638. Ngata, 25 August 1923, NZPD, vol 202, p 551

making a ‘composite title’ order.⁶³⁹ Thus, there would be no real savings for the Maori owners because it still had to be followed by a full survey: the 1923 amendment only allowed for the commissioners to make block orders, and did not allow for registration of such orders in the land transfer system without a full survey of the blocks by theodolite. According to the Crown’s reasoning, the amendment was simply passed to allow the commissioners to make orders for the Apitihana blocks as quickly as possible, once the commissioners had resolved the issues raised by Te Apitihana leaders. The commissioners directed surveyors to produce a compiled plan based on the preliminary topographical plans used in hearing the claims of Maori owners for land. These plans were not based on earlier surveys but rather on fresh topographical survey work, which had started shortly after the commission began its hearings in the Ruatahuna district.

Crown counsel’s reading of the survey plans produced for the Te Apitihana blocks suggested that having made these orders – and having seen off the opposition of Te Apitihana leaders – surveyors then returned to the blocks and cut the boundaries by theodolite, which was completed in 1926. The survey plan for the Apitihana blocks was altered to show additional survey information:

The diagram on the Apitihana order shows the land divided into 3 different portions, all separate from each other, and without the survey data included on the boundaries of each portion of the block as is found on the other Urewera consolidation orders, but it does include survey data down one side of the order. Each part of the block on the Apitihana order contains an annotation showing a reference to the relevant survey plan for each portion.⁶⁴⁰

Counsel maintained the Crown’s overriding position from the original submissions: ‘The intention of the 1921–22 Act was to provide Maori awardees with Land Transfer Act certificates of title.’⁶⁴¹ In other words, land transfer title was a promise that the Crown had made to Maori owners and from which it could not resile.

Although the 1923 amendment was made to resolve the standoff with te taha apitihana, the process did not play out as described by Crown counsel. Under the amendment, Skeet was given the authority to sign off on compiled plans. In their search for a solution, the commissioners must have sought advice from Skeet, as chief surveyor, or possibly from some of the surveyors who were working on the ground. At any rate, they formed the view that a compiled plan could be used to make orders for blocks, and that this would satisfy at least some of the objections being made by te taha apitihana leaders. Many of the owners would have been aware of the subdivisional survey of the Ruatahuna blocks that had taken place in 1919, which was a compass survey and very cheap by comparison to what

639. We suspect that the Crown confused a ‘composite title’, which was the list of all owners of the three Te Apitihana blocks in a single title, with a ‘compiled’ plan. The order would have remained a composite title, regardless of whether it was supported by a topographical plan or a full survey plan.

640. Crown counsel, memorandum (paper 2.905), p 6

641. *Ibid*, pp 1–9

took place in the scheme. When Guthrie visited Ruatahuna in 1920, owners raised the matter of the cost of the 1919 survey, and stated their objection to paying for it until the boundaries had been 'properly' fixed (after Crown purchasing).⁶⁴² Te Iriwhiro's 1922 petition objected to the Crown's plans to abolish 'the old titles and all surveys'.⁶⁴³ The 1919 survey had been carried out by Barlow, who was one of the surveyors involved in the scheme and would have been on hand to provide the necessary advice. However it was brought to their attention, the commissioners knew about the 1919 survey by 1923, and found ways to use it to end the stand-off. Skeet would presumably have told the commissioners that a compiled plan could be made using the existing survey information, and that this would result in a saving for the Maori owners. Given that he had recommended the survey of the entire scheme by compass and not theodolite, it was unsurprising that Skeet would advise this course of action; and it was equally unsurprising that both he and the commissioners would recommend an amendment to the Urewera Lands Act 1921–22, since they had already decided to depart from its process.

The 1919 survey was then used to produce a compiled plan for the Apitihana blocks, thus allowing the commissioners to make orders and end their stand-off with te taha apitihana. Unlike the surveys conducted for the reserve blocks, the records from the 1919 subdivisional survey must have survived, which made it possible for surveyors working on the scheme to produce compiled plans. Traces of the boundaries from the 1919 subdivided blocks feature on survey plans and in sketch maps in the consolidation commissioners' minute books, as shown in a map reproduced in the Tuawhenua report.⁶⁴⁴

According to Crown counsel, the 1923 'amendment did not necessarily have the effect suggested by Apirana Ngata'.⁶⁴⁵ The amendment did not allow for cheaper surveys – indeed, the Crown disputed the suggestion that magnetic surveys were significantly cheaper in any case. Nor did the amendment 'mean the saving for them of about five-eighths of their area', as Ngata had suggested.⁶⁴⁶ The Crown produced some correspondence from April 1932 in support of its interpretation. In the first letter, three consolidation officers set out a case in favour of allowing compass surveys in 'very inferior 5/- per acre land'. The reason was that 'the value affected by possible error in area as the result of such compass survey work would be small and more than offset by the saving in costs'. The margin of error would only be 'up to 4 per cent'.⁶⁴⁷ In response to this letter, the surveyor-general wrote that 'the saving due to the substitution of compass for theodolite is so small as

642. Bassett and Kay, 'Ruatahuna' (doc A20), pp 118–119

643. Tikareti Te Iriwhiro and 175 others to Parliament, [circa September 1922] (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 219)

644. Urewera minute book 2A, 24 March 1924 (doc M30), p 147; Urewera minute book 2A, 9 April 1924 (doc M30), p 221; Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two' (doc D2), map facing page 195

645. Crown counsel, memorandum (paper 2.905), p 1

646. Apirana Ngata, 25 August 1923, NZPD, vol 202, p 551

647. W Cooper, P H Jones, and M V Bell to Native Under-Secretary, 1 April 1932 (Crown counsel, memorandum (paper 2.905), app A)

to be negligible'. Of the five main types of costs in surveying land, only one was affected by the change ('traversing with theodolite and chain'). As a consequence, 'the lowering of the costs would be practically negligible' and would be 'more than offset by future trouble and expense caused by defective surveys'.⁶⁴⁸ Crown counsel took from this that, regulations aside, there was little to be gained from surveying blocks by compass.⁶⁴⁹

But the commissioners' minute books in fact show that the Apitihana blocks were charged far less for the cost of surveying than any other block in the scheme. In total, only £232 was charged for surveying the 5,690 acres of the Apitihana block, or close to 10 pence per acre.⁶⁵⁰ This was a third of the rate charged to Maori owners for the survey of their land elsewhere in the scheme (which, as we explain below, was 2s 6d per acre); a saving to Maori owners of roughly five-eighths, as Ngata predicted.

While it is likely that the commissioners arrived at this figure based on the cost of the 1919 survey (which had not been paid, but which was remitted at the beginning of the scheme), the amount charged to the owners was much more than the original costs. Barlow had carried out the 1919 survey following the instructions of William Bowler, who had asked for a compass survey of the blocks in order to obtain a Government valuation and to begin purchasing. The resultant cost was £597 6s 7d (with 5 per cent interest applying from 1919), or 2.5 pence per acre. This was less than a tenth of the rate applied for surveying most of the Maori-owned blocks in the scheme. One of the three portions of the Apitihana block comprised the entire Te Arohana subdivision of the former Ruatahuna block, which had cost £44 18s 9d to survey in 1919, approximately 2.5d per acre.⁶⁵¹ But the amount charged for producing a compiled plan in 1924 was £192. The 'cost of survey' was recorded in the minute book as 1 shilling per acre.⁶⁵² Just why four times as much was charged for producing a compiled plan is unknown, but it is likely that the commissioners took into account the original survey cost, plus the cost to the surveyors for producing the compiled plan, which included more boundary lines than was previously the case.

In any case it was much cheaper than the rate that Maori owners were charged elsewhere in the scheme, and further evidence that compass surveys were in fact much cheaper than theodolite surveys. Similar calculations were made for other blocks in the Ruatahuna series for which compiled plans were made, but the Apitihana block received by far the biggest discount, which was probably due to the extent of protest by te taha apitihana leaders. Ngata told Parliament in August 1923 that the saving to the owners would be about five-eighths of the land that was due to be deducted from the blocks, and the same amount was entered in the commissioners' minute books just a few months later, in January 1924.

648. Surveyor-general to Native Under-Secretary, 14 April 1932 (Crown counsel, memorandum (paper 2.905), app B)

649. Crown counsel, memorandum (paper 2.905), p 9

650. Robertson, 'Te Urewera Surveys' (doc A120), p 153

651. Bassett and Kay, 'Ruatahuna' (doc A20), pp 113–116

652. Urewera minute book 2A, 9 April 1924 (doc M30), p 178

Surveying in the Ruatahuna region did not end, even after the order for the Apitihana block was made in April 1924 (accompanied by a survey plan with the block shown in three parts). As we explained earlier in the chapter, Wharepouri Te Amo reversed his earlier opposition in March 1924 and submitted his people's claims to the commission, partly under the threat that their land would be decided for them if they did not participate in the process. Within the month, the compiled plan was produced, which allowed the commissioners to sign off on the block. By May 1925, Knight and Carr reported that 'very satisfactory progress' had been made in surveying the Maori-owned blocks across the scheme: 'The Te Whaiti, Tarapounamu and Ruatahuna surveys are well advanced and the surveyors expect to finish their work this season'. But Knight and Carr revealed that the purpose of these surveys was for the Crown to 'compile' a survey plan of its own award. The commissioners wrote: 'The plans shewing the Crown awards are being compiled as the native surveys are approved and orders in favour of the Crown will be ready for signature shortly after the Native awards are completed.'⁶⁵³

A further letter by Knight written in December 1925 confirms that, in practice, surveying the boundaries of the Maori-owned blocks allowed the Crown to define the boundaries of its own award. Knight wrote that 'Mitchell's plans of the Ruatahuna work have not yet been received but are expected early in the New Year'. He confirmed that that one of the purposes of the survey was to define the boundaries of the Crown's award:

A series of maps covering all the Urewera but excluding the native awards are being made here to ascertain the Crown award and prepare the necessary diagrams to the order. These . . . cannot be completed until Mitchell's Ruatahuna work is approved. I suggest for your consideration that one order in favour of the Crown will be sufficient.

Knight also reflected on the work done to date and suggested that the Crown's award should have been drawn up in a completely different way:

My opinion is that it would have been better to have drawn up an order for the entire Urewera Country in favour of the Crown and registered the native awards against it, this would have made the preparation of the plans of the Crown area unnecessary and saved a heap of work. Have we authority to make such an order? And if so is it too late?⁶⁵⁴

Steven Robertson argued that Knight's letter is evidence that cheaper surveying methods could have been used in the scheme. While the Maori-owned blocks required 'demarcation', he said, 'existing boundary markers and lines may have been sufficient, the limits of the survey operation would have been greatly

653. Carr and Knight to Native Under-Secretary, 20 May 1925 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development (doc A55(c)), pp 284–285)

654. Knight to Carr, 30 December 1925 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), pp 150–151)

reduced, and the expensive block-by-block deduction for survey costs obviated.⁶⁵⁵ The Crown rejected this, saying that Knight only referred to the way in which the Crown's award could be made and said nothing of the Maori-owned blocks, which still required surveying even if they had been 'registered' against the Crown's award. In any case, as the Crown observed, Carr wrote in the margin of the letter that they had 'no authority' to do what Knight had suggested.

The order for the Crown's award was made at the commission's hearing at Rotorua on 16 July 1925. The entry in the minute book on the same day stated that the Crown's award was '[a]ll that area in the Urewera Reserve' after allowing for the 'award to the Natives', estimated at about 484,000 acres.⁶⁵⁶ In its recent submission of February 2012, the Crown said that it 'has not seen a copy of the Commissioners' award to the Crown.'⁶⁵⁷ But one of the pieces of evidence the Crown included in its submission was the survey plan that accompanied the Crown's award, which states that the order was made on 16 July 1925.⁶⁵⁸ The plan was in 25 sheets and encompassed the single award to the Crown. In contrast to the plans that accompanied the orders for the Maori-owned blocks, this was a full survey plan that met all the requirements of the regulations. The award was gazetted on 23 June 1927. As will become clear, this was the only one of the commissioners' awards which met the standards of the Land Transfer Act and was registered accordingly.

The course adopted by the commissioners in surveying the Maori-owned blocks meant that the plans that were produced failed to meet the requirements of the regulations. The Crown asserts that 'the surveyors' notations on all of the Urewera consolidation survey plans of the awards to Maori show they were undertaken pursuant to the then current survey regulations.'⁶⁵⁹ This is incorrect. The Apitihana plan included 'survey data down one side of the order', as the Crown suggests: chainages had been copied onto the plan from the main survey plan. But this was not enough to meet the regulations. When surveyors went back out into the field in 1925 and 1926, they may have been cutting the external boundaries of the Maori-owned blocks but they only did so with an eye to creating the survey plan for the Crown's award. And by this stage, the process of producing topographical plans for Maori blocks had become established practice across the scheme. On 25 August 1924, the master plan for all Maori-owned blocks – entitled 'Topographical Plan of Proposed Partitions' – was completed.⁶⁶⁰ The plan was 'approved for the purposes of the Urewera Commissioners' by one of the surveyors, who signed on behalf of the chief surveyor. The 1923 amendment, therefore, appears to have had the opposite effect from that suggested by the Crown in its recent submission: topographical plans were considered sufficient for the purposes of making

655. Robertson, 'Te Urewera Surveys' (doc A120), p 136

656. Urewera minute book 2A, 16 July 1925 (doc M30), p 239

657. Crown counsel, memorandum (paper 2.905), pp 4–5

658. Plan of Urewera A block, ML 14218 (Crown counsel, supporting evidence for memorandum (paper 2.905(a)))

659. Crown counsel, memorandum (paper 2.905), pp 6–7

660. Topographical Plan B85 (Crown counsel, supporting evidence for memorandum (paper 2.905(a)))

orders for all the Maori-owned blocks. The commissioners approved the plan on 18 December 1926 – the last day of its recorded activity in the minute books.

Despite the process adopted by the commissioners (or perhaps reflecting Knight's poor understanding of this process), they continued to tell Maori owners that the survey costs set by the commission were necessary so that they could receive land transfer title. In May 1925, Ngati Whare leader Wharepapa Whatanui noted his objections to a number of aspects of the scheme's implementation, including the fact that Maori owners had to pay for the survey costs in land. Whatanui said that owners had been 'unfairly deprived of our lands inasmuch as large areas are being taken by the Crown for alleged Survey Costs and we are not being afforded the opportunity of paying for such surveys.'⁶⁶¹ Carr responded to the Under-Secretary for the Native Department about Whatanui's complaint:

It was one of the planks of the general scheme of Consolidation that Surveys were to be paid for in land as it was well understood that the Natives of the Urewera district had not the means to pay cash, and that it was desirable that they should get clear and unencumbered titles.⁶⁶²

Although it was true that Maori owners did not have the means to pay for the surveys with money, and that a general consensus was reached with the owners at the Tauarau hui that the costs should be met in land for this reason, Carr failed to acknowledge that the course adopted by the commissioners meant that Maori owners would never receive 'clear and unencumbered titles.'

The claimants confirmed to us that the titles were never registered in the land transfer system and remain as block orders registered in the Maori Land Court today.⁶⁶³ Counsel for Wai 36 Tuhoe pointed to the evidence of Mr Nikora:

The UCS [Urewera Consolidation Scheme] did not give rise to land transfer titles. The titles that were created were deemed to be by way of order of the Native Land Court, but no Certificates of Title were issued. Thus, one of the great promises of the UCS, that Tuhoe would receive titles 'as far advanced as the best Native titles in any part of the Dominion,' was not realized.

In my years of experience of dealing with land within Te Urewera I am not aware of the UCS having created one Land Transfer Act Certificate of Title. It would be a useful exercise for the Crown to survey the land title situation of Tuhoe lands to determine what percentage actually have a Certificate of Title today.⁶⁶⁴

But the Crown refuted this suggestion in its closing submissions, stating that no evidence had been presented to demonstrate any failing on its part:

661. Whatanui to Native Minister, 1 May 1925 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(c)), p 279)

662. Carr to Native Under-Secretary, 20 May 1925 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(c)), p 283)

663. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 117

664. Nikora, 'Urewera Consolidation Scheme' (doc E7), p 36

The Crown understands that it completed all of the necessary surveys to support the orders conferring title. Further, it understands that such orders for title were capable of generating a certificate of title under the Land Transfer Act, and is not aware of any reason why that did not happen or of any reason why it could not happen today. The Crown is aware that no evidence has been presented to the Tribunal on this point.⁶⁶⁵

In response to a question from the Tribunal, Crown counsel elaborated: ‘the work was done to the point where it could be transferred into the land transfer system. I don’t know why that didn’t happen, and there’s no evidence that I’m aware of, as to why that is.’⁶⁶⁶ In its recent submission on the new evidence, the Crown reiterated that all the necessary work had been done to register the Maori owners’ titles in the land transfer system.⁶⁶⁷

Knight himself noted that this core promise to Maori owners remained unfulfilled only a few years after the scheme’s completion. In September 1929, in the context of discussing the Crown’s remaining obligations to Maori owners in respect of the arterial roads, Knight commented: ‘The Crown are under an obligation to complete the Undertaking with the Native owners . . . to give them Land Transfer titles to their holdings.’⁶⁶⁸ The reason why this had not occurred was that the survey plans attached to the Maori awards did not meet the requisite standards. But even if the plans had satisfied the regulations, each owner still had to sign the plan, which provided a nearly impossible hurdle for the owners; and none appear to have done so. Further, the Urewera Lands Act did not provide an easy path to registration. The chief judge could refrain from sending title orders to the district land registrar, and then the registrar could keep blocks with more than 10 owners on the provisional register, which was over half the blocks in the scheme. All of these factors stood in the way of the Maori-owned blocks being registered in the land transfer system. This was a major failing of the Crown’s promises in the Urewera Consolidation Scheme.

But, even when Knight drew attention to the fact that the Crown was still under an obligation to see the Maori awards registered, nothing was done. It was not until Stone and Mitchell’s 1957 investigation into the Crown’s failure to construct the arterial roads that this matter came to light once again, but by this time the promise about registration of the Maori-owned blocks was no longer remembered. Yet, Stone and Mitchell confirmed why the Crown failed to meet its obligation: only topographical plans had been produced for the Maori-owned blocks, orders for which were at the Maori Land Court; the title to the Crown’s award by contrast was at the Land Transfer Office in Auckland. Stone and Mitchell did not comment further upon the matter: by this time, even those who were tasked

665. Crown counsel, closing submissions (doc N20), topics 18–26, p 66

666. Crown counsel, response to Tribunal question, 17 June 2005

667. Crown counsel, memorandum (paper 2.905), p 3

668. Knight to commissioner of Crown lands, 21 September 1929 (Crown Law Office, supporting papers on Urewera consolidation and roading (doc M31(a)), p 1690)

Stone and Mitchell's 1957 Stocktake of Maori and Crown Titles Emerging from the Urewera Consolidation Scheme

THE MAORI LAND COURT has available the Orders in respect of the various Maori awards. The plan referred to in the Orders is the Topographical Plan deposited in the Auckland Survey Office (Roll B.85). Attached to each Order is a group schedule which gives the total number of shares in the particular group and the individual interests of the various Maoris who make up that Group.

Also available at the Court is the Order for the Crown Award 482,300 acres (Urewera A Block). There was only the one Order for the whole of the Crown Award. The various plans showing the respective Crown areas that make up the total Award are attached to this Order. The Order was registered in the Land Transfer Office, Auckland.

RE Stone and DJ Mitchell¹

1. RE Stone and DJ Mitchell, 'Urewera Roothing – Urewera Lands Act 1921–22', 2 July 1957, p 4, LS22/697/4 (Crown Law Office, 'Document Bank: Urewera Consolidation and Roothing' (doc M31(a)), p 1698)

to investigate the mechanics of the scheme did not discover that the Crown was under an obligation to complete title registration. Instead, the awards remained in the Maori Land Court.

Thus, the evidence before us enables an answer to the question that the Crown said could not be answered: why were land transfer titles not issued? According to the Crown, 'There is no reason to suggest that surveys were not completed, and that title orders were not sufficient to raise land transfer title.'⁶⁶⁹ On the contrary, the evidence suggests that while full survey plans were completed for the Crown's award, only topographical plans were attached to the orders for the Maori-owned sections, and so the titles were not capable of registration. Given that key fact, the other inherent defects of the Act – which would have made registration of even fully surveyed blocks difficult – are ultimately beside the point. Yet, the commissioners had proceeded on the basis that Maori owners would be charged for surveys that met the regulations. We now turn to look at how those costs were established, and how much land was taken from Maori owners on this misguided and ultimately incorrect premise.

14.8.5 How much did the surveys cost and how much land was taken?

Crown counsel submitted that there was insufficient evidence to demonstrate how much land was taken for the costs of surveying and how these costs were

669. Crown counsel, closing submissions (doc N20), topics 18–26, p 4

established. In the Crown's view, the surviving records do not reveal how much the surveys actually cost or how much Maori owners were charged for the surveys. Two investigations into the mechanics of the scheme, conducted in 1937 and 1957, both concluded that the commissioners adopted a rate of 2s 6d per acre to calculate the amount of land that would be deducted from each block before the surveys took place. But the Crown accurately noted that the actual average across the whole scheme was 2s 8d per acre, with differences across many blocks. The figure usually used for how much land was taken (32,368 acres) was in fact an estimate, and there was, in the Crown's submission, no way to tell how much land was actually taken. The Crown's overriding assessment was that there is 'simply insufficient information available' to determine how Maori owners were charged for the cost of the surveys, let alone whether these costs were fair.⁶⁷⁰ Counsel for Wai 36 Tuhoe agreed that 'it is not easy to determine' how the survey costs were met, and put this down to 'the poor record keeping' in the scheme.⁶⁷¹

Although the records of the scheme do not make it easy to establish the facts, it is possible to answer most of the Crown's questions, beginning with the actual expense accrued by the surveyors when they were out in the field, about which the least is known. Skeet, as chief surveyor, would have advised the commissioners on how to go about estimating the cost of surveys, relying on the surveying rates set by regulations at the time and on recent experience of surveying in the Ruatoki blocks. Although the rate set for surveying in the scheme was well above the cost for surveying the Ruatahuna subdivisions in 1919, it was in line with the survey of the partitioned Ruatoki blocks. Bowler reported in March 1920 that the subdivisions of these blocks 'have been surveyed at a cost of about 2/6 per acre and the cost has been met by the Crown.'⁶⁷²

Based on the surveying regulations, Skeet would have been able to establish an approximate cost of surveying land in the former reserve. At the time, the average cost for surveying 'Native land' was just under two shillings per acre, 3½ pence more than the average rate for surveying ordinary 'rural land'.⁶⁷³ The likely reason for this difference is that Maori land often consisted of much rougher terrain than other rural land, and with more forest-cover, both of which would have increased surveyors' expenses. Regulations determined how much surveyors could expect to charge for surveying different kinds of land. Steven Robertson quoted from a letter written by Skeet in 1923, which referred to surveying rates gazetted in 1913

670. Crown counsel, closing submissions (doc N20), topics 18–26, p 60

671. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 115

672. Bowler to Native Under-Secretary, 15 March 1920 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), p 1111)

673. 'Department of Lands and Survey: Surveys (Annual Report On)'; 30 August 1921, AJHR, 1922, C-1A, p 2; 'Department of Lands and Survey: Surveys (Annual Report On)'; 1 July 1923, AJHR, 1923, C-1A, p 2; 'Department of Lands and Survey: Surveys (Annual Report On)'; 4 July 1924, AJHR, 1924, C-1A, p 2; 'Department of Lands and Survey: Surveys (Annual Report On)'; 2 July 1925, AJHR, 1925, C-1A, p 2; 'Department of Lands and Survey: Surveys (Annual Report On)'; 2 July 1926, AJHR, 1926, C-1A, p 2

as the rates ‘for surveying in the Urewera.’⁶⁷⁴ These rates covered surveys of town sections (up to one acre in size), suburban and small areas (up to 100 acres in size), and mileage rates for country lands (which were not subject to a specific area).⁶⁷⁵ Robertson said that Skeet likely referred to the mileage rates for country lands, which specified categories ranging from ‘rough and precipitous country under forest’ (£21 per mile for boundary lines) to ‘easy and flat open country’ (£7 10s for boundary lines).⁶⁷⁶ But Skeet also said that these rates were ‘subject to an increase up to 30%.’⁶⁷⁷ This was probably based on a clause in the regulations that was specific to ‘small areas’: ‘when the proper location of boundaries is hindered or delayed exceptionally by loss of ground marks or by occupation of the lands, or by defective prior surveys, the rates . . . may, at the discretion of the Chief Surveyor, be increased by not more than 30 per cent.’⁶⁷⁸ It is possible that the poor records kept from the reserve surveys, coupled with the general understanding that those surveys had been ‘defective’, led Skeet to increase the rates for surveying in the scheme.

With the rates set out in regulations to hand, and knowing the number and size of Maori-owned blocks to be surveyed, Skeet would have been able to advise the commissioners on how to calculate the amount to be deducted from each block. The average sized Maori-owned block in the scheme was around 500 acres. Although the 1913 rates set out estimates for costs based on ‘mileage’ rather than the ‘per acre’ rate set for the scheme, the earlier 1907 regulations had set area-based rates.⁶⁷⁹ Under those regulations, the per-acre rates gradually increased as blocks became smaller. For example, the rate for surveying forested blocks of 1,000 to 2,000 acres was one shilling per acre; for forested blocks of 100 to 200 acres, the rate stepped up to 2s 6d per acre.⁶⁸⁰ These area rates were updated after 1917, but the new rate for bush-covered areas was made up of a base rate for flat, open country (for example, sixpence per acre for 1,000 to 2,000 acres, and 1s 7d per acre for 100 to 200 acres), with an additional 3s 3d to be added for every chain of boundary through the forest. The flat, open country rates could also be increased by 20 per cent in areas where the terrain was steeper.⁶⁸¹ From the regulations described above, by way of example, the survey of a flat, one-square-mile

674. Chief surveyor to Frank J Hosking, licensed surveyor, Dargaville, 4 September 1923 (Robertson, ‘Te Urewera Surveys’ (doc A120), p 147)

675. ‘Survey Regulations under the Land Act, 1908’, 13 April 1913, *New Zealand Gazette*, 1913, no 28, pp 1015–1016

676. Robertson, ‘Te Urewera Surveys’ (doc A120), p 148

677. Chief surveyor to Frank J Hosking, licensed surveyor, Dargaville, 4 September 1923 (Robertson, ‘Te Urewera Surveys’ (doc A120), p 147)

678. ‘Survey Regulations under the Land Act, 1908’, 13 April 1913, *New Zealand Gazette*, 1913, no 28, p 1016

679. Robertson, ‘Te Urewera Surveys’ (doc A120), p 148

680. ‘Survey Regulations under “The Land Act, 1892”’, 29 August 1907, *New Zealand Gazette*, 1907, no 77, p 2723

681. ‘Council of the New Zealand Institute of Surveyors’, 29 May 1919, *New Zealand Gazette*, 1919, no 63, p 1620

block containing 640 acres, with three of the four edges (3 × 80 chains) completely under forest, would be charged at approximately two shillings per acre. Both the 1907 and the 1917 regulations also allowed surveyors to add travel allowances to these rates.⁶⁸² Although there is no evidence to say how long each of the surveys actually took in Te Urewera, this may have been factored into the commissioners' estimate of survey costs.

The outcome of these deliberations was that the commissioners adopted a rate of 2s 6d per acre to estimate how much land should be taken from each block. The claimants suggested that the 2s 6d per acre rate was a 'substantial average overcharge' because rates for surveying land elsewhere in New Zealand were considerably lower.⁶⁸³ Crown counsel accepted a 'prima facie case' that the Maori owners had been significantly overcharged, but concluded that there was simply insufficient evidence to establish a comparison between the cost of surveys in the scheme and elsewhere.⁶⁸⁴ But Skeet's observation that the general rates were 'subject to an increase of up to 30%' might also explain the difference between the average cost for surveying Maori land and the rate adopted for the scheme.

Although Robertson was unable to locate records documenting the amount of money expended by the surveyors over this period, the commissioners expected the cost of the surveys would match the 2s 6d per acre rate, if not in each block then across all of the blocks in the scheme.⁶⁸⁵ In February 1922, Knight instructed Mitchell that he was to keep an accurate record of how much money was expended in surveying blocks, which would match the estimate: 'the areas of the various groups are all to be reduced by areas equivalent to the cost of the survey, the same to be ascertained by you as the work proceeds.' Referring to a specific block, Knight said: 'the area equivalent in cost must be deducted from the boundary of the land awarded to this Group. 8/3½d, the price at which the Crown acquired the land, is to be taken as the basis upon which to estimate the area.'⁶⁸⁶

Tai Mitchell later wrote to Knight in February 1925 about one instance where the estimate did not match the cost. He noted that the £75 estimate for a five-mile traverse line in the Pawharaputoko block (in the Ruatahuna series) appeared to be 'somewhat high', now that the actual chainages were known.⁶⁸⁷ In most cases, the surveyors expected that their activities would produce a cost that matched the estimate. Mitchell's sole letter suggests that this was not a common occurrence, though in the case of the Pawharaputoko block the difference favoured the Crown, the survey for which only served to define the Crown's award.

682. 'Survey Regulations under "The Land Act, 1892"', 29 August 1907, *New Zealand Gazette*, 1907, no 77, p 2723; 'Council of the New Zealand Institute of Surveyors', 29 May 1919, *New Zealand Gazette*, 1919, no 63, p 1620

683. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 115

684. Crown counsel, closing submissions (doc N20), topics 18–26, pp 58–62; Crown counsel, memorandum (paper 2.905), p 7

685. Robertson, 'Te Urewera Surveys' (doc A120), p 146

686. Knight to Mitchell, 7 February 1922 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(h)), p 2596)

687. Tai Mitchell to Knight, 17 February 1925, p 2 (Urewera minute book 2A, interleaved between pp 189–190 and 191–192 (doc M30), pp 227, 230)

The only other evidence that shows how much the surveys actually cost also sheds light on the claimants' contention that the costs of surveying shared Crown–Maori boundaries were paid by the Maori owners alone. In June 1925, Knight reported to the Under-Secretary for the Native Department that £1,800 had been paid to Armit and Mitchell for a survey of the Te Whaiti blocks, which was well above the estimate of £1,599. Based on the valuation of 20 shillings per acre, 1,280 acres had been deducted from the 12 Maori-owned blocks. Knight noted that the 'utmost care' had been taken in arriving at 'a fairly accurate estimate of the cost of these surveys', and that when all the surveys across the scheme were completed the estimated and actual costs would 'agree pretty closely'. Even if the 'estimated and actual costs' did not 'about balance', as Knight hoped, he argued that the overspend in the Te Whaiti case could be justified by the benefit the Crown received from shared boundaries: 'some small portion of this amount [£1,800] will have to be borne by the Crown for the half cost of common boundary lines possibly £200 or £250'.⁶⁸⁸

The Crown pointed to this letter as evidence that it had undoubtedly 'incurred survey costs': 'it had surveyors in the field preparing topographical maps, surveying road lines, and surveying Crown blocks for settlement purposes'.⁶⁸⁹ In his letter, Knight said that the Crown could afford to wear the £200 to £250 difference because it had not (yet) paid for common boundaries; any other reading of the letter would have him recommending the Crown to pay these costs twice. The deduction at 2s 6d per acre for the Maori-owned block, however, took no account of whether the Crown might later pay part of the costs of surveying the shared boundary. In other words, the same amount of land would be deducted from the Maori-owned block at the set rate, regardless of any shared boundaries with the Crown, and regardless of whether the Crown might pay something later. Also, Knight's letter indicates that the Crown would only have to pay towards the surveying of common boundaries if the actual cost exceeded the estimated cost (which was borne by Maori alone).

At the very least, we can say that there is no evidence confirming a Crown contribution to shared boundary costs. At the most, we can say that Maori appear to have paid a set rate that was not adjusted downwards when there were common boundaries with the Crown. It is not possible to say how often the actual surveys cost more or less than the estimated rate, and therefore whether Maori owners or the Crown benefited from any difference. We reiterate, however, our earlier conclusion that when the surveyors went back to cut boundaries using theodolites, the Crown alone seems to have benefited since its award was fully surveyed and the Maori awards were left with a topographical plan. In those circumstances, it is difficult to see how any of those survey costs could have been fairly deducted from Maori-owned blocks; an outcome the commissioners could

688. Knight to Native Under-Secretary, 11 June 1925 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(g)), pp 2564–2565)

689. Crown counsel, closing submissions (doc N20), topics 18–26, p 61; Crown counsel, memorandum (paper 2.905), p 7

Surveying the Urupa, Papakainga, and Waikaremoana Reserves

Crown counsel pointed to the fact that the Crown had not imposed a charge for the surveys of the 27 urupa and papakainga reserves, which were normally 10 acres in size. But the surveying of these reserves without charge would not have made much difference to the overall survey costs. According to the 1917 survey regulations, the maximum charge for areas of hilly open country would have been around £9 8s for blocks under three acres, and £13 6s for blocks under 10 acres in size. Many urupa reserves encompassed an acre or less and the cost for surveying them would have been less than £400. As the combined worth of deductions for surveys amounted to £14,246, it will be seen that this favour towards the Urewera Consolidation Scheme owners would have equated to less than 3 per cent of the estimated survey costs. Nonetheless, we acknowledge that the Crown did not charge the Maori owners for these surveys.

In terms of the surveying of Ngati Ruapani's 14 small reserves in the Waikaremoana block (the cost of which the Crown had agreed to pay in 1923), we note the following statement in the commission minute book: 'The Comm[ission]ers agreed that Land Transfer surveys were unwarranted re these reserves & considered compass surveys adequate for all purposes. Mr Mitchell to accordingly fix these early next summer.'¹

1. Urewera minute book 1, 17 February 1922 (doc M29), p 29

hardly have contemplated when they made their original deductions that were for surveys necessary to support land transfer titles. It was not too late, however, to have returned some of that land to each Maori-owned block when, in 1929, Knight pointed out to the Government that the peoples of Te Urewera had not been given land transfer titles (despite having paid for them). Instead, nothing was done, either to enable the issuing of land transfer titles or to return some of the land taken to pay for the requisite surveys.

The rate used by the commissioners to estimate survey costs was used to determine how much land would be taken from each block, which varied depending on the size of that block and its valuation. One of the claimants' central issues was whether the costs of surveying the land were 'loaded' onto the land at two points: first in the valuations of the blocks conducted in the 1910s and, secondly, in the costs borne by Maori owners on their land (including survey costs). In their view, the Maori owners were 'paying twice' for the survey of their land.⁶⁹⁰ In brief, the claimants argued that the original valuations were set with future development costs in mind, including specific amounts for surveys and arterial road con-

690. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 113

struction. This meant that when Te Urewera peoples came to have land deducted for roads and surveys during the course of the consolidation scheme, they were essentially paying for a second time. The Crown denied that this was the case: because the land was undeveloped, Crown counsel argued, it had been appropriate to exclude these development costs from the valuation.⁶⁹¹

As we discussed in chapter 13, the capital value of land consisted of the unimproved value plus any improvements that had already been made before sale. Hence, unimproved land values would have been higher for fully surveyed land with land transfer titles, located in districts already served by roads. The absence of these features would have been taken into account in Te Urewera, even if a fair and proper Government valuation had been made. Thus, an estimate of value that took their absence into account does not mean that Maori who retained land at that value were ‘paying twice’ when they later paid for surveys or made a contribution for roads. On the other hand, as we also found in chapter 13, the unlawful and unfair ‘valuations’ that did take place in Te Urewera in the 1910s deliberately adjusted the values (and prices) downwards so as to ensure a profit for the Crown and to make any eventual settlement scheme more affordable. To that extent, Maori who retained land and had to pay later with that land for surveys and roads – still at those unlawful and discounted values – were likely surrendering more land than was fair, even if all other aspects of the contributions for roading and surveys had been fair.

But all other aspects were *not* fair, a matter on which we concentrate in this section. We also note that the differences between the valuations of the various blocks had significance in determining how much land would be awarded to the Crown. The lower the valuation, the greater the area the Crown would acquire. This had the greatest impact in places with a low valuation, such as in the Tarapounamu series, where the takings were as high as 36 per cent. This process can be explained by comparing two hypothetical scenarios (see the sidebar over).

Based on the research of Steven Robertson, the Crown disputed whether the commissioners did in fact use any kind of flat rate to estimate survey costs. In examining the amount of land taken from blocks across the scheme, Robertson concluded that ‘the rates of deduction varied from series to series and block to block’. The estimated total deduction area of 32,368 acres was valued at £14,246 for the survey of 105,342 acres, which averaged out at ‘just over 2s 8d per acre . . . slightly more than the 2s 6d calculated by Dick.’⁶⁹² Surveyor RG Dick had been the first to suggest (in 1937) that the commissioners set a rate of 2s 6d per acre. Dick had been asked to conduct an inquiry into the Crown’s failure to construct the arterial roads. He concluded that a flat rate of 2s 6d per acre ‘was charged on all areas independent of the value of the land’, but that this could only be proved through a comprehensive study. Twenty years later, in 1957, RE Stone and DJ Mitchell conducted a similar inquiry in preparation for compensation negotiations between the Crown and Tuhoe owners over the same issue. Stone and

691. Crown counsel, closing submissions (doc N20), topics 18–26, p 55

692. Robertson, ‘Te Urewera Surveys’ (doc A120), pp 146, 149

How Much Land Would the Crown Acquire?

Three areas of a block of Maori-owned land need to be distinguished when calculating the amount of land that the Crown would acquire for the cost of surveying the area that would remain in Maori ownership:

- ▶ Area A – the total area of the block before the survey charge was applied.
- ▶ Area B – the area of the block that the Maori owners would retain and which would actually be surveyed.
- ▶ Area C – the area of land that the Crown would acquire, being equal in value to the cost of the survey of area B.

The relative sizes of areas B and C would depend on the value of the land.

For example, if area A is 100 acres and the land is valued at £1 per acre (240 pence per acre), then, with a survey charge of 2s 6d per acre (30 pence), area B will be just under 89 acres and area C will be just over 11 acres. The calculation of area C can be performed as follows:

$$(100 \text{ acres} \times 30 \text{ pence} = 3000) \div (240 \text{ pence} + 30 \text{ pence} = 270) = 11.11 \text{ acres}$$

Area A = 100 acres, valued at £100

Area B (to be retained by Maori) = ~89 acres

Area C (equal to cost of survey of area B) = ~11 acres

If the land was valued at only six shillings per acre (72 pence per acre), and the survey charge was 2s 6d per acre, then the size of areas B and C would change as follows:

$$(100 \text{ acres} \times 30 \text{d} = 3000) \div (72 \text{d} + 30 \text{d} = 102) = \sim 29.4 \text{ acres}$$

Area A = 100 acres, valued at £30 (600 shillings)

Area B (to be retained by Maori) = ~71 acres

Area C (equal to cost of survey of area B) = ~29 acres

Mitchell could not uncover any records that set out ‘the basis of the deductions’, but after going through the working papers of the commission they concluded that the rate was ‘up to 2/6s per acre or based on actual cost.’⁶⁹³

Robertson was unable to offer any firm conclusions about why the rate varied from block to block, but suggested that an answer could be found in the possibility that Maori ‘effectively paid for the survey of these deducted lands in additional

693. Robertson, ‘Te Urewera Surveys’ (doc A120), pp 139, 141

land.⁶⁹⁴ In other words, this would mean that Maori owners paid for the surveying of the deducted land that was to be awarded to the Crown for the cost of both surveying and roading, on top of the cost of surveying their own land. He observed that if the 'notional rate' of 2s 6d per acre was applied to the 'gross' area of land to be awarded to Maori owners (that is, the size of the Maori-owned blocks before the road and survey deductions), the total was much closer to the actual amount calculated for these costs (£14,246) than if it was applied to the 'net' area (105,342 acres). Crown counsel suggested similarly that the rate may have been applied to more than just the land kept by Maori owners, and admitted that 'strong suspicions are roused about the amounts charged for surveys', but was unable to draw firm conclusions.⁶⁹⁵

Our examination of the commission's minute books and other evidence confirms Robertson's hunch. A number of entries in the commissioners' minute books show that they intended to set 2s 6d per acre as a standard rate for all the blocks in the scheme (with the exclusion of the Apitihana blocks). Matamua Whakamoe complained in March 1924, objecting to a taking of one-eighth of his group's block, which amounted to 2s 6d per acre (based on the block's valuation of £1 per acre).⁶⁹⁶ Two references to the 2s 6d per acre rate also appear in the minute books for Ruatahuna, in April 1924, where the survey rate for the Apitihana blocks was given as 1s per acre; whereas the cost for the Tarapounamu block would be 2s 6d per acre. Finally, the minute book also includes a series of calculations about the Kiha block, including a specific mention of the 'cost of survey at 2/6 per acre.'⁶⁹⁷

Although the commissioners intended to apply this rate throughout the scheme, a crucial error was made in calculating the block sizes at the very beginning of the process, which resulted in the Crown taking extra land from about half the blocks; and this is why the average rate was higher than had been intended. Based on an assessment of the minute books (which lists the original size of the blocks, their total value, the value estimated for the cost of survey, and how much land would be taken subsequently), it is clear that two calculations were used to establish the estimated costs. From the beginning of the scheme's implementation until about October 1923, the commissioners (or whoever was responsible for calculating the amount of land to be deducted from each block) mistakenly calculated the estimated cost based on the amount of land Maori owners were entitled to after the roading deduction had been factored in, but not after the survey deduction. From October 1923 on, the amount of land Maori would lose was calculated with only the 'net' area in mind, which meant that Maori owners would be charged for the survey of the actual area that they would be awarded. Up until then, however, they also paid for a notional survey of what they would lose.

The critical turning point appears to have been around October 1923, and certainly by the time the main schedule of blocks was compiled in the commission's

694. *Ibid.*, p 149

695. Crown counsel, closing submissions (doc N20), topics 18–26, pp 61–62

696. Urewera minute book 2A, 4 March 1924 (doc M30), p 72

697. Urewera minute book 2A, 9 April 1924 (doc M30), pp 178–179, 185–186

minute book, between April and August 1924. The blocks that were surveyed early in the process all had larger areas deducted because the 2s 6d per acre rate was applied to the 'intermediate' area (after the roading deduction). This was approximately 90 blocks, or half of the 183 Maori-owned blocks in the scheme. It is likely that the error was discovered around this time (possibly by the commissioners themselves or perhaps by the Department of Lands and Survey), and that a decision was made not to revisit those surveys already completed. Those blocks that were surveyed later in the process had proportionately smaller areas deducted (calculated from the 'net' area). This accounts for a further quarter of the blocks. For the final quarter of the blocks, we are unable to determine the method of calculation. In some cases, the blocks are too small to determine the difference. In a few other cases, such as the Apitihana blocks and others in the Ruatahuna series, the survey charge was less on account of the use of the compiled plan. The difference can be seen in the examples of the Papueru and Te Honoī blocks in the Tarapounamu series; the Crown acquired an extra 166 acres in the Te Honoī block simply through this mistake in the commissioners' calculations (see sidebar).

The mistaken calculations explain why the overall average across the blocks in the scheme is 2s 8d per acre and confirm that the commissioners did in fact intend to use a flat rate for all blocks in the scheme. In total, the Crown acquired an extra 4,000 acres than it should have from the approximately 90 blocks in which the error occurred. This was hardly a fulfilment of the scheme's promise to guarantee Maori owners security in their remaining land, and is yet another instance where an error in the scheme's administration favoured the Crown. Maori owners had been the victim of similar errors in the rim blocks, as we explained in chapter 10.

Crown counsel, however, raised doubts about how much land was actually taken to account for survey costs, noting that the usual figure – 32,368 acres – was, in fact, an estimate. Estimates were recorded for each of the 183 blocks in one of the consolidation commission's minute books between April and August 1924, before all the surveys had been completed. The Crown noted that these estimates differed from the final block orders, and pointed to the specific example of the Raroa series, in which the final size of the Maori-owned blocks increased by 1.5 per cent on the estimate. By implication, the Crown suggested that it acquired much less land than the existing research had suggested, and asked the Tribunal to investigate the matter further.⁶⁹⁸

Our examination of the final block awards confirms that there was a difference between the estimates recorded by the commission in 1924 and the final block awards.⁶⁹⁹ The difference amounted to a total of approximately 900 acres across the Maori-owned blocks. This was an enlargement of the Maori-owned blocks of just less than one per cent compared with the estimates, though we are unable to say for certain whether this difference was solely because of the survey tak-

698. Crown counsel, closing submissions (doc N20), topics 18–26, p 59

699. Robertson, 'Te Urewera Surveys' (doc A120), app, pp 151–156; 'Urewera Consolidation Block Order Files (Ahiherua to Owaka)' (doc M12(c)); 'Urewera Consolidation Block Order Files (Paemahoe to Wharepakaru)' (doc M12(d))

Two Methods of Calculating Survey Costs: The Papueru and Te Honoī Blocks

The inaccurate calculation of survey costs can be seen with the example of the Papueru and Te Honoī blocks in the Tarapounamu series.

The Papueru block was dealt with by the commissioners in April 1924. The 'gross' area of the block was 2,409 acres. A quarter (602 acres) was deducted for the cost of constructing the arterial roads, leaving an 'intermediate' area of 1,807 acres. Based on the value of the land (eight shillings per acre), the commissioners were then able to calculate that the appropriate amount of land for the survey deduction was 430 acres, which left a 'net' area of 1,377 acres. This calculation took into account the fact that the Crown would survey only the final 'net' area.

The Te Honoī block, however, was dealt with differently. After the roading deduction (744 acres), the gross area of the block (2,975 acres) was reduced to 2,231 acres. But whoever was responsible for doing the calculations at this point mistakenly multiplied the 2s 6d per acre rate by the 2,231 acres of the 'intermediate' area, leaving an estimated survey deduction that was significantly inflated: 698 acres. Had the proper method been applied, only 531 acres would have been deducted: a difference of 166 acres.

As a proportion of the original block sizes, the difference is noticeable: the owners of the Papueru block had the equivalent of 17.8 per cent of the 'gross' area deducted for surveying costs, whereas the owners of the Te Honoī block had 23.4 per cent deducted.

ings: unlike the commission's minute book, which recorded the estimated survey deductions for each block, the final block awards only note the acreage of each block. This is also because the land awarded to the Crown was not defined as separate survey blocks, but became washed up instead in one large Crown block, known as Urewera A.

It is likely that the variations in the total block size were the result of surveying practice. Surveyors were often directed by the commissioners to cut boundaries on 'good fencing lines', rather than the precise areas set out by the commission.⁷⁰⁰ This is confirmed by the 1957 investigation into why the roads were never built, which observed that the 'boundaries of each block were described in the minute books in general terms . . . The areas were approximate only'.⁷⁰¹ The result was the potential for variation between the commission's estimates and the final awards.

This conclusion is supported by the Crown's appendix to its closing submissions, which contained the estimated areas and final awards for the blocks in the

700. See, for example, the commission boundaries for blocks in the Ruatoki series, Urewera minute book 1, 16 November 1922 (doc M29), pp 223–225.

701. Robertson, 'Te Urewera Surveys' (doc A120), p 140

Waimana and Raroa series.⁷⁰² Each block in the Raroa series varied between the estimate and the final award, but in different ways: some were increases on the estimate, others were decreases. It was only on average that the Maori-owned blocks increased in size by 1.5 per cent. The other series included in the Crown's appendix, the Waimana series, lends added weight to this proposition. In total, the Waimana series blocks decreased in size, which shows that the tendency of the surveyors was not automatically to make the Maori-owned blocks bigger. There were more significant variations in the Apitihana block and the Maungapohatu series, and these account for a majority of the differences, but these were few and do not distort the overall pattern. We can conclude, therefore, that while these fluctuations worked in favour of the Maori owners across all the 183 blocks, it was not in a way that can be described as significant.

Although it is impossible to say exactly how much land the Crown acquired for the cost of surveying the Maori-owned blocks, surveyors followed the commissions' estimates within a few acres, except for a few major exceptions. 32,368 acres was the estimate across all of the blocks. If we were to assume that the increase of approximately 900 acres across the Maori-owned blocks was taken entirely from the survey areas acquired by the Crown, then the total amount of land it acquired for this purpose could have been no less than 31,468 acres. It is clear that the commission's estimates, though not exact, were followed by the surveyors in most cases within a few acres, except for a few major variations. The estimate is certainly accurate enough for our purposes, and we dismiss the suggestion made by the Crown that significantly less land was taken for the cost of surveying than has previously been understood.

There can be little wonder that the theodolite is to this day known in Te Urewera as 'Te Whatu Kai Whenua' (the eye that eats the land).

14.8.6 Conclusions – surveys and titles

The experience of Maori owners in the scheme was merely a confirmation of their worst fears about surveying and its consequences, as Te Whitu Tekau had maintained from 1872. Almost every aspect of the Crown's acquisition of 31,500 acres for survey costs can be harshly condemned; the loss of this land should be seen as part of a bigger figure – 62,436 acres – which represents the total loss of land from survey costs, including the rim blocks. Maori owners accepted the Crown's proposal at Tauarau in the belief that land transfer title would provide them with the security that had not been afforded to them under the UDNR Act, which had been primarily due to the Crown's failure to establish the mechanisms for corporate land management and self-government, and its purchase instead of undivided individual interests (see chapter 13). But the Crown did not disclose the costs involved, which gave rise to subsequent and considerable protest from a broad base of Maori owners within the scheme. Worse than this, the process designed for achieving the Crown's promised outcome was significantly flawed. The Crown derived the primary benefits from surveying in the scheme: it was the only owner

702. Crown counsel, closing submissions (doc N20), topics 18–26, app 1

in the scheme to have its title registered in the land transfer system, which Maori owners paid for out of their land.

Given these circumstances, Maori owners would have been no worse off had the Crown surveyed their blocks using the cheaper compass methods. Although the boundaries of the blocks would have resulted in a greater margin of error, they would still have received the same titles but with significantly more land. All Maori-owned blocks could have been surveyed by compass like the Ruatahuna survey in 1919, and as Skeet had recommended at the beginning of the scheme. They would have only paid a third of the costs (the charge on the Apitihana blocks) or perhaps even less (the cost of the 1919 survey). The Crown could then have surveyed its award by theodolite and paid for that survey itself. But it also should not have been beyond the Crown's abilities to come up with a system that guaranteed Maori owners their land, and made allowances for titles with multiple owners. These were the very problems that were identified by Stout and Ngata in 1907 and 1908 and that had given rise to consolidation schemes and associated innovations such as incorporation. In fact, such a mechanism of corporate ownership would have been in place had the Crown not undermined the UDNR Act in the preceding generation.

Crown counsel said that 'a fair survey charge should have been made for the surveying of the Maori awards.'⁷⁰³ This would be true in normal circumstances, but the circumstances which gave rise to the scheme meant the Crown should have ensured any costs were kept to a bare minimum. It is extraordinary that Maori owners were expected to pay one-fifth, and sometimes as much as one-third, for the survey of their remaining land. The fact that the Crown acquired extra land simply (and wrongly) for the survey of land that it would acquire anyway is a further indictment on the scheme. And the fact that Maori owners were also required to pay for the cost of surveying common boundaries is another failure. Above all, the Crown at no stage acknowledged the consequences of its purchasing programme and offered to pay the lion's share of the costs, as it should have done. Instead, Maori owners were deprived of 31,500 acres of their last remaining land, and for no benefit. Yet, the Consolidation Scheme Report had trumpeted the fact that 'useless and expensive surveys' would be unnecessary: 'The surveys necessary to complete our scheme will be Land Transfer surveys done once to enable the issue of certificates of title.'⁷⁰⁴ Crown counsel before us (in response to our questions) only went so far as to concede that the scheme's outcomes in respect of surveys and titles would have been different had it been 'carried out as it was intended.'⁷⁰⁵

But the non-sellers lost not only substantial areas of land to pay for surveys but also a quarter of their gross remaining land to pay for arterial roads. It is to the claims about that matter which we turn next.

703. Ibid, p 60

704. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 3

705. Crown counsel, response to Tribunal question, 17 June 2005

A Summary of the Tribunal's Findings on Titles and Surveys

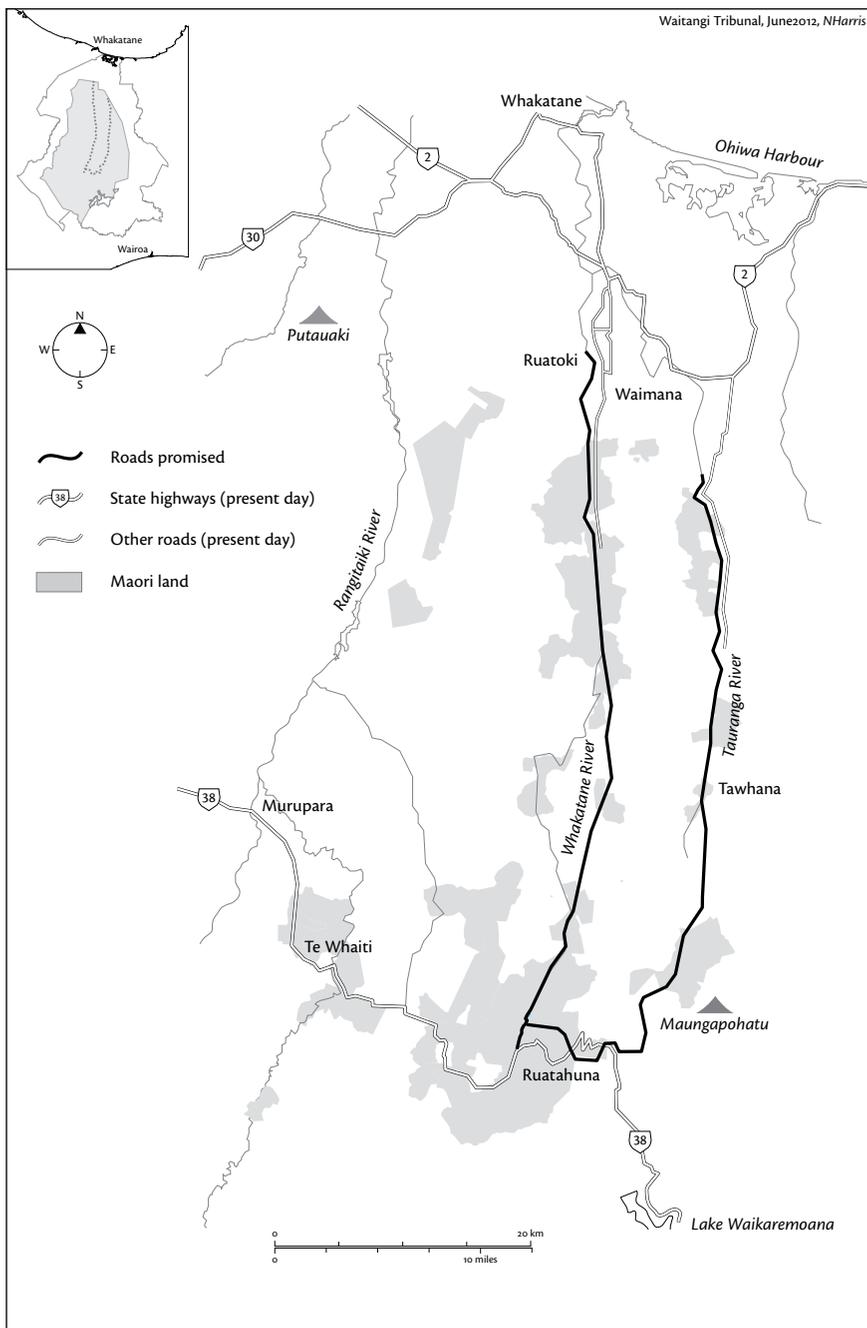
- The Crown promised land transfer titles to the Maori owners but failed to deliver on its promise.
- Only the Crown got a land transfer title.
- Land was deducted from the Maori-owned blocks to pay for a full survey but the Maori owners' titles were supported only by a topographical plan and could not be registered in the land transfer system.
- Cheaper survey methods could have been used for the same result, as with *taha apitihana*, with no actual loss of benefit for the Maori owners. Cheaper survey methods had been proposed by the chief surveyor at the beginning of the scheme but were rejected by the Government on the basis that land transfer titles were necessary.
- The set rate for the surveys (2s 6d) was higher than usual but not outside what was allowable in the survey regulations.
- Due to an error by the commissioners or officials, Maori wrongly paid at an average rate of 2s 8d per acre, resulting in the wrongful award of 4,000 extra acres to the Crown. Although the error was identified in October 1923, it was not corrected in the blocks for which survey deductions had already been made.
- The Maori owners never had an opportunity to consider or consent to the extent of land that would be deducted for survey costs, and many objected to it.
- The set rate was not lowered to account for common boundaries, whether with the Crown or other Maori-owned blocks. The evidence supports the contention that common Crown-Maori boundaries were surveyed at Maori expense, and that the Crown's award (by default) was surveyed at Maori expense. But a definitive answer is not possible because the final cost of the surveys (as compared to the estimates on which the deductions were made) is not known. From the evidence available to us, it is likely that the estimated and final costs were close, and Maori may well have paid for the Crown's land transfer title, but it is not possible to say for sure.
- As a result of survey costs, Maori lost 31,500 acres (almost one-fifth) of the land that they had retained at the beginning of the scheme. This was far in excess of what was reasonable, even if land transfer titles had resulted (which they did not). The degree of land loss was greater for the lower value blocks. Land was deducted at the old 1910s 'valuations', which had been unfair even at that time and were, in any case, out of date.
- Given that the surveys were only necessary because the Crown had undermined the collective authority of Te Urewera tribes, broken its UDNR promises, and purchased one half of the inalienable Reserve by obtaining individual interests, the Crown should have borne the full costs of the surveys. No Maori land should have been taken to pay for them.

14.9 SHOULD MAORI OWNERS HAVE CONTRIBUTED 40,000 ACRES TOWARD THE COST OF CONSTRUCTING TWO MAIN (ARTERIAL) ROADS ?

SUMMARY ANSWER: Maori owners of reserve blocks should never have been required to make a contribution of land toward the cost of constructing two main (arterial) roads, because funding for those roads depended on the Crown's flawed plans to open the reserve lands for farming settlement. Funds for main road construction in the late nineteenth and early twentieth century were generally raised through Government borrowing – not local government rates, which were used to fund road maintenance – and allocated through Government departments on the premise that more roads in certain areas would stimulate economic activity, thereby paying off borrowing through increased taxation revenue. Maori land was considered the lowest priority, unless it was being opened for settlement. These funding policies meant that the Crown only seriously considered constructing main roads through the reserve lands once a decision had been made to proceed with a consolidation scheme, which was only made possible when the Crown had set aside its commitments under the UDNR Act and begun purchasing in the reserve.

In the lead-up to the consolidation scheme, however, Maori owners continued to believe that the Crown would fund road construction following the terms of the UDNR Act and associated agreements, which had established a precedent for full Crown funding that was quite unlike general policies in existence at the time. The agreement emerged from the stand-off between Te Urewera leaders and the Crown in 1895 about the planned route of a road between Galatea, Ruatahuna, and Waikaremoana. Although these leaders (through Te Whitu Tekau) had resisted the introduction of roads into Te Urewera, they had begun to see the potential economic benefits. The Crown, for its part, wanted a road for strategic reasons and possible gold prospecting and tourism opportunities. The Urewera District Native Reserve agreement allowed the road to go ahead at the Crown's expense: local people would be given employment on the road's construction and the road itself would be vested in the Crown. The road was paid for (over a period of six years) from a limited Government fund available for roads in 'backblock' areas of New Zealand on the back of this agreement.

Although the agreement made no commitments to future road construction, it established the principles by which future agreements could be reached, which Maori owners soon called upon as they became increasingly firm advocates of roads to assist the economic development of their lands. But the Crown rejected these requests, because it had begun developing plans to 'open' the reserve lands for large-scale Pakeha settlement. These plans included the establishment of a network of roads that would primarily service settlers, funded through 'loading' construction costs onto the price paid by settlers for land they purchased from the Crown. Instead of bringing its purchasing to an end, and constructing the network of roads for settlers, the Crown decided to wait until further purchasing in reserve blocks was no longer possible. Maori owners – particularly Tuhoe at Ruatoki – continued to seek an extension of the UDNR arrangements through assistance with



Map 14.5: Arterial roads promised in the Urewera Consolidation Scheme and roads built subsequently

Source: Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme' 31 October 1921, AJHR, 1921, G-7

road construction. In the absence of any assistance, they began this work on their own initiative in 1918.

The funding system for road construction in place at the time meant that the financial viability of arterial roads as part of the consolidation scheme would be heavily dependent on opening for farming the land awarded to the Crown. However, politicians involved in negotiations continued to assert that, because Maori owners would derive half the benefit, they should meet half the cost in the form of a contribution of land. This cost was initially estimated as £64,000. Following early negotiations at the Tauarau hui, and to reflect the relative interests of the Crown and Maori owners in the reserve, the contribution of Maori owners was reduced from £32,000 to £20,000; the equivalent of approximately 40,000 acres, or one quarter of the land Maori-owners were entitled to at the beginning of the scheme. This arrangement was not akin to a funding agreement with a territorial authority under existing roading policies, as Crown counsel argued: the relevant authority – the General Committee – had such a brief life that within a few years the Crown would deny it had ever existed. It was unable to negotiate whether, in light of the UDNR Act, it should make a contribution and, if so, its amount and how it would be made. Having rejected requests made by Maori owners over the past 13 years for more roads in the reserve, and having purchased into the reserve on a massive scale for the purposes of settlement, the Crown should have done more to fund the entire cost of the arterial roads.

The Crown's promise to construct roads was not contingent on the success of a settlement scheme. When it became clear that the roads were not to be built, the Crown must surely have immediately returned the contribution made by Maori owners. The Crown's failure to fulfil its promise is made worse by the predictability of the outcome. The flaws in the Crown's plans were revealed as construction began in 1922, which showed the actual cost would be several times greater than the original estimate of £64,000, and instead between £173,000 and £240,000. The revised cost, combined with the revelation that the Crown's award would not serve its original plans, saw the Department of Public Works withhold further funding; officials once again adopted the position that funding would be discontinued because the roads would only serve Maori lands. By 1930, the last of the road work was abandoned, without reference to the Crown's promises in the scheme. Between a quarter and a third of the promised roads were built; Maori owners had lost a quarter of their remaining land to pay for them.

The owners of the newly consolidated blocks did not quickly forget the Crown's promises. By the late 1930s, their leaders began pressing the Government for answers about the non-completion of the arterial roads. But it was two decades before the Government responded to their protests – a quite unreasonable length of time. A settlement was finally agreed in 1957.

In 1958, the Crown, with the consent of Tuhoe, created the Tuhoe Maori Trust Board, and paid to it the sum of £100,000, plus interest from the time of the agreement until the payments were actually made. That sum was calculated basically as the value of land taken at the 1922 valuation (itself dubious), plus 5

per cent interest compounded annually. This produced a figure of £113,400 which the Crown rounded down for reasons not disclosed to £100,000. The problems we have with this settlement are that it did not attempt to revalue the land, the Crown refused to countenance the possibility of the return of land, and it took no account of the long-term economic and social consequences for the Maori-owned blocks and their owners of the failure to build the arterial roads. It was an unfair settlement.

14.9.1 Introduction

A cornerstone promise of the Urewera Consolidation Scheme was the construction of two main, or 'arterial', roads along the Ruatoki and Waimana Valleys. As a 'contribution' toward the cost of constructing these two roads, the Crown acquired approximately 40,000 acres – or £20,000 worth – of Maori-owned land. Aspects of these roading arrangements were discussed in the lead-up to the Taurau hui in August 1921, and were included in the Consolidation Scheme Report and Urewera Lands Act 1921–22 for implementation by the consolidation commissioners and the Department of Public Works. Forty thousand acres amounted to nearly one-quarter of the land that remained in Maori ownership at the beginning of the scheme, and £20,000 equalled nearly a quarter of the value of the remaining land. This land – as with the land taken for survey costs – was 'deducted' from each of the 183 Maori-owned blocks (excluding the papakainga and urupa reserves), and was washed up in the Crown's award of 482,300 acres in 1927. The promised roads, however, were never completed. Although survey and construction work began in earnest alongside the hearings of the consolidation commission, this work quickly tapered off. In 1930, when the last work ceased, only part of the roads had been finished.

The Crown conceded in our inquiry that its 'failure to provide the promised roads was fatal to the integrity of the scheme and significantly prejudiced Urewera Maori.'⁷⁰⁶ Also, it acknowledged that this failure was a Treaty breach.⁷⁰⁷ We welcome this significant concession. The claimants, however, maintained that the Crown should never have sought a contribution towards roading in the first place. As with survey costs, roading costs were already 'loaded' onto the land valuations, which in effect meant they were paying for the roads for a second time in the scheme.⁷⁰⁸ We have already noted that we do not accept this argument except in the broadest possible sense: a proper Government valuation would have taken into account the lack of roads in Te Urewera in the 1910s. The system of valuation in force at the time meant that the land was worth less because it lacked roads, and even a proper Government valuation would have taken that into account. It will be recalled from chapter 13 that this was a plank of the Crown's purchasing

706. Crown counsel, closing submissions (doc N20), topics 18–26, p 3

707. *Ibid*, pp 6, 98

708. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 113; Tuawhenua claimants, amended statement of claim, 3 March 2003 (claim 1.2.12, SOC 12), p 89; counsel for Ngati Whare, closing submissions (doc N16), pp 157–158

policy. It refused to build roads while the last possible individual interests were being ‘combed out’, because roads would have raised the value of the land and the prices paid to Maori owners. Nonetheless, the so-called ‘valuations’ made in 1910 and 1915 were calculated – and, we have found, discounted – more with a view to an affordable settlement scheme than the value of the land (or, for that matter, the Crown’s Treaty obligations to the peoples of Te Urewera). Thus, while the values were set and discounted by the purchaser in a process that was flawed, we cannot find that the claimants paid twice for roads that were then never built.

But the claimants also said that the Government’s national system of funding main road construction in the early part of the twentieth century meant that the Crown should have met all of the costs itself: ‘The policy was that arterial roads for the benefit of the public were constructed at the cost of the public.’⁷⁰⁹ The Crown firmly denied this point. Crown counsel submitted that it was reasonable for the Crown to seek a contribution because funding was only available where the Government was able to ‘recoup its costs’, either through rates (collected by local government) or through the Crown on-selling land to settlers at a higher price. Without a contribution, the Crown told us, it was unlikely that roads would have ever been built in the former reserve lands.⁷¹⁰

So, the first question for the Tribunal is whether the Maori owners should have made any contribution toward roading at all. Because there was no common ground at all between the parties on this issue, we begin by looking in some detail at how the Crown funded main road construction throughout New Zealand before 1921. Its policies changed according to shifting priorities; their application in Te Urewera also shifted as the relationship between the Crown and the peoples of Te Urewera evolved. At the same time, as will be clear from earlier chapters, Te Urewera peoples looked increasingly upon roads as a development opportunity rather than a threat to their autonomy. By 1921, they had been in favour of introducing roads through their lands for a generation.

14.9.2 What were the Crown’s national roading policies and how were they applied in Te Urewera up to 1921?

The first roads to extend into the border regions of Te Urewera in the 1870s, and the early attempts of politicians and officials to test the policies of Te Whitu Tekau, occurred in the context of wider Crown attempts to create a network of roads across the North Island. At the conclusion of the New Zealand Wars, Julius Vogel launched his Public Works programme, which was inaugurated in 1870 and set much of the Crown’s early policies on how roads would be funded and in which areas of New Zealand they would be built. Although railways were at the centre of Vogel’s programme, roads served two needs relatively easily: opening land for settlement and breaking the isolation of Maori communities located in remote areas. Te Urewera was seen as perhaps the most remote area of New Zealand.

709. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 132

710. Crown counsel, closing submissions (doc N20), topics 18–26, pp 89–94

Te Whitu Tekau, however, maintained an opposition to roads as one of their foundation policies (see chapter 8). Tamaroa Nikora related to us the saying remembered by Tuhoe on marae today: ‘Kaua te ruri, kaua te rori, kaua te rihi, kaua te hoko’ – no surveys, no roads, no leasing, no land sales.⁷¹¹ As we discussed in chapters 8 and 9, this opposition to roads in the Rohe Potae held firm until the mid-1890s, when the UDNR agreement was negotiated and Te Urewera leaders began to appreciate the key role that roads could play in the economic development of their peoples. By the time that the UDNR Act was passed in 1896, Tuhoe leaders had agreed to roads and soon began to actively request them when the Crown failed to build them.

As part of the UDNR agreement, Te Urewera leaders were to have a significant say about the routes taken by roads, and their peoples were to be employed in building and maintaining the roads; in return, they agreed that land could be taken by the Crown for those roads. This gave them more power over roads than was usual for other Maori communities at the time, which comes as little surprise since the UDNR arrangements were exceptional in a number of ways.

Also, according to the evidence of Tom Bennion, there were two key features of the UDNR agreement in terms of the funding of future roading. First, Seddon had stated in his 25 September 1895 memorandum: ‘You refer to roadworks in your district, and ask that certain sections be given for the Maoris to do, and that when the roads are finished that certain portions be given to the Maoris to maintain. These requests are reasonable, and will be given effect to.’⁷¹²

In Bennion’s view, Seddon’s undertaking was not to ‘give’ the roads to Maori to maintain in the sense of either legal ownership of the roads or the responsibility of paying for maintenance. Rather, it must be understood in context as an undertaking that they would be given paid work in maintaining as well as building the roads.⁷¹³ So who would pay for roads under the agreement? Bennion suggested that the Crown’s stated intent was to build roads in Te Urewera for strategic and tourism purposes, and that it clearly planned to pay for them. Indeed, section 25 of the UDNR Act, which provided for the Crown to pay the expenses associated with the Act, may have been intended to cover paying for roads from the Consolidated Fund, since Tuhoe agreement had been obtained to stop interfering with the construction of new roads.⁷¹⁴

We think it unlikely that section 25 had such a scope but we do not need to determine this point because, as we discuss below, Crown policy was for central government to pay for main roads in any case. If there *was* a legal requirement for the Crown to pay for roads under the UDNR Act, that requirement ended when the Act was repealed in 1922 at the beginning of implementing the scheme.

711. Tamaroa Raymond Nikora, ‘Ko Wai a Tuhoe’, brief of evidence, 17 November 2003 (doc B11), p16

712. R J Seddon to ‘the persons who came hither to represent Tuhoe’, 25 September 1895, Urewera District Native Reserve Act 1896, sch 2 (Tom Bennion, ‘The History of Rating in Te Urewera’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003) (doc A130), p 25)

713. Bennion, ‘The History of Rating in Te Urewera’ (doc A130), p 25

714. *Ibid*, pp 30–31

In the meantime, the Government had developed a system for funding main road construction throughout New Zealand that remained relatively stable through to the early twentieth century. This system meant that most of the money spent on roadworks came either directly or indirectly from the Crown's 'Public Works Fund'. The money for this fund, which was created in 1870, was raised largely by overseas borrowing. The fund received regular top-ups by transfers from the Crown's 'Consolidated Fund', which was made up of various taxes, duties, and fees.⁷¹⁵ 'Government' roads were built by the Crown but were declared 'county' or 'district' roads upon completion, and were left to councils or roads boards to maintain.⁷¹⁶ Exceptions were made for long stretches of 'main roads' that ran through sparsely settled land, because local bodies could not raise much in the way of rates in these areas.⁷¹⁷ The money for maintaining roads was initially drawn from the Public Works Fund, but came from the Consolidated Fund from 1906. To pay for both construction and maintenance, Government departments and local bodies made requests each year to Parliament for money from the Public Works Fund. The rationale behind the Public Works Fund was that increased economic activity produced by works, and roads in particular, would stimulate development and produce increased tax-revenue that would off-set borrowing over time. Maori land was considered the lowest priority, unless that land was being opened for settlement.⁷¹⁸

In December 1896, work resumed on the Galatea–Ruatahuna–Waikaremoana road in the wake of the UDNR agreement and the passage of the Act.⁷¹⁹ The agreement provided a mechanism (in the form of the General Committee) to avoid a repeat of the kind of disputes that had resulted in the 'short war' of 1895 (see chapter 9). Nonetheless, the agreement contained no firm commitments on either side about any future road construction in the reserve beyond the Galatea–Ruatahuna–Waikaremoana road, as counsel for Wai 36 Tuhoe noted.⁷²⁰ It may be that Tuhoe leaders were continuing to discuss their recent transition to a position in favour of roads, and insisted on limiting the agreement to the road under construction. But the agreement also represented a significant compromise on the part of the Crown, which departed from its own established policies of funding main road construction: the Crown did not contemplate the 'opening' of the district for large-scale settlement, which Seddon had publicly renounced, yet it had agreed to build the road as part of a self-governing reserve. We note, of course, that for Seddon the road had a strategic purpose; it was to open Te Urewera for the easy passage of Government forces and the swift suppression of any further difficul-

715. WS Short to W McGregor Ross, 20 November 1917, p 3, and RW Holmes to Minister of Public Works, 12 February 1920, p 8 (Kirsten Price, comp, supporting papers to 'Timeline – Roading Policy (1916–1922)', various dates (doc M10(a)), pp 28, 181)

716. Cleaver, 'Urewera Roading' (doc A25), p 26; Public Works Act 1894, ss 103–104

717. WS Short to W McGregor Ross, 20 November 1917, pp 1–2 (Price, supporting papers to 'Timeline – Roading Policy (1916–1922)' (doc M10(a)), pp 26–27)

718. Cleaver, 'Urewera Roading' (doc A25), p 25

719. Binney, 'Encircled Lands, Part 2' (doc A15), p 204

720. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 131–132

ties. The prospect of future roading agreements was itself left open to negotiations between the Crown and the General Committee, once it was established.

The Crown maintains that no promises were made to Maori owners to construct the Rotorua–Galatea–Waikaremoana road, because the system of funding main road construction would have prevented such a promise from being made. ‘Such projects’, Crown counsel submitted, ‘were always dependent upon funding by Parliamentary appropriations year by year. In this environment, there was considerable competition for the available funds.’⁷²¹ But this point ignores the origin of the funds and their overriding purpose. Although Government departments and local councils did indeed obtain funds for roading projects through parliamentary appropriations, the priorities for expenditure were determined by the Crown.

Up to 1889, the Departments of Public Works and Lands and Survey set these priorities; funding was approved by Parliament. Between 1889 and 1901, funding came solely through the Department of Lands and Survey, which was responsible for all central government road expenditure.⁷²² This reflected the Crown’s increased focus on opening lands for settlement, which became the main focus of central government road construction in the twentieth century. But during 1897–98, the categories used to differentiate between types of road expenditure were disbanded, which left one single vote and no discernable roading policy behind the budget estimates that were presented to Parliament. This meant that the Galatea–Ruatahuna–Waikaremoana road had to be funded with a specific purpose in mind. Yet, it was funded consistently from 1896 to 1901: the total expenditure during this period was £55,766,⁷²³ averaging just under £8,000 per year, compared with total roading expenditure estimates of between £350,000 and £500,000 per year from 1897 and 1901.⁷²⁴

Given the Crown’s increased focus on making funds available to settlement areas, the continued funding of the Rotorua–Galatea–Waikaremoana road only makes sense in the context of the promise made to Maori owners under the UDNR

721. Crown counsel, closing submissions (doc N20), topics 18–26, p 89

722. Rosslyn J Noonan, *By Design: A Brief History of the Public Works Department Ministry of Works, 1870–1970* (Wellington: Government Printer, 1975), pp 263–264

723. W Hall-Jones, ‘Public Works Statement’, 2 October 1896, AJHR, 1896, D-1, p 23; W Hall-Jones, ‘Public Works Statement’, 14 December 1897, AJHR, 1897, D-1, p 10; W Hall-Jones, ‘Public Works Statement’, 27 September 1898, AJHR, 1898, D-1, p 17; W Hall-Jones, ‘Public Works Statement’, 12 September 1899, AJHR, 1899, D-1, p 22; W Hall-Jones, ‘Public Works Statement’, 28 September 1900, AJHR, 1900, D-1, p 25; ‘Department of Lands and Survey (Annual Report On)’, no date, AJHR, 1901, C-1, pp 243–244; W Hall-Jones, ‘Public Works Statement’, 16 September 1902, AJHR, 1902, D-1, p 10

724. ‘Appropriations Chargeable on the Public Works Fund, and the Government Loans to Local Bodies Account, for the Year Ending 31st March, 1898’, no date, AJHR, 1897, B-7A, p 8; ‘Appropriations Chargeable on the Public Works Fund, and the Government Loans to Local Bodies Account, for the Year Ending 31st March 1899’, no date, AJHR, 1898, B-7A, p 8; ‘Appropriations Chargeable on the Public Works Fund, and the Government Loans to Local Bodies Account, for the Year Ending 31st March, 1900’, no date, AJHR, 1899, B-7A, p 8; ‘Appropriations Chargeable on the Public Works Fund, and the Government Loans to Local Bodies Account, for the Year Ending 31st March, 1901’, no date, AJHR, 1900, B-7A, p 8; ‘Appropriations Chargeable on the Public Works Fund and Other Accounts for the Year Ending 31st March, 1902’, no date, AJHR, 1901, B-7A, p 17

Act – one of the few the Crown actually kept. After all, the Crown had persisted with the road survey in 1895 despite criticism in some quarters based on greater need elsewhere in New Zealand. Funding was made available over a number of years based on the UDNR agreement, and all parties to the agreement left the table on the understanding that road work would immediately resume, which is what occurred a few weeks later and continued through to 1901. Road surveyor Robert Reaney, reporting in 1896, gave an indication of the thoughts of Te Urewera peoples, who were ‘showing a friendliness of disposition, and an anxiety to obtain work on the roads.’⁷²⁵ The Crown did not consider opening the land for settlement as a priority in approving the funds for this project.

But in the period up to the negotiations around the Urewera Consolidation Scheme, a number of circumstances converged which meant that no other main roads were put through the reserve lands. The Crown’s decision to begin purchasing with a view to on-selling portions of the reserve to sheep farmers, coupled with the increasing focus in the priorities set by central government for funding main road construction to open new areas for settlement, meant that there would never be a revival of the UDNR arrangement in which Maori owners obtained roads but kept their land. Although it contained no firm commitments about future road construction, the UDNR agreement was open-ended so that it could be revived in special circumstances, once the General Committee was up and running and amenable to the introduction of further roads within the reserve. Maori owners in the reserve continued to believe that these terms could be revived in following years, even as the Crown began purchasing. The Crown’s policies, however, went in the opposite direction. In particular, as we observed in chapter 13, the Crown was determined not to build any roads that might increase the value of – and prices paid for – unsold Maori land. As a consequence of this, and of the Crown’s failure to keep its promises in the Urewera Consolidation Scheme (as we shall see), the Galatea–Ruatahuna–Waikaremoana road remains the only main road through Te Urewera today.

The first two decades of the twentieth century saw an increased focus placed on funding main road construction in areas of new or recent settlement. The Public Works Statement to Parliament in 1903 reported that ‘[n]early the whole of the new roads or tracks are for the purpose of giving or improving access to land recently taken up and held by Crown tenants under the various land-tenures now in force.’⁷²⁶ The Crown stood to gain from the increase in land values on land it leased to farmers, following the provision of road access. A new system was also established in which the Crown covered some of the costs of road construction by ‘loading’ these costs on the sale price (to settlers), but funds raised through ‘loading’ were only equivalent to one-tenth of the total amount voted for roading

725. Cecilia Edwards, ‘The Urewera District Native Reserve Act 1896, Part 1: Prior Agreements and the Legislation’ (commissioned research report, Wellington: Crown Law Office, 2004) (doc D7(a)), p 124

726. W Hall-Jones, ‘Public Works Statement’, 16 November 1903, AJHR, 1903, D-1, p ix

expenditure in this period.⁷²⁷ Other expenditure was appropriated from the Public Works Fund for main road construction across new or recently opened lands. In areas which already had county or district roads, new construction was seen as a lower priority.⁷²⁸

The focus on dedicating large portions of the Public Works Fund to constructing main roads across lands recently opened for settlement was given greater priority in 1908. Pressure from dairy farmers to convert existing bridle tracks and unmetalled dray roads into roads that could stand the test of carting cream to the factory (for which a metalled dray-road was a minimum requirement) resulted in a commitment to spend £1 million over four years on 'back-block' roads, announced by Prime Minister Sir Joseph Ward in 1908. Although the term was never formally defined, 'backblocks roads' seems to have been used only to describe lands being opened for settlement.⁷²⁹ The Minister of Public Works noted in 1909 that 'the construction of new roads to open backblocks is a duty that may be properly regarded as devolving upon the general Government.'⁷³⁰ From 1909 to 1918, backblocks roads remained a separate component of Public Works roading funding.

In all of its consideration to invest in the economic development of rural areas, the Crown gave little attention to meeting the roading needs of Maori communities, as Philip Cleaver has noted.⁷³¹ By and large, Maori communities did not feature in the Government's over-arching plans for economic development. Few options remained open for Maori communities who wished to develop their lands. While there were provisions allowing Maori Land Councils and Boards to borrow money to assist in road construction in the Maori Lands Administration Act 1900 (section 29(3)) and the Maori Land Settlement Act 1905 (section 11), these were for lands that would be leased by settlers. Part XIV of the Native Land Act 1909 allowed Maori Land Boards to borrow money for the same purpose, although with the incentive that the Board could apply to the Minister of Public Works for a subsidy of up to 50 per cent of the construction cost.⁷³² Although the Native Land Act did not generally apply within the reserve, leases under Part XIV of the Act were allowed, subject to the consent of the General Committee (under section 7 of the Urewera District Native Reserve Amendment Act 1909). Unless Maori owners considered leasing their land at the very least, the Government was not interested

727. See funds made available from the Public Works fund (through the 'Roads etc.' vote and the 'Backblocks Roads' vote, from 1908) and funds from the Loans to Local Bodies' Account (through the 'Roads to open up Crown Lands' vote) in the annual Appropriation Acts from 1903.

728. See, for example, W Hall-Jones, 'Public Works Statement', 28 October 1904, AJHR, 1904, D-1, p ix.

729. The term 'back-block' roads does not seem to have been defined in legislation. A close approximation is probably the class of roads given second highest priority in the Local Grants and Subsidies Bill 1914, after urgently needed improvements for reasons such as public safety. Under section 8 of this Bill, class II was defined as: 'Local Works in districts or parts of districts where settlement of Crown lands has been effected for a period exceeding three years, and where the settlers are not provided with sufficient roads.'

730. Roderick McKenzie, 'Public Works Statement', 20 December 1909, AJHR, 1909, D-1, p xiii

731. Cleaver, 'Urewera Roading' (doc A25), p 25

732. Native Land Act 1909, ss 274-276

in making funds available; they could submit petitions, but the Government's priorities lay elsewhere.

Maori owners, however, became increasingly committed to the idea of bringing more roads within the reserve in ways that foreshadowed their expectations of the Urewera Consolidation Scheme. The broad economic aims of Maori owners underwent a further shift during this period, and came into increasing focus with the rise of Rua Kenana and his community at Maungapohatu, as well as increased attention on possible gold prospecting. By 1908, they were seeking to find the best way to utilise their lands in the colonial economy. Alongside the first proposals to alienate reserve lands, Tuhoe leaders made requests for more main roads. Numia Kereru had supported leasing land, and made offers to the Government, both in March 1908, when the General Committee was first elected, and then in July, when a Tuhoe deputation visited Wellington. The leasing proposal appears to have emerged as an attempt to raise money to pay for survey costs, but also to raise funds for general development, which included roads. Kereru asked that 'main arterial roads from Waimana to Maungapohatu and from Ruatoki to Ruatahuna . . . be constructed by the State, the cost of construction to be eventually made a charge against the land to be served by the roads.'⁷³³ This was followed by two petitions in April 1909: one from Numia Kereru and 32 others from Ruatoki; the other from Te Amo Kokouri and 41 others of Ruatahuna.⁷³⁴

But at this point, Maori owners ran into the realities of the Crown's new priorities for the reserve lands, which now reflected general policies for funding main road construction. In May 1909, Judge Browne of the Wairiki District Maori Land Board advised Kereru that there was no use asking the Government to consider funding these arterial roads until a scheme of settlement had been formulated.⁷³⁵ Given his knowledge of the legislation and the current policies, Judge Browne was conscious that the only course for securing funding on the scale required for these roads was to use section 11 of the Maori Land Settlement Act (which was soon replicated in the Native Land Act 1909). Within a few days, the General Committee had proposed the leasing of 43,242 acres (an increase on an earlier proposal to lease 28,000 acres).⁷³⁶ A report on the proposed road between Ruatoki and Ruatahuna was then provided on 14 August 1909 by the district engineer, FA Wilson. This estimated that the road would cost between £6,000 and £9,000 if made as a bridle track, or between £15,000 and £20,000 as an unmetalled dray road. Wilson concluded that '[a]s the Natives will reap the most benefit, I do not consider the Government would be justified in opening the Road without the Natives contributing very substantially toward its construction.'⁷³⁷ He recommended instead that

733. 'Urewera's Awakening', *Poverty Bay Herald*, 28 July 1908, p 5 (Cleaver, 'Urewera Roothing' (doc A25), p 30)

734. Cleaver, 'Urewera Roothing' (doc A25), p 31

735. Cleaver, 'Urewera Roothing' (doc A25), p 31; Binney, 'Encircled Lands, Part 2' (doc A15), p 405; Edwards, 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)), p 88

736. Cleaver, 'Urewera Roothing' (doc A25), pp 32–33; Binney, 'Encircled Lands, Part 2' (doc A15), p 406

737. Cleaver, 'Urewera Roothing' (doc A25), p 34

£500 be made available from the Crown to survey a road line.⁷³⁸ Wilson's comments were unsurprising, given the wider funding system in existence at the time: public money was being devoted to opening new districts for settlement.

Kereru's proposed lease of reserve land to Pakeha settlers never took effect because the Crown began purchasing interests instead. Rua and a number of his supporters were appointed to the General Committee (in circumstances described in the last chapter), and consequently Crown purchasing in four blocks was approved when it came up for consideration in May 1910.⁷³⁹ But Rua was also an advocate of the potential benefits of road access, having offered labour to the Cook County Council in 1908 to assist it to complete the missing sections of the Rotorua–Gisborne stock track (this ran through Maungapohatu and Ruatahuna).⁷⁴⁰ Rua hoped that the sale of 34,000 acres in the Waimana Valley would induce the Crown to build a road between Waimana and Maungapohatu.⁷⁴¹ Kereru, according to Binney, was also persuaded to accept the sale of interests by the prospect of roads.⁷⁴² However, the Auckland district surveyor, Andrew Wilson, who had the task of valuing the lands offered for sale, concluded in his June 1910 report that the Crown should try to purchase all 90,000 acres within the valley before starting work on such a road. To do otherwise, he considered, 'would be a big mistake, as they would have to construct roads through large areas of Native land enhancing its value, and would later have to pay an increased price for the same land, made more valuable by our own roads.'⁷⁴³

In 1915, Wilson and his colleague A B Jordan argued that the roads were needed for future settler sheep farmers and that the Crown should withhold building roads (and starting settlement) until all possibilities for purchasing had been exhausted:

no settlement should be undertaken or road making attempted until the purchasing of the land has been completed, and an effort should be made to define the area each Native should be allowed to retain. Neither Natives nor Europeans should be allowed to hold the land for speculative purposes and reap the benefit of a settlement and road-making policy undertaken by the Crown.⁷⁴⁴

The vast majority of landholders in the reserve remained the original Maori owners at this stage, but their development needs – including roads – were not considered. Cleaver observes that this position had become official policy without the apparent knowledge of the native reserve's owners.⁷⁴⁵

738. Cleaver, 'Urewera Roothing' (doc A25), p 34

739. *Ibid*, pp 34, 37–38

740. *Ibid*, pp 28–29. Rua's offer was not taken up, and the stock track remained unfinished.

741. Cleaver, 'Urewera Roothing' (doc A25), pp 38–39

742. Binney, 'Encircled Lands, Part 2' (doc A15), p 431

743. Cleaver, 'Urewera Roothing' (doc A25), p 38

744. Wilson and Jordan to chief surveyor, 1 August 1915 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3' (doc D7(b)(i)), pp 145–149)

745. Cleaver, 'Urewera Roothing' (doc A25), p 40

Apart from the tortuous, decade-long struggle to get a 2½-mile road built at Ruatoki, to link Waikirikiri with a cheese factory,⁷⁴⁶ the Crown held firm in its determination not to build roads while its officials were still purchasing undivided interests in the reserve, a situation that lasted until the consolidation proposals were taken to Ruatoki for approval in 1921.

14.9.3 What commitments did the Crown make to Maori owners in respect of the roads and how did it secure a contribution in land for their cost?

The Crown's commitment to Maori owners in 1921 to construct two arterial roads as part of the Urewera Consolidation Scheme was primarily motivated by its plans to sell selected blocks to settlers on a large scale. Maori owners were led to believe that the consolidation scheme would enhance the potential for their economic development. After years of requests for roads, and given they had been refused so many times, they were more likely to agree when asked to make a contribution, especially when they had been told that it was not the Crown's policy to make funds available to meet the needs of Maori owners. Also, they had shown themselves willing to donate land and labour for the road to the cheese factory at Ruatoki (mentioned above).⁷⁴⁷ There was an increasing air of desperation to get roads, as that 10-year battle demonstrated, and they were ready to make sacrifices to attain their goal. One key question for the Tribunal is: should they have had to sacrifice ancestral land to get main roads built in Te Urewera?

From late 1919, when Jordan made the first proposal for a consolidation scheme, officials continued to maintain that any work on roads within the reserve must wait until the completion of purchasing. After receiving Jordan's plan in November 1919, Skeet advised that 'a comprehensive roading scheme' would be required before any partition or consolidation of the Crown's interests took place, 'to ensure all the partitions of the Block' had 'proper road access.' Skeet thought this process should begin after Maori settlements had been located 'within proper fenceable boundaries' and the division of the land had been made 'on proper settlement lines'; but, as with Wilson and Jordan four years earlier, he noted that the actual surveying of roadlines should be delayed as long as possible as owners were likely to ask for higher prices once the road works had begun.⁷⁴⁸

746. The Crown eventually subsidised the building of this road in 1920, in cooperation with the Whakatane County Council, but not until after the Ruatoki Maori community donated the land, formed a road themselves (for free), and then donated further free labour. Even then, the Crown's purchase agenda had effectively blocked Government support of the project for a decade, until Native Minister William Herries unexpectedly supported it after his own car got stuck on this road in late 1919: see Cleaver, 'Urewera Roading' (doc A25), pp 34–36, 43; Paula Berghan, 'Block Research Narratives of the Urewera, 1870–1930' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001) (doc A86), pp 540–544.

747. Cleaver, 'Urewera Roading' (doc A25), pp 34–36, 43; Berghan, 'Block Research Narratives' (doc A86), pp 540–544

748. Commissioner of Crown lands to Under-Secretary for Lands, 18 November 1919 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), pp 40–41)

Guthrie spoke to the Government's settlement plans when pressed by the 'large deputation' of Te Urewera leaders at Ruatoki in February 1920, explaining that he was visiting the district to ascertain 'the possibility of opening up the Urewera lands', which 'could not be done without roads'.⁷⁴⁹ But Maori owners also set out their own expectations for the opening up of their rohe. The 'large deputation' of Te Urewera leaders told Guthrie that they still needed a main road up the Whakatane Valley to Ruatahuna. Two days earlier, Guthrie had received a similar appeal from another deputation for improvements to the track between Ruatahuna and Maungapohatu.⁷⁵⁰ Both of these requests echoed the calls made 12 years earlier by Kereru and Kenana; with the rise of motor transport, such roads were needed more than ever.

By early 1921, the Crown began making preparations to construct a main road between Ruatoki and Ruatahuna as part of broader preparations for the consolidation scheme. In January, J McKinlay of the Lands and Survey Department began surveying a roadline between the existing terminus at Waikirikiri and Ruatahuna. McKinlay's work prompted an immediate complaint from the leader Te Pouwhare Te Roau, who said he had not been consulted about the route of the roadline, and asked for it to be shifted so that it would run along the base of the hills, so that it would not interfere with their cultivations. Both Skeet and McKinlay dismissed this objection and argued that the route selected was the best from an engineering perspective.⁷⁵¹ Ngata reassured Maori owners that the roads constructed as a result of the consolidation scheme would be to their benefit when he met with them at Ruatoki in February 1921. He observed that 'they were within thirty miles of Ruatahuna, the centre of the Urewera, and sixty-five miles from Waikaremoana. If the Crown consolidated its land purchases it could open up a fine road to Waikaremoana and it would be the finest tourist route in New Zealand, apart from opening up the country'.⁷⁵² This was not the last time that the forthcoming scheme and roads were presented to Maori owners together in the same positive light.

The May 1921 hui at Ruatoki, featuring Ministers Coates and Guthrie, continued to develop Maori owners' expectations for the scheme, but also established the principle that they would make a contribution toward the cost of road construction. One of the opening requests made by Tuhoe leader Fred Biddle was that, as part of the consolidation scheme, 'a road should be laid out through these lands so that we may be enabled to do a lot of things we cannot do now'.⁷⁵³ Maori owners indicated they were eager to see the immediate construction of the roads, as Apirana Ngata remarked (on the second day of the hui) that he 'found the

749. Cleaver, 'Urewera Roothing' (doc A25), p 43

750. Ibid

751. Ibid, pp 50–51

752. 'The Urewera Lands', *Whakatane Press*, 19 February 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(c)), pp 419–420)

753. 'Meeting of the Representatives of the Urewera Natives with the Honourable DH Guthrie, Minister of Lands, and the Honorable JG Coates, Native Minister, at Ruatoki on the 22 May, 1921, 18 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 123)

Maoris exercised here yesterday with the question [of] whether the laying off of the roads should or should not precede the consolidation scheme'. But both Ngata and Guthrie told Maori owners that in order to ensure the roads' construction as part of the scheme, they would have to make some sort of contribution; Maori were co-owners of the reserve, alongside the Crown, and had to meet a proportionate amount of the costs.

Ngata raised the subject first:

I put it to the friends here that they would have to face a contribution to the cost of the roading. I don't think it would be fair to put the non-sellers on a proportionate basis with the Crown. It is the duty of the Crown to lay off general main roads through the lands of the Dominion, but it would appear quite fair that the Maoris [*sic*] should contribute something, because I don't think any community will benefit to the same extent as they will.⁷⁵⁴

Guthrie endorsed Ngata's speech, describing the idea of a contribution as 'a very fair one indeed':

The Government lands have got to bear their share of the roading, and it is only fair that the Maori lands should do the same. But I recognise as Minister of Lands, that when the money is required for the roading the Government should find it in the meantime, but it will have to be paid back later on by those who take up the land [that is, by loading some of the costs onto settler purchasers of land in Te Urewera]. I am also aware that the payment of a contribution in money for the carrying out of the roading scheme would probably be detrimental to the interests of the natives in the first stages, and therefore the proposal that you make the contribution in land is, I think, an excellent idea and one which the Government will no doubt readily accept from the Natives.

Guthrie thought it would 'be necessary in the interests of both parties to have some idea where the roads are going, so that we can arrange an equal exchange of land for land', though preliminary consolidation work could start immediately.⁷⁵⁵

In June 1921, Knight observed (somewhat casually) that 'arterial roading of the whole block will cost on a conservative estimate £150,000'. Little work appears to have gone into establishing this estimate, as later revised estimates proved. He concluded that because '[m]uch of this roading will not be required for years, and when done will be of little use, or unnecessary, to the Natives', it was necessary 'now to deal only with the main arterial roads in the Whakatane and Waimana Valleys to their junction with the coach road at Ruatahuna'. Knight estimated that

754. *Ibid*, pp 132–133

755. 'Meeting of the Representatives of the Urewera Natives with the Honourable DH Guthrie, Minister of Lands, and the Honorable JG Coates, Native Minister, at Ruatoki on the 22 May, 1921', 18 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 136–137)

these two roads would cost £64,000, of which he thought at least half should be contributed by the Maori owners; this amount could, he thought, 'be taken at once in an area out of the useless lands'.⁷⁵⁶ As with survey costs, Knight over-estimated the amount of land remaining to Maori and predicted that these deductions (for surveys and roads) could come out of some large, 'useless' block outside of their core settlement areas. But although the plan was based on this misconception, it was not significantly adjusted when it became clear that the land would have to be deducted from each of the 183 small blocks remaining to Maori after they had, as suggested, consolidated their interests in relatively small, whanau groups.

Guthrie had not suggested at the May 1921 hui that the Maori 'share' would necessarily be fully half of the cost of arterial roads. Nonetheless, this was the proposal put to the committee of owners at Tauarau in August of that year: 'The Crown asked that the non-sellers should contribute £32,000 worth of land towards the cost of the arterial roads, connecting Ruatoki with Ruatahuna, and Waimana via Maungapohatu with Ruatahuna.'⁷⁵⁷ The wording of Knight's proposal made it clear that Maori owners were only contributing to the cost of these two main (arterial) roads to their junction at Ruatahuna, and not any side roads. But the officials recorded in the Consolidation Scheme Report that the Maori-owned blocks would be 'accessible by or handy to arterial roads', and thus provision had to be made at least to provide for legal access to all blocks.⁷⁵⁸ We consider the details of what this commitment entailed below.

In the two days following the receipt of the Crown's proposals, Ngata agreed with the committee that the value of the contribution ought to be lowered to £20,000, which was then accepted by the Crown's representatives. Balneavis later reported that 'the Natives, on Mr Ngata's advice, agreed that the roading contribution should be £20,000 worth of land.'⁷⁵⁹ Ngata probably recognised that the amount requested by the Crown did not match the proportional interests of Maori. While the Crown and Maori owned roughly half of the former reserve each in 1921, the Crown proposal excluded the blocks in which it had not purchased any interests. Thus, the cost of the main roads in Te Urewera was to be borne solely by the co-owners of the blocks in the scheme, of which the Crown was the majority owner (of about two-thirds of the interests). Even if we accept that the owners were obliged to pay their fair share, as Guthrie had suggested, clearly an even split could not be justified. Only Ngata's intervention brought about a fairer split of the costs as they were estimated at the time. Nevertheless, the building of these roads (on the basis of a set Maori contribution of £20,000 worth of land) was recorded as

756. Knight to Under-Secretary for Lands, 21 June 1921 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), pp 70-71)

757. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 4

758. *Ibid*, p 7

759. Balneavis to Coates, 27 August 1921 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 84)

part of the Crown's promise to Maori owners in the scheme, in the Consolidation Scheme Report and section 5(1) of the Urewera Lands Act 1921–22.⁷⁶⁰

Crown counsel maintained that it was fair to ask Maori owners for a contribution toward the cost of the roads '[g]iven the limited funding that government contributed to road-building'. According to this line of reasoning, the agreement arrived at in the Urewera Consolidation Scheme 'can be likened to the type of arrangements the Crown would make with a territorial authority in making a contribution to the construction of main roads'. Given that funding was limited, Crown counsel interpreted the contribution as 'an astute arrangement on the part of Urewera Maori as it obligated the government to engage in the provision of roading when it might otherwise not have done so'. The changing circumstances of Crown road funding policies also made the move a sensible one, counsel argued. Local authorities had increasingly asked central government to take over the maintenance of main roads, given increased amounts of motorised traffic. The result was the Main Highways Act 1922, which meant that the Crown and the local authority (or authorities) would each pay half of the cost of constructing roads. Crown counsel acknowledged that there was provision, under section 22 of this Act, for the Main Highways Board to construct and maintain 'Government roads' without requiring any contribution from a local authority, particularly if a project had special circumstances or if the land was sparsely populated or remote. But as no evidence was presented to the Tribunal about 'how the Minister of Works exercised his discretion', Crown counsel said it was not known whether the terms of section 22 could have applied in the scheme. The Crown's overriding position was that the Main Highways Act reflected changes in funding practices in the period immediately before it was passed, and was directly relevant to why the Crown sought a contribution from Maori owners.⁷⁶¹

Although the system of funding road construction and maintenance was undergoing significant change when the details of the scheme were negotiated in 1921, Government policies – which allowed the Crown to construct 'Government roads' without a local authority contribution – remained essentially the same, and particularly in their application in Te Urewera. In support of this contention, a number of claimant counsel have highlighted Ngata's comment about the roading contribution during the Parliamentary debate on the Urewera Lands Bill:

I do not think that honourable members will find in the history of this country any record of any contribution as handsome as the contribution made by the Ureweras, upon the request of the Crown representatives, of £20,000 worth of land towards the cost of the arterial roads through the Urewera country. That contribution is part of the settlement now, *but there was never any obligation upon the Urewera Natives to make a contribution of a single penny towards the cost of roading. It has always been recognised*

760. Cleaver, 'Urewera Roading' (doc A25), pp 53–54; Robertson, 'Te Urewera Surveys' (doc A120), pp 101–102

761. Crown counsel, closing submissions (doc N20), topics 18–26, pp 92–94

that the opening-up of the country with arterial roads is the job of the State. However, the Natives recognised that they would get these arterial roads much sooner if they assisted the Government by making a contribution in land . . . This threw the onus on the Government of opening up that country much more rapidly than otherwise would have been the case . . . [Emphasis added.]⁷⁶²

At the time, Ngata's comments were supported by an editorial in the *Auckland Star* which described the contribution as 'contrary to the established practice'.⁷⁶³ Based on this evidence, claimant counsel concluded that the Crown acted in bad faith towards Maori owners by expecting them to make a contribution which they were not really required to make.⁷⁶⁴

Crown counsel attempted to dismiss Ngata's statement in Parliament as 'rhetoric': Ngata was merely 'enhancing the facts to underscore the appropriateness of the Government undertaking an obligation to provide these arterial roads'.⁷⁶⁵ But this very public declaration was consistent with what Ngata had observed privately in a letter to Coates, written on 19 September 1921:

The Urewera have agreed at the request of the Crown representative to contribute £20,000 of land towards the cost of arterial roads. This is the first time in the history of the Dominion that any such contribution has been proposed, where it is the manifest duty of the State to construct arterial roads for the use of the public. There was no need whatever for the Urewera's to make any such contribution. The Crown in the ordinary course would have had to put roads in to serve the lands it acquired . . . I advised the Ureweras to agree to make the contribution to facilitate a settlement with the Crown, and to expedite, if possible, the roading of their territory.⁷⁶⁶

More importantly, Ngata's contention is also borne out by remarks of senior staff in the Public Works Department. An internal report by RW Holmes, engineer-in-chief, to the Minister of Public Works, in February 1920, made the comments that 'the general practice is for the Government to undertake the construction of roads from the initial stage of track formation to that of a formed road suitable for vehicle traffic. The whole of the funds required in this connection are usually found by the General Government'.⁷⁶⁷ Three years earlier, the Under-Secretary for Public Works had commented that '[i]n the case of the Government roads, the money is provided for either out of general revenue or out of the Public Works

762. Ngata, 14 December 1921, NZPD, vol 192, pp 1115–1116 (counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 134 n)

763. 'The Urewera Country', *Auckland Star*, 17 December 1921, p 6 (counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 134 n)

764. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 135

765. Crown counsel, closing submissions (doc N20), topics 18–26, p 93

766. Ngata to Coates, 19 September 1921 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(g)), p 2435)

767. RW Holmes to Minister of Public Works, 12 February 1920 (Price, supporting papers to 'Timeline – Roading Policy (1916–1922)' (doc M10(a)), p 175)

Fund, which latter is loan money.⁷⁶⁸ The roads that the Crown proposed to build as part of the scheme could only be ‘Government roads’, as the reserve was not under the control of a county council, and nor had the General Committee been established to the extent that it could negotiate such an arrangement.

The issue, therefore, is not whether the Crown usually funded main road construction; it is rather the circumstances in which funding would be made available. As Ngata observed in his speech to Parliament, the contribution by the owners was a means of inducing the Crown to give greater priority to the work, because its priorities did not rest with funding roads for Maori land. But even that was misleading: most of the funding for the various central North Island roads districts in 1920, for example, was not matched by a local subsidy, which meant that in most cases spending was authorised for projects for which there was no additional form of funding.⁷⁶⁹ Also, as we noted above, the Crown did not recover much of its expenditure from the on-sale of land to settlers; ultimately, the Crown expected to be refunded by economic growth and an increase to the tax base.

In fact, the Main Highways Act was accompanied with a change in the Government’s funding priorities that could have favoured applications for main roads as promised to Maori owners in the scheme. The 1921–22 Public Works Statement set out the revised priorities:

It is proposed that in future the appropriations for roads and bridges be based on an automatic system whereby those districts that are backward in roading and in development shall receive a greater proportion of the amounts available than will other districts that are already well roaded and well developed. The basis for adjustment will include such factors as mileage of roads unopened, areas of Crown and Native land undeveloped, areas of districts, populations, productivity, loans, and mileage of roads still requiring improvement.⁷⁷⁰

Te Urewera was most definitely a district which was ‘backward in roading and development’ in the modern economic sense. Following these guidelines, which now included undeveloped Maori land, the two proposed arterial roads would in future have been more likely to attract funding under the Public Works Act. Although we have no evidence about how the Minister of Works used his discretionary powers under section 22 of the Act, the Crown’s revised priorities indicated that Maori land could now be considered for its development potential. By the time the scheme came about, Maori owners had been requesting these roads for 13 years; it was not as if they had just joined the queue for roading funds.

But the Main Highways Act had not come into force when the Crown set about its negotiations with Maori owners in 1921, and nor did the planning for the

768. WS Short to W McGregor Ross, 20 November 1917 (Price, supporting papers to ‘Timeline – Roading Policy (1916–1922)’ (doc M10(a)), p 28)

769. The roads districts examined were Tauranga, Gisborne, Taumarunui, Stratford, Wanganui, and Napier: see ‘Appropriations Chargeable on the Public Works Fund and Other Accounts for the Year Ending 31st March, 1922’, no date, AJHR, 1921–22, B-7A, pp 43–58.

770. J G Coates, ‘Public Works Statement’, no date, AJHR, 1921–22, D-1, p xvi

scheme take into account this new direction. Instead, Government departments – following instructions from Ministers – prepared for the roading work on the assumption that its primary purpose was to accompany the opening of lands for settlement, and that funding was being made available on that basis. The Crown's promise to Maori owners was tied to the national system for road funding that had been in existence since the end of the nineteenth century. Under that system, a contribution from the Maori owners was clearly welcome but it was not a necessary precondition for the Government to fund the building of arterial roads in the 'back-blocks'.

Even if Maori owners had been required to make a contribution, it was unfair for the Crown to obtain the entire £20,000 contribution 'at once' in the form of land, especially when it paid no consideration to borrowing the required sum and repaying it over many years. This amount was far larger than the typical roading appropriation from the Public Works Fund votes at the time. In the 1920/21 appropriations, funding in the 'Roads &c' vote averaged £478 per item; 'Roads to Open Up Land for Settlement' averaged £919 per item.⁷⁷¹ Ordinarily, such a large roading project as the arterial roads through Te Urewera would have been either built incrementally or paid off incrementally. The Rotorua–Galatea–Waikaremoana road was an example of the former, in which £55,766 was spent across six years (see above). Incremental construction and repayment ought not to have been a consideration in the Crown's plans for Te Urewera, since action on roading had been delayed throughout the 1910s to protect the Crown's purchasing programme and avoid an increase in land values. Roads required immediate construction once the scheme got under way.

Considering the gravity of the agreement – one that resulted in the alienation of 40,000 acres of their surviving land – the Crown should have at least ensured that all owners were well aware of its terms. But as with many other aspects of the scheme, this does not appear to have been the case. Just days after the Tauarau hui finished, Wharepouri Te Amo, Te Wharekiri Pararatu, and Pomare Hori of Ruatahuna petitioned Parliament with the complaint that the Crown was asking the owners to pay half the roading cost; that is, £32,000, not £20,000.⁷⁷² Wharepouri Te Amo repeated this claim when the consolidation commissioners visited Ruatahuna on 22 February 1922.⁷⁷³ On 29 March 1922, Hori Hohua and three others, representing around 150 owners, similarly complained in a letter to Coates about being required to meet half the cost of the Ruatoki–Ruatahuna road.⁷⁷⁴ Even as late as 1924, some owners were still mistaken about the size of

771. 'Appropriations Chargeable on the Public Works Fund and Other Accounts for the Year Ending 31st March, 1921', no date, AJHR, 1920, B-7A, pp 116–122

772. The petitioners also noted that 4,000 acres was being taken from the Te Whaiti block, which they assumed was part of the roading contribution. Translation of petition by Wharepouri Te Amo, Te Wharekiri Pararatu, and Pomare Hori to Parliament, 5 October 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 201–202).

773. Cleaver, 'Urewera Roading' (doc A25), p 61

774. Campbell, 'Land Alienation, Consolidation and Development' (doc A55), p 96

the contribution, with Tikareti Teirawhiro and 175 others seeking a parliamentary investigation into a number of alleged injustices, including a road contribution of £32,000.⁷⁷⁵

In response to these complaints, the commissioners simply noted that the roading contribution was actually £20,000, and in any case it was too late to alter it.⁷⁷⁶ Although it is clear that Ngata reached an agreement with the committee in the first two days of the Tauarau hui, it is less clear how widely the outcomes of the negotiations were understood by Maori owners. As with the survey costs, the decision to deduct the land from each of the Maori-owned blocks was made after the hui was completed. It was unlikely the Consolidation Scheme Report, which was difficult to understand on this issue, would have provided the owners with a clearer understanding of how the Crown would acquire the contribution.

Finally, we note that the suggestion for a contribution towards the cost of building roads did not originate with the owners themselves. As discussed above, the idea was first raised by Ngata in the May 1921 hui at Ruatoki. We take it from what he told Parliament that his hope was to accelerate the building of roads, because – as he told the House publicly and Coates privately – he knew very well that there was not the slightest obligation for Maori to have donated a single acre. Yet this was not how he put it to the assembled leaders at Ruatoki. Basically, he told them that they would *have to pay their share*, and Guthrie was quick to agree with him. It then became a central part of the proposals put by the Crown to the owners' committee at Tauarau in August 1921. By that point, the idea had matured from paying a share to paying half. As noted, Ngata negotiated this down to one-third of the estimated costs, but it seems to have been taken for granted by all concerned that Maori had to pay *something*. We cannot escape the conclusion that the Maori owners were misled by Ngata, Guthrie, and Knight on this point, and were not aware that they did not have to pay anything for the building of arterial roads. The arrangement made at Tauarau does not meet the standard of willing and informed consent. As a result, a quarter of the area of every Maori-owned block was given up to meet an obligation that did not actually exist – more, even, than was taken for survey costs.

In light of all these factors – the lack of a legal or policy requirement for a contribution at the time, the contemporary acknowledgement that undeveloped areas needed prioritisation in road funding, the past delays in road construction which had occurred for the Crown's benefit, the lack of informed consent, and the limited means the owners had at their disposal to make a contribution – the Crown should not have sought any kind of contribution, rather than immediately assuming that the owners should pay one-half of the construction costs (and then reducing this to one-third). Given that a contribution was made, however, the Crown should have ensured that Maori owners understood what they had agreed to, that the means of payment caused the least loss to the owners, and that the Crown

775. *Ibid*, pp 79–80

776. Cleaver, 'Urewera Roding' (doc A25), pp 61–63

followed through with its part of the bargain by building the roads. The Crown failed the owners on the first two counts: it was eventually found wanting on the last count as well.

14.9.4 How were the Crown's promises to construct the roads abandoned and what proportion of the roads were completed?

The Crown abandoned its promise once it became clear that plans to open the lands for European settlement would fail. This was despite the fact that the Crown had promised the Maori owners that two roads would be built of certain specifications: 'these being a road south of Waimana to Maungapohatu, and a continuation of the Whakatane–Ruatoki road to Ruatahuna, both roads junctioning with the Galatea–Ruatahuna Coach road at Ruatahuna.'⁷⁷⁷ Some kind of allowance would also have to be made so that legal access to the different Maori-owned blocks could be formed as they were surveyed, but the construction of these access roads was not part of the promise that was made to Maori owners. (We note that the drafters of the Urewera Lands Act 1921–22 did not in fact make provision for the commissioners to form road lines or create legal access to blocks, but this oversight was corrected with an amendment in 1923.⁷⁷⁸)

Knight's June 1921 proposal described these two roads as 'main arterial roads', a term which he never defined.⁷⁷⁹ Notes in the Public Works Department's 'Maintenance of Main Roads' file, dating from 1919, record that the minimum formed width of 'main roads' varied between 24 feet in flat easy country to 16 feet in mountainous country; the metalled surface width would be two feet less than the formed width, up to a maximum of 18 feet.⁷⁸⁰ In addition to the width, Knight also estimated that the length of the roads would total 80 miles (though this was later discovered to be 100 miles).⁷⁸¹ In short, the Crown promised Maori owners that it would construct formed and metalled roads of at least 14 feet in width for the entire distance between Ruatoki and Ruatahuna, and between Waimana and the junction with the Galatea to Ruatahuna road (which later became the Rotorua to Waikaremoana highway); a total of 100 miles.

Once the agreement had been reached, two key departments – Lands and Survey and Public Works – had to carry out the work, although they had different priorities for what they were about to do. By 23 September 1921 (just after the

777. Balneavis to Coates, 27 August 1921 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 78)

778. Native Land Amendment and Native Land Claims Adjustment Act 1923, s 10(4)

779. Knight to Under-Secretary for Lands, 21 June 1921 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 70). Knight did not define 'main arterial roads', but a contemporary definition can be found in section 11(1) of the Local Grants and Subsidies Bill 1914; that stated that main arterial roads passed 'in a continuous line either through at least two counties, or in a continuous line from a railway to a seaport', and were 'generally used by persons residing in districts other than the districts of the local authorities within which its course or part of its course is situate'.

780. 'Maintenance of Main Roads', no date (Price, supporting papers to 'Timeline – Roading Policy (1916–1922)' (doc M10(a)), p 133)

781. Nikora, 'Urewera Consolidation Scheme' (doc E7), app D, p 31

Tauarau hui), they had agreed that the ‘main access roads to the Urewera country’ would be laid off and constructed by the Public Works Department, with the priority being given to the road south of Waimana, where the consolidation commissioners had established that the Crown’s land would be opened to the market first, following the terms of the Urewera Lands Act.⁷⁸² Authorisation was given for the department to spend £20,000, voted by Parliament under the ‘Roads to open up lands for settlement’ section of the Lands for Settlement Account, on the understanding that the land would soon be made available for public buyers.⁷⁸³ This amount matched the roading contribution made by Maori owners. Ngata appeared to have been proven correct when he said that the Maori owners’ contribution was necessary to ensure that the construction of these roads took priority, with the swift provision of £20,000 of public money for that purpose.

The competing departments understood that each had different purposes for constructing roads in Te Urewera, but neither considered the obligations made to Maori owners in the scheme. It took appeals from the Ruatoki leaders before Coates was willing to recommend that £1,000 be issued to allow work to start on the Ruatoki–Ruatahuna road in July 1922, nearly a year after the Tauarau hui.⁷⁸⁴ Meanwhile, in the Waimana Valley – where 12 miles of the roadline had been surveyed by December 1921, and nearly four miles of the road itself constructed by May 1922 – officials debated the specific purpose of their mission.⁷⁸⁵ The Department of Lands and Survey wanted a road which would open up the future Crown award for settlement as quickly as possible. But after Skeet visited Waimana in February 1922, with Conservator of Forests H A Goudie, and had concluded that the land was ‘very ridgy with flats of very limited area on some of the bends of the streams’, he could only recommend the immediate construction of a bridle track from Waimana south. Although a bridle track was normally six feet wide, and did not meet even the minimum standards of a main road, Skeet said it should proceed ‘or else no inducement could be given to intending settlers.’⁷⁸⁶ Public Works policy was that a main road through mountainous terrain should be at least fourteen feet wide,⁷⁸⁷ but, as a August 1922 letter by resident engineer FS Dyson recorded, a compromise was reached, whereby a six-foot track was pushed ahead, to be made later into a 12-foot-wide dray road. However, Dyson – conscious of the Crown’s commitment – cautioned that only if it were widened to 18 feet would it constitute a ‘main road.’⁷⁸⁸ He must have been aware that the Crown

782. Cleaver, ‘Urewera Roothing’ (doc A25), p 69

783. ‘Appropriations Chargeable on the Public Works Fund and Other Accounts for the Year Ending 31st March, 1922’, no date, AJHR, 1921–22, B-7A, p 93

784. Cleaver, ‘Urewera Roothing’ (doc A25), pp 69–70

785. Cleaver, ‘Urewera Roothing’ (doc A25), p 69

786. Robertson, ‘Te Urewera Surveys’ (doc A120), p 125

787. Under-Secretary for Lands to commissioner of Crown lands, Auckland, 14 February 1922 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 123)

788. District engineer to chief surveyor, 12 August 1922 (Paula Berghan, comp, supporting papers to ‘Block Research Narratives of the Urewera, 1870–1930’, 18 vols, various dates (doc A86(i)), vol 9, p 3144)

could not depart from its promise simply because its plans for the roads – to assist in on-selling the land to settlers – had begun to look precarious.

Preliminary survey and construction work caused officials to re-examine Knight's estimates for the costs of the roads, and to begin considering whether the work would continue at all. In July 1922, JB Thompson, Under-Secretary for Lands, wrote to Skeet to ask how much could and should be met by 'loading' the costs onto future Crown sections, and how much would have to be met from the Public Works Fund. Skeet – who was already advocating limits on road construction because much of the land was not suitable for settlement – concluded that the cost of building roads to service all of the blocks emerging from the scheme would be £225,000, rather than the £150,000 that Knight had estimated. Skeet concluded that 'loading' costs on Crown sections would only bring in £85,000 at most, which would leave the Public Works Fund to provide the £140,000 difference if the entire network was eventually built.⁷⁸⁹ This posed less of a problem for the Waimana and Whakatane Valley roads, since Skeet observed that these were main roads, so that at least part of their costs should be met by the Public Works Fund anyway.⁷⁹⁰

The Crown made its first contribution, over and above the £20,000 that was going to be recouped from the Maori owners, from the Lands for Settlement Account rather than the Public Works Fund. This was because it was still believed that the roads would service at least some settlement blocks. The authorised expenditure for the 'Urewera Blocks' in the 1922 roading votes amounted to £49,064.⁷⁹¹ But with Skeet's re-evaluation of the total cost, the idea that this cost was too great to bear took root.

A further report in 1923 – this time by officials from both departments – confirmed that Knight had significantly under-estimated the costs, and recommended that the Crown abandon the proposed roading on the grounds that it did not meet either department's funding policies. In March 1923, Skeet and GT Murray (Public Works Department inspecting engineer) produced a report on what was required to fulfil the terms of the consolidation scheme, based on a week-long assessment of the district. They concluded that, in exchange for a contribution of land from Maori owners, the Crown had promised that it would construct two 50-mile arterial roads (combined, 20 miles more than Knight had anticipated), and two 30-mile side roads. In their view, these roads would cost £240,000 if they were all built as 12-foot-wide dray roads. If the side roads were omitted, and if the 50-mile Whakatane Valley road was left as a six-foot bridle track, the cost would amount to £173,000.⁷⁹²

Skeet and Murray recommended that the Waimana Valley road should be diverted south of Tawhana into the upper Ruakituri watershed, so that it would

789. Cleaver, 'Urewera Roading' (doc A25), pp 74–75

790. *Ibid*, p 74

791. 'Appropriations Chargeable on the Public Works Fund and Other Accounts for the Year Ending 31st March, 1922', no date, AJHR, 1921–22, B-7A, p 95

792. Commissioner, chief surveyor, and inspecting engineer to Under-Secretary for Lands, 15 March 1923 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(j)), pp 3391–3392)

become part of a shorter route between Opotiki and Gisborne.⁷⁹³ By altering the direction of the road, continued funding from public works grants could be guaranteed, as 'it would be quite reasonable to charge a large proportion against the Dominion as a whole'.⁷⁹⁴ At the same time, they recommended that the proposed road south from Tawhana through Maungapohatu and ultimately to Ruatahuna should be a side road only.⁷⁹⁵ These recommendations signalled a significant departure from a cornerstone promise of the Urewera Consolidation Scheme; no thought was even given to notifying the Maori owners of this proposed change.

Skeet and Murray's recommendation to abandon the Crown's roading obligations was confirmed in May 1924, when the Department of Lands and Survey decided to withhold any more money from the 'Lands for Settlement Account'. By this stage, it had been established that the Crown was unlikely to sell much land (if any). Although some £44,000 had been authorised, the department had now calculated that it could only recoup £40,000 from the Crown blocks that would be on-sold to settlers.⁷⁹⁶ This calculation was based on the assumption that the Crown would be able to open up 100,000 acres. In fact, as discussed above, only 31,886 acres of land in Waimana and Te Whaiti were ever offered, and only three of these sections were taken up.⁷⁹⁷ HA Goudie – Conservator of Forests – had earlier anticipated the inevitable result when he visited the Waimana Valley with Skeet in February 1922. The land was unsuitable for settlement except in limited areas, in which 'Maoris usually locate their Kaingas'. The question of 'paramount importance' was whether the forests would be protected from 'wholesale denudation' to prevent flooding in surrounding regions; a question soon asked by Dr Leonard Cockayne, reporting for the Forest Service.⁷⁹⁸

Although around 80 miles of the roads remained unfinished, and with the Department of Lands and Survey having ended its funding, the Public Works Department also abandoned the Crown's promise. In order to keep any road work going at all, the Public Works Department's engineer-in-chief, FW Furkert, approached the Minister in June 1924 and secured an immediate injection of funds (£3,500) plus the promise of £10,000 for ongoing work. By this time, the dray road had been completed to around 20 miles up the Waimana Valley to Tawhana, and a bridle track six or seven miles beyond that; engineering surveys had been completed for 70 miles of the proposed roadlines.⁷⁹⁹ In 1924–25, funds that were authorised only amounted to £12,519. By 1925–26 and 1926–27, this amount had dropped to only £8,000.⁸⁰⁰ Little progress was made on the road between Waimana and

793. Cleaver, 'Urewera Roothing' (doc A25), pp 75–76

794. Commissioner, chief surveyor, and inspecting engineer to Under-Secretary for Lands, 15 March 1923 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(j)), pp 3391–3392)

795. Cleaver, 'Urewera Roothing' (doc A25), pp 75–76

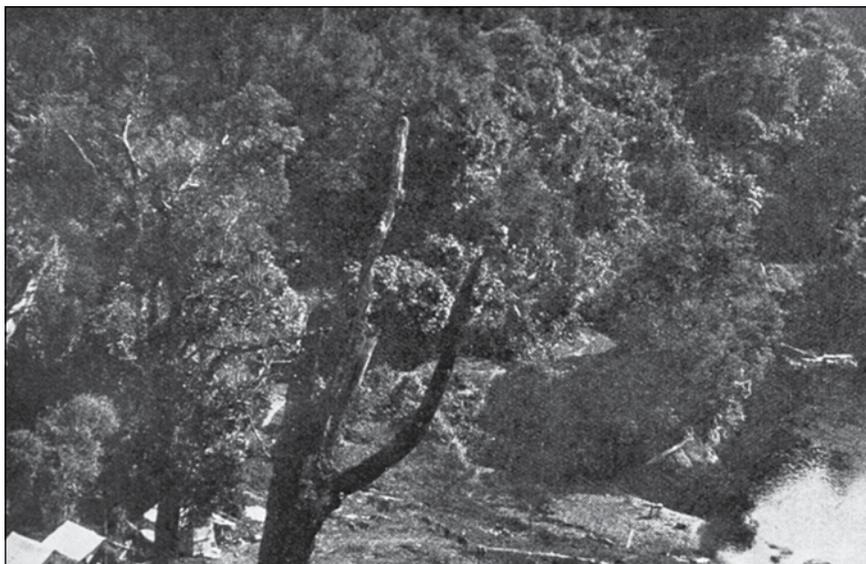
796. *Ibid*, p 77

797. *Ibid*; 'Department of Lands and Survey, Settlement of Crown Lands (Annual Report On)', 25 June 1925, AJHR, 1925, C-1, p 10

798. Bassett and Kay, 'Ruatahuna' (doc A20), pp 176–177

799. Cleaver, 'Urewera Roothing' (doc A25), pp 77–78

800. AJHR, 1924, B-7A, pp 51, 102; AJHR, 1925, B-7A, p 51; AJHR, 1926, B-7A, p 49



L R de Roo (SC GSC, Auckland Libraries, AWNS-19280823-36-1)

Surveyors' camp beside the Hopuruahine River, 1928. The camp was for those working on the Waikaremoana–Ruatahuna road, work on which had begun in earnest under the Urewera District Native Reserve agreement some 20 years before, when both Te Urewera leaders and the Crown wanted the road. The Crown funded it for six years, before adopting a new policy of buying land in the Urewera District Native Reserve for Pakeha settlement. It thus had no further interest in paying for roads that would merely increase the value of Maori land it wanted to purchase. Only in the late 1920s did it complete the road as part of an unemployment relief scheme. Because the Crown failed to keep its promises to provide arterial roads as part of the consolidation scheme, this road remains the main thoroughfare through Te Urewera to this day.

Ruakituri between 1925 and 1926, with the bridle track being extended 14 miles south of Tawhana, so that the completed length was 35 miles.⁸⁰¹

By 1925, as work on the downgraded side road to Maungapohatu was nearing an end, only some departmental officials had knowledge of the Crown's promise to Maori owners; others either did not know or appear not to have taken it seriously. Because the side road was only four miles from Maungapohatu by May 1925, the resident engineer in Tauranga, FS Dyson, proposed an additional branch track that would cover this distance. In doing so, he observed that this was 'really the continuation of the Waimana Valley Road on to Lake Waikaremoana, and was part of the scheme of roading of the Urewera Block, more or less approved.'⁸⁰² But Furkert's response demonstrated that for some the Crown's promise now held little weight.⁸⁰³ The branch track was 'a desirable work', Furkert said, but as

801. Cleaver, 'Urewera Roading' (doc A25), pp 79–80

802. District Engineer to permanent head, Public Works Department, 4 May 1925 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(j)), p 3355)

803. Cleaver, 'Urewera Roading' (doc A25), p 78



Surveyors shifting camp, 1928

‘it would mainly benefit the Native Settlement, it is considered the Natives should pay for it.’ Because heavy demands had been placed on the Public Works Fund, the work would not warrant funding. Furkert (astonishingly) concluded that the Maungapohatu owners might fund the track by making a payment in land for it.⁸⁰⁴ Not all officials had forgotten the Crown’s obligations, however: Dyson alerted Furkert to the fact that ‘the natives have already supplied certain lands free of charge on condition that certain roads were constructed.’⁸⁰⁵ Eventually work commenced, with contract workers from Maungapohatu having pushed the track through to the settlement by the end of September 1926.⁸⁰⁶

804. Engineer-in-chief to district engineer, 26 June 1925 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(j)), p3352)

805. Cleaver, ‘Urewera Roading’ (doc A25), p79

806. Ibid

At the same time, the Public Works Department came to the decision that work on the Waimana–Ruakituri road should stop because funds had been diverted elsewhere. In light of the fact that the Department was now opening up an alternative route to Gisborne through the Waioweka Gorge, the inspecting engineer, A J Baker, had been asked to report back on the unbuilt sections of the Waimana–Ruakituri route. He estimated that it would cost £132,000 to finish as a metalled road, and £27,300 just to join up the two ends with a bridle track.⁸⁰⁷ He concluded that the region ‘can do without this road at the present time, even for stock purposes.’⁸⁰⁸ Baker’s recommendation to stop building the Waimana–Ruakituri road was approved by the Minister of Public Works on 1 October 1926.⁸⁰⁹ According to the funding priorities of both departments, there was no longer any justification to continue funding. This decision – and its significance for the Urewera Consolidation Scheme as a whole – was not conveyed to the Maori owners. Yet, Sissons has observed that Rua Kenana seemed convinced that the Crown was going to build a road to Maungapohatu when he encouraged his followers to move back there in 1927 (as we will discuss in chapter 17).⁸¹⁰ Neither department had Maori communities in their funding priorities.

As the commitments under the scheme were abandoned, the Public Works Department threw its energies into finishing the upgraded main road between Murupara and Waikaremoana, work on which was intended to aid the Crown’s tourism operations at Lake Waikaremoana.⁸¹¹ Apart from a 12-mile section between the old Ruatahuna road terminus and Papatotara, which happened to coincide with the southern end of the Waimana Valley roadline proposed by Knight, this work did not coincide with the promises made in the scheme. The only road work that could be construed as part of the Crown’s obligations occurred in the form of unemployment relief on the Whakatane Valley road, and, as FS Dyson observed in May 1927, this was merely a stop-gap measure.⁸¹² In July 1927, Apirana Ngata inquired as to how much of the promised roading had been completed. The Public Works Department noted ‘evasively’, as Philip Cleaver put it, that £69,716 had been spent so far on roads in the Urewera district, as if to imply completion.⁸¹³ According to a report the following year by KM Graham, the chief surveyor in Auckland, by April 1928 only 2¾ miles of road at the northern (Waikirikiri) end of the Whakatane Valley road had been completed, and ¼ mile at the Ruatahuna end. This was in addition to the 21 miles of 12-foot dray road between Waimana and Tawhana, 13 miles of six foot (bridle) track between

807. Cleaver, ‘Urewera Roading’ (doc A25), pp 79–80

808. *Ibid*, p 80

809. *Ibid*

810. Sissons, *Te Waimana* (doc B23), p 272

811. Cleaver, ‘Urewera Roading’ (doc A25), pp 101–102

812. District engineer to permanent head, Public Works Department, 23 May 1927 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(j)), pp 3327–3328); see also the authorisations for relief work made by Dyson on 22 March, 12 August, and 22 August 1927 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(i)), pp 3121–3123).

813. Cleaver, ‘Urewera Roading’ (doc A25), pp 80–81

Tawhana and the Maungapohatu turnoff, and the 4½ miles of branch track to Maungapohatu.⁸¹⁴ This was the full extent of the promised roads in the Urewera Consolidation Scheme; no further work was undertaken.

The extent to which the Crown met its roading promises – the type of roads and their distance – was a matter of some debate between the parties in our inquiry. According to Crown counsel, one-third of the promised roads were built; but the claimants maintained it was only one-quarter.⁸¹⁵

Claimants pointed to the 44 miles of road and track that were confirmed to have been built by Graham (and a 1937 investigation into the scheme), which consisted of four miles in the Whakatane Valley and 40 miles in the Waimana Valley, and compared this with the 160 miles of road and track that Skeet and Murray had estimated in 1923 were needed to be built to meet the Crown's promise, which consisted of 100 miles of arterial roads and 60 miles of side roads. Although the 60 miles of side roads were not part of the Crown's promise, 19 miles out of the 40 miles in the Waimana Valley could not to be considered as an arterial road, because it was only a six-foot track and the construction of the southernmost part of the road in the Whakatane Valley came as part of the Ruatahuna Development Scheme in the early 1930s.⁸¹⁶ But having taken these factors into account, the completed amount was only 23 miles out of 100; less than one-quarter.

Crown counsel took these estimates into account, but included the 12-mile section of the Rotorua–Waikaremoana highway that was built between the old Ruatahuna terminus (at Umuroa) and Papatotara. This section, counsel submitted, coincided with a portion of the arterial roadline promised by the Crown, which would increase the total to 35 miles; a third of the promised amount. The 1937 investigation by Department of Lands and Survey official, R G Dick, on this very issue reached the conclusion that the Crown's work on the Rotorua–Waikaremoana highway during this period cannot be considered as part of the Crown's obligation under the scheme. Out of some £118,000 spent on the highway, Dick concluded that only £9,000 could be said to have improved access to Maori lands (made up of £6,000 on construction and maintenance costs for the Ruatahuna–Papatotara section, and £3,000 for improvements to the Whirinaki River bridge at Te Whaiti).⁸¹⁷ The highway would have been built irrespective of the Crown's roading obligations under the scheme, especially since the Crown had to provide road access to its Ruatahuna township reserve adjacent to Tatahoata, which was two miles from the previous Umuroa terminus.⁸¹⁸ Against this, however, the highway did provide access to a number of Maori-owned blocks east of

814. Graham observed that three miles had been also been built in the Whirinaki Valley to provide access for a Pakeha settler: see Cleaver, 'Urewera Roading' (doc A25), pp 72–73.

815. Crown counsel, closing submissions (doc N20), topics 18–26, p 67; counsel for Wai 36 Tuhoe, closing submissions in reply (doc N31), p 24

816. Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two' (doc D2), pp 273, 290; counsel for Wai 36 Tuhoe, closing submissions in reply (doc N31), p 24

817. Cleaver, 'Urewera Roading' (doc A25), pp 101–102

818. Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two' (doc D2), p 244

the township reserve which might otherwise have been left stranded. In our view, therefore, the true figure is likely to be between one-quarter and one-third.

Although the Crown managed to complete this small part of its promise, any benefit that the Maori owners might have derived was lost when funding for maintenance was stopped; not because of the rates exemption, which the Urewera Lands Act had set in place until the completion of the roading scheme, but because the roads would serve Maori communities and the Crown considered that they were not worth funding. The Urewera Lands Act 1921–22 had placed a rates exemption on all of the Maori-owned blocks, which was only meant to be lifted once the roads had been built.⁸¹⁹ In December 1926, the consolidation commission completed its orders for the roadlines, despite the fact that the road work itself was all but abandoned by then.⁸²⁰

Initially, the Public Works Department had accepted an obligation to fund the maintenance of the Waimana Valley road, but by 1929 it appears to have become a target for Government cost-cutting. On 21 September 1929, one of the former consolidation commissioners, RJ Knight, wrote to the Auckland commissioner of Crown lands reminding him of the Crown's roading obligations to the owners of the Maori-owned blocks. But only three days later the engineer-in-chief, FW Furkert, wrote to the district engineer in Tauranga to say that he thought ongoing maintenance funding ought to be reconsidered.⁸²¹ Furkert's view won out: CE Bennett, the department's Assistant Under-Secretary, concluded that the existing maintenance expenditure of £1,200 per year was not warranted because it served 'only Native land and unoccupied Crown land.' Furthermore, the Maori owners, who were not paying rates, were 'farming their properties in a very small way indeed.'⁸²²

The Minister of Public Works, EA Ransom, adopted Bennett's recommendation and stopped all funding for maintenance in January 1930. Once again, there is no evidence that the Maori owners of the affected blocks were consulted about this retrenchment from the Crown's obligations, and when concerns were raised on their behalf by KS Williams, the member for the Bay of Plenty, and Sir Apirana Ngata, the Native Minister – both of whom clearly recalled the promises made to Maori owners in 1921 – the Public Works Minister did not move from his decision.⁸²³ Ngata asked for a memorandum to be prepared, detailing all of the Crown's undertakings in the consolidation scheme, but Mr Easthope could not find such a memorandum on file and it may not have been written.⁸²⁴ Ngata himself, now

819. The Consolidation Scheme Report stated: 'No Native section shall be liable for rates until, say, a period of one year after the completion of the title thereto, and then only by notification under the hand of the Native Minister. It would not be fair to make these lands rateable until the roading scheme, to the cost of which they are contributing, is carried out'. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 6.

820. Cleaver, 'Urewera Roading' (doc A25), p 71

821. *Ibid*, pp 81, 83

822. *Ibid*, p 84

823. *Ibid*

824. Easthope, 'Maungapohatu and Tauranga Blocks' (doc A23), p 194

Knight Reminds the Crown of its Obligations, 1929

'THE Crown are under an obligation to complete the undertaking with the Native owners under which a contribution of £20,000 worth of land was given towards the cost of surveying and forming the arterial roads . . . land of the above value having been included in the Crown's award. And also to give the Land Transfer titles to their holdings.'

RJ Knight¹

1. Knight to commissioner of Crown lands, Auckland, 21 September 1929 (Crown Law Office, 'Document Bank: Urewera Consolidation and Roding' (doc M31(a), p1690))

Native Minister, was the best hope that the Crown's promises would be remembered and honoured; after his replacement as Native Minister in 1934, all the key Ministers – Coates, Guthrie, and Ngata – who had been involved in the scheme were gone.

When the responsibility for the roads was transferred to the relevant local authorities, which followed shortly after the completed portions of the arterial roads and connecting roadlines were gazetted as county roads in July 1930, the rates exemption did become a factor. The transfer had been proposed as early as February 1927, but the Whakatane County Council had opposed the move on the grounds that the terms of the Urewera Lands Act 1921–22 prevented it from raising any rates. The district engineer, KM Graham, advised the Council in April 1928 that the Public Works Department would retain authority for maintaining the roads for the time being. But as of October 1929 the Council was informed that the department might renege on this position, which it did nine months later.⁸²⁵ As claimant counsel have observed, it was to be expected that local councils would not want to spend money on road maintenance when they were getting no rates income from the area, while the owners were not in a position to pay rates on land that had marginal or no road access.⁸²⁶

The Crown's obligations to the Maori owners under the Urewera Consolidation Scheme were remembered by few officials by 1930, despite Knight's reminder in 1929 and Ngata's request that same year for a memorandum to record them. Maori owners, however, had not forgotten about the promises made to them. Rua Kenana's supporters had moved back to Maungapohatu in anticipation of the promised roads, but found themselves in serious economic difficulties. They complained to Ngata and to the Rotorua member of Parliament, Cecil Clinkard,

825. Cleaver, 'Urewera Roding' (doc A25), pp 85–86

826. Counsel for Wai 36 Tuhoë, closing submissions (doc N8(a)), p 138

in 1930. At this time, the Maungapohatu community was 'really in need' and had great difficulties getting stock in or out. Ngata treated this as a Depression-era unemployment issue. He asked in 1931 and 1933 that unemployed relief workers be assigned to keeping open the old stock route which had existed between Maungapohatu and Ruatahuna. Work was only funded for repairs to the main road between Te Whaiti and Ruatahuna; a sum of £100 was authorised on the track in 1933, but it is unclear whether this money was actually spent.⁸²⁷

More substantial works on the roading and tracks in the Waimana Valley were then proposed in the reports on Te Urewera lands and forests by MJ Galvin and DD Dun in 1935, and Galvin and GP Shepherd in 1936, whose main focus was on protecting the forests.⁸²⁸ Although Pera Meihana and William Bird raised the issue of the roading contribution when Galvin and Shepherd visited Te Whaiti in 1936, their subsequent report made no reference to the Crown's roading obligations under the scheme.⁸²⁹ Galvin and Dun had recommended that £2,000 should be provided 'for the improvement of North and South access' to Maungapohatu.⁸³⁰ Galvin and Shepherd added that priority should be given to repairs on the road between Waimana and Tawhana, followed by construction work and repairs to the Maungapohatu–Papatotara track, and finally repairs to the track between Maungapohatu and Tawhana.⁸³¹ Nothing was done, however, until the Maungapohatu community complained again about the track to Ruatahuna – this time to the Minister of Public Works, Robert Semple, which finally brought about the authorisation of £3,400. This money was made up from unemployment relief funds and money from the roads vote, but much of it was subsequently spent on repairs to the Waimana–Tawhana road.⁸³²

In 1936, Takurua Tamarau and others questioned the Minister of Internal Affairs and the acting Native Minister about the fate of the promised road in the Whakatane Valley.⁸³³ An ensuing report by ON Campbell, the Under-Secretary for the Native Department, acknowledged that, because Maori owners had made a contribution of land in the Urewera Consolidation Scheme, 'there is therefore probably a contractual obligation upon the Crown to make these tracks reasonably available for the use of the Urewera people.'⁸³⁴

827. Easthope, 'Maungapohatu and Tauranga Blocks' (doc A23), pp 194–198; Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two' (doc D2), pp 288–289

828. Dun was a State Forest Service ranger, Galvin a field inspector for Lands and Survey, while Shepherd was chief clerk of the Native Department.

829. Cleaver, 'Urewera Roothing' (doc A25), pp 99–100; Easthope, 'Maungapohatu and Tauranga Blocks' (doc A23), pp 200–203

830. Galvin and Dun, 'Report by Officers of the Lands & Survey Department and the State Forest Service, on the Urewera Forest', 29 April 1935 (John Hutton and Klaus Neumann, comps, supporting papers to 'Ngati Whare and the Crown, 1880–1999', 2 vols, various dates (doc A28(a)), vol 1, p 24)

831. Easthope, 'Maungapohatu and Tauranga Blocks' (doc A23), p 202

832. *Ibid*, pp 210–214, 224

833. Cleaver, 'Urewera Roothing' (doc A25), p 122

834. Under-Secretary, Native Department, to acting Native Minister, 20 May 1937 (Easthope, 'Maungapohatu and Tauranga Blocks' (doc A23), p 208)

The Lands and Survey chief draughtsman, RG Dick, was then asked to report on the extent to which the Crown had met its obligations. He estimated that the Crown had spent £73,500 to meet its obligations (made up of £60,000 on the Waimana road, £4,500 on the Whakatane Valley road, and £9,000 on the Murupara–Waikaremoana road). In order to fulfil its promises, so that the Maori-owned blocks would be made more ‘accessible or handy’ to arterial roads, as had been promised, Dick concluded that the Crown would have to expend a further £230,000. But, in his view, the development potential of Maungapohatu was so low that this expenditure was ‘unwarranted’. Similarly, the proposed road up the Whakatane Valley was ‘quite uneconomic’ because of its steep, mountainous topography; it was far better, Dick thought, to divert money that might have been spent on these roads to assist development in more physically amenable areas, such as the Whirinaki Valley. Upon receipt of Dick’s report, the Under-Secretary for Lands acknowledged that ‘the arrangements entered into at the time of consolidation cannot be said to have been fulfilled’, but endorsed Dick’s conclusion that the roads should not be built. The acting Native Minister, Frank Langstone, informed the Under-Secretary for Native Affairs on 18 October 1937 that ‘only access tracks for the Natives should be attended to.’⁸³⁵

Langstone’s decision represents the point at which the Crown’s commitment to constructing the arterial roads officially ceased, although it had effectively ended as early as 1929; the only difference was that the Crown still acknowledged but deliberately set aside its contractual obligation.⁸³⁶ Afterwards, the only new construction consisted of a one-mile branch road between Waimana and the neighbouring Raroa series blocks in 1939. Funding for maintenance was largely limited to the sum which had been authorised in 1937.⁸³⁷ It was not until 1957 that the Crown provided redress for its abandonment of its arterial roading commitments, which we discuss shortly.

14.9.5 How much land did the Crown acquire for the road contribution?

When the Crown made its proposal to Maori owners at the Taurarau hui, officials were yet to decide on how exactly the £20,000 contribution would be taken, except that it would be in land. Knight’s June 1921 plan suggested that the roading contribution could come from an area of ‘useless lands’, which had been identified on a map as a large area encompassing parts of the Hikurangi–Horomanga, Tarapounamu–Matawhero, Ruatahuna, Waikaremoana, Manuoha, and Paharakeke blocks.⁸³⁸ Balneavis’ report at the end of the Taurarau hui suggests that Crown representatives continued to act on the assumption that the lands ‘out of which such contribution

835. Cleaver, ‘Urewera Roding’ (doc A25), pp 101–106

836. *Ibid*, p 106

837. After the Second World War, an annual grant of £100 was given for maintenance on the Maungapohatu–Papatotara track: see Easthope, ‘Maungapohatu and Tauranga Blocks’ (doc A23), pp 217, 225–226.

838. Webster, ‘Urewera Consolidation Scheme’ (doc D8), pp 257, 260–261

will be made' were 'for the most part situated' in these same areas.⁸³⁹ It is not clear why, however, since Manuoha and Paharakeke had already been excluded from the scheme at the request of the Crown, and by the end of the hui the Government expected to obtain the whole of the Waikaremoana block (leaving no Maori land there that could be taken for the roading contribution).

At some point after the Taurarau hui, the officials decided to distribute the contribution equally among all of the Maori-owned blocks, with the exception of those in the Te Whaiti series, which would not benefit from the promised roads. Knight reported on 3 October that it had 'been agreed that the proportion of the contribution towards roading and also the cost of the survey of the sections shall be taken in area from each section as the survey proceeds'.⁸⁴⁰ Balneavis' report, which was written at the end of the hui, made it clear that no such agreement had been reached at Taurarau. The about-face may have been precipitated by the realisation that the Crown had purchased too many interests in the reserve; after the provisional division of the land was negotiated at the Taurarau hui, there was not enough 'useless land' remaining in Maori ownership, and Maori owners were clearly unwilling to give up their main areas of settlement. The deduction would have to come from each of the remaining areas, and from each block.

The Consolidation Scheme Report established that a portion of land amounting to the value of £20,000 would be taken from each of the Maori-owned blocks and awarded to the Crown: 'the areas of the Native sections are subject to an assessment as a contribution towards the cost of surveying and forming the proposed arterial roads'. The Report also established that the commissioners could account for this land in areas that were not contiguous to the 'Native section' in question.⁸⁴¹ The commissioners used this provision in some cases where more than one block was awarded to the same group of owners, so that the roading deduction came from the block that was the least developed in terms of settlement or cultivations.⁸⁴² But they could also withhold from grouping the takings, as in the Te Whaiti series, where the commissioners refused to take all of the deduction from the Te Whaiti Residue block, and instead took smaller pieces of land from the blocks along the Whirinaki River valley. This may have been to keep the blocks back from the forest edge, which was in keeping with the approach taken by the commissioners in the division of the land.

Unlike the takings for survey costs, the consolidation commissioners decided to account for roading costs by deducting a quarter of the owners' 'gross' interests in a block, which was a quarter of the block's valuation. For example, a group of owners who had interests that amounted to £400 would lose £100 for roading costs, leaving them with a block with the value of £300 (which was then subject

839. Balneavis to Coates, 27 August 1921 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 84)

840. Webster, 'Urewera Consolidation Scheme' (doc D8), p 264

841. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 8

842. This occurred with several blocks in the Ruatoki series, as noted in the commission's minute book: see Urewera minute book 2A, 9 April 1924 (doc M30), pp 204, 206.

to a survey deduction). This meant that in most cases – except for the few blocks where the commissioners decided to group the deduction, and other exceptions discussed below, such as the Te Whaiti series – the blocks decreased both in size and in value of interests by a quarter. Given that this was a proportional deduction rather than a flat rate per acre charge, the takings for roading costs were applied more evenly across the scheme than were the survey deductions. Blocks with a lower valuation, therefore, did not bear a heavier burden than those with a higher valuation; each lost a quarter of its original size. For this reason, the valuations are of little relevance to our analysis here, except to reiterate the general point made in this chapter that the valuations were unfair and out of date. It is likely the commissioners adopted a one-quarter deduction because £20,000 equalled roughly a quarter the total value of the remaining interests of Maori owners at the beginning of the scheme, which was (mistakenly) given as £78,035 in the Consolidation Scheme Report.⁸⁴³

As noted above, the commissioners also made some exceptional roading arrangements during the course of their work, which we now assess. The necessity for these arrangements arose mainly because some of the new Maori-owned blocks seemed closer to roads outside the consolidation scheme than they would likely be to new roads constructed inside it.

Maori owners of the newly formed Hikurangi–Horomanga blocks had a quarter of their land deducted for the construction of the Whakatane and Waimana Valley roads, even though those roads would be some kilometres and a mountain pass away. But, having decided to take a quarter of the land, the commissioners were then obliged to create formed legal access to the blocks and road access. As a compromise, they decided to give legal access to four of the blocks (Papapounamu, Tukutomiro, Mokorua, and Onapu), and to create a roadline across privately owned land (the Waiohau 2 block) to the main road that was about to be built, running west of the Rangitaiki River from Te Teko to Galatea. The commissioners did not have authority to lay out the legal access for road lines until the Native Land Amendment and Native Land Claims Adjustment Act 1923, which gave them the authority to provide access inside the scheme. But no provision was made to form access in areas outside the scheme, which Knight and Carr pointed out in 1924, reporting that their only authority lay in somehow convincing landowners outside the scheme to cede accessways. There the matter remained, until the ongoing lack of access to the blocks was raised in the proceedings to amalgamate their titles, which we discuss later in the report. Thus, the Urewera Consolidation Scheme failed to provide either legal access to these blocks or actual access in the form of a main road. Nevertheless, the Crown acquired a total of 4,413 acres at the value of £1,538.

The owners of the Te Whaiti blocks were also subject to similar takings but for different reasons. Forty-eight acres was taken from seven of the blocks in the Te Whaiti Valley (10 had no deduction), totalling 336 acres, to contribute to a road

843. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 11

that would junction with the existing main road through to Lake Waikaremoana. This connecting road was built, although the land was taken along the forest line in the Te Whaiti Valley instead of the Te Whaiti Residue land further to the north. But the connecting road to the southern Minginui block, for which the owners had 306 acres taken (£325), was only built so far as a farm on former Crown land, for which the Crown was legally obliged to form road access.⁸⁴⁴ In contrast, the Urewera Lands Act 1921–22 required the Crown to construct two arterial roads in the Whakatane and Waimana Valleys, and to form legal access to the blocks from those roads. Reconciling the distance between these roads and the Hikurangi–Horomanga and Te Whaiti blocks proved too difficult an undertaking for the Crown, despite the fact that a significant amount of land was taken for this purpose.

Elsewhere in the scheme, inconsistencies in how the one-quarter deduction was calculated affected blocks in the Tarapounamu, Maungapohatu, Waimana, Ruatahuna, Ohau, and Ruatoki series.⁸⁴⁵ In the vast majority of these cases, the commissioners (or whoever did the calculations) incorrectly made the roading deduction equal one-quarter of the net area rather than the gross area. A similar error had been made with the survey deduction, but in this instance the error slightly favoured the owners. The outcome of this error in the Ruatahuna series was that only 22 per cent on average was deducted, which meant that the owners retained around 600 acres more than they should have.⁸⁴⁶ These gains were slightly countered by the excessive deductions in three Waimana series blocks (Tarahore, Opei, and Oueariu), which averaged out at 29 per cent.⁸⁴⁷ But overall the difference in favour of the owners across all the blocks (with the exception of the Te Whaiti series) only amounted to around 800 acres. This was several times less than the Crown's gain through the survey deduction errors, which totalled some 4,000 acres.

Such frequent survey and roading deduction miscalculations, not to mention unexplained changes in methodology (such as between the Te Whaiti series road deductions and those in other blocks) are indicative of the Crown's haphazard approach to the scheme. Neither the commissioners nor other officials ever

844. Robertson, 'Te Urewera Surveys' (doc A120), p 151; Clayworth, 'Te Pahou Blocks' (doc A19), pp 34–35

845. Miscalculations occurred in the following blocks: Apitihana (Ruatahuna and Tarapounamu series), Kiritahi, Maramataupiri, Omakoi, Onini, Paripari, Porere, Tatahoata, Tataramoa, Tarahanga, Te Pua, Te Tawai, Umuroa, Waipakau, Wairere, Wharekakaho (Ruatahuna series), Waipatukakahu (Maungapohatu series), Korouanui (Ohau series), Otairangi/Tewhatawha/Waitapu, Awamutu (Ruatoki series), Tarahore, Opei, and Oueariu (Waimana series). In the cases of Opuatawhiro (Waimana series) and Umukahawai (Tarapounamu series) the deductions were correct, but mis-recorded as 51 acres instead of 81, and 457 acres instead of 497.

846. Based on the commission's figures, there were 4,495,062 one-penny shares (collectively worth £18,729) in the Ruatahuna series, while the total roading contribution was £4,090 (or 21.8 per cent of the total). On an area basis, the contribution percentage was closer to one-quarter (10,418 acres out of 46,270, or 22.5 per cent): see Robertson, 'Te Urewera Surveys' (doc A120), p 154.

847. Robertson, 'Te Urewera Surveys' (doc A120), p 154

published a final reckoning of the outcomes of the scheme, either in the blocks awarded or in the areas deducted. A list of areas and deductions for each block, included in the Urewera minute book 2A, was prepared in mid-1924, but because the commission continued to move small numbers of shares between series in the last stages of consolidation this list was altered by a number of crossouts and insertions.⁸⁴⁸ Nevertheless, counsel for both the Crown and the claimants have accepted that the final, post-alterations deduction was calculated to be 39,355 acres (worth £19,975).⁸⁴⁹ Although this figure was still an estimate of the actual amount of land that was taken, which became part of the large block awarded to the Crown in 1927 as Urewera A (482,300 acres), 39,355 acres is a sufficiently accurate figure. The exact addition to the Crown award on the ground is likely to have varied from this total, because of the numerous discrepancies – usually small – between the calculated final block areas and the areas actually surveyed.

14.9.6 Were the terms of the 1958 roading settlement fair?

Maori owners of the newly consolidated blocks did not quickly forget the promises that had been made to them. By the late 1930s, leaders began pressing the Government for answers about the non-completion of the arterial roads. Officials confirmed the unofficial policy that had developed since the road work first began to be abandoned in the early 1920s: the roads would not be completed. But it was two decades before the Crown responded to repeated protests from Maori owners, when negotiations for a settlement commenced. The Crown acknowledged that compensation was due to the owners for the contribution they had made as part of the consolidation scheme, which would discharge the Crown of its statutory obligation. In 1957, shortly after the creation of Te Urewera National Park, the parties negotiated a settlement of £100,000 in cash to be paid the following year to a newly created trust board.

Having established how much of the roads were completed and how much land the Crown acquired for the cost of their construction, we turn our attention to the final part in the story of the Urewera Consolidation Scheme: the 1958 settlement and the question whether its terms were fair. The claimants maintained that the settlement was less than adequate. Particular issues were:

- ▶ the length of time taken to reach a settlement;
- ▶ the process by which the negotiations took place;
- ▶ the payment of compensation in money rather than the return of land;
- ▶ whether the cash settlement was proper compensation for the range of effects suffered through the Crown's failure to construct the roads, or simply the price of the land taken for the roads, plus interest; and
- ▶ whether a trust board was the appropriate body to receive the settlement.

848. Amendments were made to the following blocks: Waipatukakahu, Maungapohatu, Pukioire, Apitihana, Matera, and Te Whaiti Residue: see Urewera minute book 2A, 9 April 1924 (doc M30), pp 207–208, 211–212, 215–218.

849. Crown counsel, closing submissions (doc N20), topics 18–26, p 59; counsel for Wai 36 Tuhoe, closing submissions (doc N8), p 57; counsel for Tuawhenua, closing submissions (doc N9), p 195

The Crown, however, disputed these points: the settlement was fair in the circumstances of the time, and provided full monetary compensation for the land that was contributed, given that the land had been incorporated into Te Urewera National Park by this time.

As we have explained above, the policy decision to abandon the Crown's roading obligations came somewhat later than its abandonment on the ground (when funding of regular maintenance ceased in 1930), and only after Maori owners began raising objections. The decision by acting Native Minister Frank Langstone in October 1937 to formally abandon all arterial road construction came on the back of the report from Under-Secretary for Native Affairs ON Campbell that there was 'probably a contractual obligation upon the Crown to make these tracks reasonably available for the use of the Urewera people.'⁸⁵⁰ Campbell was the first official to draw attention to the Crown's roading obligations since Knight's similar observations in 1929.⁸⁵¹ Dick's subsequent report on the issues concluded that around £73,500 had been spent on the roads, but that the cost of completing the roads would be around £230,000. On the basis of these figures, he argued that further road development was 'unwarranted', and advised that this amount should be spent developing land for farming at Ruatahuna and in the Whirinaki Valley instead.⁸⁵² Robertson, Under-Secretary for Lands and Survey, endorsed this recommendation, noting that while the 'arrangements entered into at the time of consolidation cannot be said to have been fulfilled', it was 'not desirable to make some of the roads, such as that from Ruatoki to Ruatahuna', given that 'the expense would be enormous', and 'the upkeep would be heavy with no rateable property to provide rates.'⁸⁵³ Langstone approved Robertson's recommendation to abandon all road construction.⁸⁵⁴ But no action was taken to compensate the owners in the form of funding for land development. Despite the fact that the failure to complete the roads had very noticeable effects by 1937 (as observed by officials such as Shepherd and Galvin, and Dick), it took a further 21 years before a settlement was reached. The outbreak of the Second World War meant that any serious consideration of compensating owners did not occur until 1946.

When the subject of the Crown's roading obligations did arise again, it was only after concerns were raised by the Public Works Department that funds were being squandered on repairs to the old stock route between Maungapohatu and Ruatahuna, which had been made available – independently of the Crown's obligations under the consolidation scheme – and amounted to £100 per annum for

850. ON Campbell, Native Under-Secretary to acting Native Minister, 20 May 1937 (Easthope, 'Maungapohatu and Tauranga Blocks' (doc A23), p 208)

851. Easthope, 'Maungapohatu and Tauranga Blocks' (doc A23), p 208; Cleaver, 'Urewera Roding' (doc A25), p 81

852. R G Dick to Under-Secretary for Lands, 20 August 1937 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 162)

853. W Robertson to Native Under-Secretary, 23 September 1937 (Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two' (doc D2), pp 292–293)

854. Cleaver, 'Urewera Roding' (doc A25), pp 106

three years.⁸⁵⁵ There was a view that repair work should be abandoned and more drastic solutions applied: ‘in my opinion these people should be compelled to evacuate this village and should be established by the Native Department somewhere in the vicinity of Ruatahuna, where they are accessible.’⁸⁵⁶ Even the consolidation commissioners had never gone so far as considering a settlement of such ancestral significance as Maungapohatu would be abandoned.

But the Public Works Department asked Judge Harvey of the Waiariki Maori Land Court to negotiate the evacuation of Maungapohatu (though Easthope noted that the Native Department was ‘much more cautious’ in its approach in passing on the request from the Public Works Department).⁸⁵⁷ Inquiries by the court’s deputy registrar, JJ Dillon, found the families at Maungapohatu very determined to stay there: they wanted the Government to provide Post Office and educational facilities, as well as the road access that was due to them. Dillon recommended that the people stay in their settlement and reminded Judge Harvey of the Crown’s obligations under the consolidation scheme. He said that at least a four-foot track from Papatotara should be maintained, as well as cattle droving access between Waimana and Maungapohatu.⁸⁵⁸

Judge Harvey was more opposed to the proposition of negotiating the evacuation of Maungapohatu than his registrar, calling the proposal ‘fatuous.’ He told the Native Department that the Crown must either commit the annual interest on £20,000 or return the land which was the form of the original contribution:

The facts are that various commissions and delegations have promised amenities to these Maungapohatu people from time to time and that the Crown has had the use of some £20,000.0.0 of Maori money since 1921, obtained upon a promise to provide arterial access to these people. If the Crown is prepared to revest the £20,000.0.0 worth of land in the Natives, it is possible that the Tuhoe tribe may be willing to relieve it of the responsibility to provide the promised arterial access, but so long as the Crown is not prepared to do so it should, I think, spend the interest on the amount (say) £700.0.0 per annum, or an accumulation of £17,500.0.0 to date, towards the object.⁸⁵⁹

In the face of Judge Harvey’s forcefully stated position that the Crown was obligated either to complete the roads or to provide compensation to the owners, the Native Department remained unmoved. The department rejected Harvey’s argument, pointing to the fact that the Crown had already spent £73,500 on the roads,

855. Easthope, ‘Maungapohatu and Tauranga Blocks’ (doc A23), pp 217–218. The funds had been secured after representations to Government by the moderator of the Presbyterian Church of New Zealand.

856. AG St George to resident engineer, 27 November 1945 (Easthope, ‘Maungapohatu and Tauranga Blocks’ (doc A23), pp 218–219)

857. Easthope, ‘Maungapohatu and Tauranga Blocks’ (doc A23), pp 220–221

858. *Ibid*, pp 221–223

859. Judge Harvey to Native Under-Secretary, 17 July 1946 (Easthope, ‘Maungapohatu and Tauranga Blocks’ (doc A23), p 223)

and thus it had no further obligation to the Maori owners.⁸⁶⁰ No further action on the settlement was taken at this time.

Frustrated by the continuing Crown inaction in relation to the promised roads, Takurua Tamarau and 93 others finally petitioned Parliament in August 1949. The petition noted that lands (the area of which was wrongly given as 24,000 acres) had been taken in return for the construction of two arterial roads in the Whakatane and Waimana Valleys, but that these roads had not been built. The petitioners asked for these lands to be returned by the Crown.⁸⁶¹ This request echoed Judge Harvey's view three years earlier, that the lands taken should be returned if there was no intention by the Crown to build the roads.

In January 1951, the Under-Secretary for Maori Affairs, T T Ropiha, produced a report for the Maori Affairs Select Committee on the petition. Citing Dick's report, Ropiha noted that the Maori owners had contributed lands worth £19,620 in return for the Crown's undertaking to build the arterial roads. He similarly concluded that the high construction cost associated with the roads (£230,000, according to Dick's 1937 estimate) meant that they were not worth building. Following the receipt of this report, the committee met with a delegation of Maori owners. Takurua Tamarau told the committee that they sought the return of land for the settlement of Tuhoe returned servicemen and timber for improved housing. The committee then recommended that the petition be given further consideration. In his report, Ropiha noted the obvious course of action: 'it appears that if anything is to be done, it will be the return to the Maoris of some of the present Crown land'.⁸⁶² Thus – in the wake of Judge Harvey's recommendation and the petition from Maori owners – a senior Government official contemplated the possibility of a return of the land as early as 1951.

But little progress was made towards a settlement until 1957. During this time, the Crown instead began to pursue a policy of acquiring more Tuhoe land, as it sought to protect forests from private sawmiller interest in logging Maori land. Ernest Corbett – who became Minister of Lands, Forests, and Maori Affairs, under the Holland Government from December 1949 – continued to push for forest preservation as he moved towards the creation of Te Urewera National Park in 1954. In December 1953, in a bid to meet what he now saw as the justifiable wishes of Tuhoe for economic development of their timber resource, Corbett arrived at a compromise: milling would be allowed on parts of blocks, while the remaining forested area (which the Crown would offer to purchase) would be preserved.⁸⁶³ As we explain in chapter 16, the task of deciding where milling would occur was given to the Urewera Land Use Committee, formed from Crown and Tuhoe representatives in 1954. In the same period, the Maori Affairs Department conducted

860. Easthope, 'Maungapohatu and Tauranga Blocks' (doc A23), p 224

861. Cleaver, 'Urewera Roding' (doc A25), pp106–109

862. Ropiha to Minister of Maori Affairs, 25 January 1951 (Cleaver, 'Urewera Roding' (doc A25), pp110–111)

863. SKL Campbell, 'Urewera Overview, Project Four: Te Urewera National Park, 1952–75' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1999) (doc A60), pp 33, 48–52, 57–62

negotiations with landowners over the future level of Crown support for the Ruatahuna and Ruatoki Development Schemes.⁸⁶⁴ In the early 1950s, the issue of compensation for the failure to build roads thus fell off the Crown's agenda.

But the Maori owners refused to let the matter drop. At a May 1953 hui at Ruatahuna, Te Pakitu Wharekiri had given an account of the effects of the lack of roading on the Whakatane Valley blocks. A motion was passed that the Crown would again be asked to complete its promise and build the roads. On the back of this request, the Secretary for Maori Affairs inquired into the fate of Takurua Tamarau's petition. Director-General of Lands, DM Greig, merely replied that the petition was being given 'further consideration'.⁸⁶⁵ But this was clearly not the case. Tui Tawera, of the Western Tuhoe Tribal Executive, next raised the issue with Corbett in February 1955, but was told that the Urewera Land Use Committee had been too busy to consider it, and that a further study was required. By 1957, Maori owners had become exasperated by attempts to get the Government's attention, and decided to go to the press. Tui Tawera somewhat provocatively told the *Bay of Plenty Beacon* that the owners would accept compensation of £9 million (a figure which he based on an average timber value of £150 per acre over 60,000 acres) for their roading contribution.⁸⁶⁶

This move to go public proved successful. In August 1957, the new Minister of Lands RG Gerard submitted a memorandum to Cabinet outlining his proposed solution (Corbett had resigned because of poor health). Gerard provided a brief historical overview of Crown purchasing in the reserve and the Urewera Consolidation Scheme, noting that though 115 miles of the promised arterial roads remained to be completed, their completion was 'impractical and uneconomic'. Because the Crown had not fulfilled its agreement with Maori about roading under the consolidation arrangements, there was a 'moral obligation [on the Crown] to either return the land or compensate the Maoris'. He added, we note, that because the roading that had been done (apart from the main highway) had fallen into disuse because of lack of maintenance, 'any expenditure on it should be discounted'. But returning the land flew in the face of the Government's attempts to acquire the remaining Maori land in the former reserve and to include it as part of the newly formed national park. The land contributed by Maori owners toward the cost of road construction (given as 39,355 acres) was 'difficult to define'. More importantly, however, in Gerard's eyes, 'it would comprise land which in the interests of soil conservation should be retained in its natural state'. For this reason, and given the Crown was now 'the legal owner of the 39,355 acres, morally, it would appear to be in adverse possession', the Crown 'should compensate the Maoris by a cash payment'. Gerard proposed, as 'a preliminary approach' to negotiations, a payment of £19,975 with 5 per cent compound interest from 1 January 1922, which

864. Tuawhenua Research Team, 'Te Manawa o te Ika, Part Two' (doc D2), pp 343–345; Oliver, 'Ruatoki Block Report' (doc A6), pp 208–209

865. Director-General of Lands to secretary for Maori Affairs, 10 July 1953 (Clever, 'Urewera Roothing' (doc A25), p 112)

866. Cleaver, 'Urewera Roothing' (doc A25), pp 111–113

totalled £113,400. In conclusion, Gerard recommended the Crown to 'lock up' the remaining part of the Crown's land awarded it in the Urewera Consolidation Scheme (330,000 acres) for conservation purposes, by including it in the national park, and to complete the roading settlement: the Crown would be unable to purchase any more Maori land until those two issues were resolved.⁸⁶⁷

On 1 October 1957, Takurua Tamarau and Sonny White led a 30-strong deputation to Wellington to meet with Gerard and Corbett.⁸⁶⁸ Corbett acknowledged that towards the end of his term of office, he felt that the Crown's breach of promise with respect to the arterial roads was 'the one injustice . . . that was crying out to be righted'. But he also told the deputation that there was no prospect of having their land returned, as they had requested in their 1949 petition. Corbett explained that there were two reasons why the land could not be returned. First, it would be 'absolutely impossible in view of the way interests lie . . . to hand back 39,000 acres out of 300,000 because no interest had been defined as to where that area lay'.⁸⁶⁹ It should not pass without comment that when the Crown was faced with exactly the same problem prior to consolidation, it found a way through it when it served its interests. Corbett's statement was based on the findings of a report on the roading and survey contributions, written earlier in the year by RE Stone and DJ Mitchell of Lands and Survey (discussed above). Stone and Mitchell concluded that though it was possible to say which groups contributed towards road (and survey) costs, it was not possible to indicate where the land was taken by the Crown.⁸⁷⁰ The second reason was that the Crown had decided that the land was to be kept 'forest clad'. As he put it:

One point I want to make abundantly clear – that the whole of the Urewera purchase has been declared Rahui, a National Park. It is completely tied up; it is tapu, and I think that I should make that clear to you because there has been, for years while it was Crown land and not tapu, a feeling that some day somebody would come along and exploit it. It is not possible today, or in the future, because by Act of Parliament the whole of the land has become a reserve that cannot be touched.⁸⁷¹

In fact, while Cabinet had authorised the addition of 330,000 acres of Crown land to Te Urewera National Park in August 1957, the Order in Council legalising this change was not issued until 25 November.⁸⁷² The land had not been 'tied

867. Minister of Lands to Cabinet, 5 August 1957 (Crown Law Office, supporting papers on Urewera consolidation and roading (doc M31(a)), pp 1700–1702)

868. Cleaver, 'Urewera Roading' (doc A25), p 113

869. 'Notes of a Deputation which Waited on the Hon RG Gerard, Minister of Lands', typescript, 1 October 1957 (Nikora, 'Urewera Consolidation Scheme' (doc E7), app D, p 72)

870. RE Stone and DJ Mitchell, 'Urewera Roading – Urewera Lands Act 1921–22', 2 July 1957 (Crown Law Office, supporting papers on Urewera consolidation and roading (doc M31(a)), pp 1694–1699)

871. 'Notes of a Deputation which Waited on the Hon RG Gerard, Minister of Lands', typescript, 1 October 1957 (Nikora, 'Urewera Consolidation Scheme' (doc E7), app D, pp 73–74)

872. Campbell, 'Te Urewera National Park' (doc A60), pp 86–88; 'Adding Land to the Urewera National Park', 25 November 1957, *New Zealand Gazette*, 1957, no 89, p 2217



Takurua Tamarau. Mr Tamarau led the appeal to the Crown for compensation for the land given for the building of arterial roads in Te Urewera.

up; Ministers had merely decided that it would be so, as Gerard's earlier memorandum to Cabinet revealed. There was, therefore, no legal or logical reason why appropriate land could not have been excluded from the Park and returned to Maori owners.

Instead of returning land, Corbett recommended that compensation be offered to the owners in the form of a cash payment, which could be vested in a Trust Board.⁸⁷³ Such a sum, he said, 'must be a fair amount, satisfactory to the honour of Government, who has failed to pay what would have been £20,000 in 1922 and not paid since, and satisfactory to the people who have been denied their property rights for so long'.⁸⁷⁴ Sonny White's response to the proposal for a cash settlement was to describe the importance of the roads to the Maori owners' hopes for economic development, and the effect that the failure to construct the roads had on their development: 'They [the Maori owners] thought that the Crown was going to put roads in straight away and it would then be a means to open up country, and at that time they were living off the land'.⁸⁷⁵ In other words, it was not just the loss of the land, it was the loss of the opportunities available had the roads been constructed, that was at issue.

Although the notes of the meeting do not reveal whether the Crown made an initial offer at that time, it appears that Sonny White at the very least was briefed on its likely terms: the return of land was not on the table and a cash settlement would be the Crown's only offer. On 6 November, five weeks after the Wellington meeting, a hui was held at Ruatoki to receive the Crown offer. More than 100 representatives of the Maori owners attended. Speaking on behalf of the owners, White opened the proceedings by saying that a cash settlement should be based on 1922 land values (rather than allowing for an increase in values due to current interest in the timber, as Tui Tawera had suggested to the *Bay of Plenty Beacon*). White then proposed the same terms that Gerard had set down in his August memorandum: the settlement should be based on the original value of the contribution (£19,975) plus 5 per cent per annum, compounding interest.⁸⁷⁶

Speaking for the Crown, EP Wakelin (commissioner of Crown lands in Hamilton), stated that the Crown had agreed to repay the original value of the land with compound interest at current rates for the 35 years since the Crown had received the contribution. He had been instructed to offer £100,000 in full settlement, with 5 per cent interest on top of this until the payment was actually made (the following year). But, as Cleaver notes, 5 per cent compounding interest on the £19,975 contribution over 35 years should have seen the owners receive £110,182.⁸⁷⁷ Even Gerard had earlier proposed that the proper amount should be £113,400,

873. Cleaver, 'Urewera Roothing' (doc A25), p114

874. 'Notes of a Deputation which Waited on the Hon RG Gerard, Minister of Lands', typescript, 1 October 1957 (Nikora, 'Urewera Consolidation Scheme' (doc E7), app D, pp 72-73)

875. *Ibid*, p 76

876. Cleaver, 'Urewera Roothing' (doc A25), pp 116-117

877. *Ibid*, p 117

based on interest over 35 years and six months.⁸⁷⁸ The reduced amount cannot be put down to the extra 5 per cent interest Maori owners would receive until the payment was actually made, as Corbett had earlier explained (at the 1 October meeting) that this sum had not been budgeted for in the 1957–58 financial year (ending on 31 March). The Crown's final offer, therefore, was a significant discount on the terms proposed earlier, though Tuhoe would not have been aware of this.

Tuhoe signalled their approval of the terms that Wakelin put to the hui. As Sonny White said: 'There was no doubt from the applause that the people unanimously accepted the Crown's offer.'⁸⁷⁹ The following day, Takurua Tamarau, Sonny White, and Tui Tawera accepted on behalf of Tuhoe the £100,000 compensation (together with interest accrued from 6 November) as a 'full settlement'.⁸⁸⁰ The hiatus between the settlement and the actual payment allowed the Maori Affairs Department to arrange for the constitution of a Tuhoe Maori Trust Board, so that it could receive the payment. This Board was subsequently made a legal entity by section 9(1) of the Maori Purposes Act 1958, which came into force on 25 September 1958, while section 9(3) of the same Act contained the appropriation for the compensation to be paid to the Board in return for the 'discharge of all claims and demands against the Crown'. The beneficiaries of the Trust would be 'the persons to whom land was allotted under section seven of the Urewera Lands Act 1921–22 and their successors in title (being Maori or the descendants of Maoris)' (section 9(2)).

Can it be said that the roading settlement was fair, both in its terms and in the process by which it was achieved? Counsel for the Wai 36 Tuhoe claimants submitted that the settlement failed to take into account the full range of effects the Maori owners suffered due to the Crown's failure to construct the arterial roads. Counsel argued that a proper settlement would have applied the legal principle of '*restitutio in integrum*', and that the owners were entitled to claim damages in the same way as a plaintiff in a civil case. This means that the offending party (in this case, the Crown) would ensure that the offended party (the owners who gave land as their roading contribution) were left no worse off by the contractual breach, and equally the offending party should not be able to profit as a result of the breach. The various losses suffered by the Maori owners, counsel for Wai 36 Tuhoe explained, may be defined as the restitution interest (the original contribution made by the party to the contract), the reliance interest (the losses resulting from the steps taken by the party in the belief that the contract would be fulfilled), and the expectation interest (the loss of benefit, and opportunity to profit from the completion of the contract).⁸⁸¹

878. Minister of Lands to Cabinet, draft memorandum, 5 August 1957 (Parker, supporting papers on Urewera consolidation and roading (doc M31(a)), p1702)

879. 'Report of a Meeting Held at . . . Ruatoki . . . on Wednesday 6 November, to Discuss a Settlement of the Urewera Roading Petition' (Parker, supporting papers on Urewera consolidation and roading (doc M31(a)), p1704)

880. Cleaver, 'Urewera Roading' (doc A25), p118

881. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp139–140

Counsel for Wai 36 Tuhoe observed that the Crown could have done more to meet the restitution interest, as it was within the power of the Crown to return the land taken. Instead, by offering only a cash payment, counsel argued that Maori owners were short-changed, since the valuations on which the payment was based (the same as those used for Crown purchasing in the reserve blocks and the consolidation scheme) were too low. On the question of the reliance interest, counsel noted that the Crown gave no remedy to Tuhoe owners who had sought to take their respective awards along the line of the promised roads, and were subsequently left with titles to blocks with little practical access. As for the expectation interest, counsel observed that nothing was offered to compensate Tuhoe for the investment they had made in blocks which were meant to have road access, or for the profits which that investment might have been expected to generate, but did not. Finally, counsel pointed out that the estimated cost of road construction ballooned to £225,000 by 1922: compensation should have been based on the increased value of what was promised, rather than the original and inaccurate estimates. Not to do so would see the Crown profit by its breach of contract, since it did not have to meet this unforeseen expenditure.⁸⁸²

Crown counsel, in contrast, submitted that the settlement was 'reasonable in all the circumstances'. The Crown based its compensation on the full value of the land when the contribution was made, allowing for a 5 per cent annual interest rate in the interim period. This amount was in fact generous, counsel implied, because a significant portion of the arterial roads were actually built. Counsel acknowledged that 'there were flow-on effects' for the Maori owners due to the Crown's non-completion of the promised roads and that these effects would be subject to the Tribunal's consideration. However, counsel argued, 'a damages approach is not appropriate for historical grievances.'⁸⁸³

We agree with the Crown that the approach proposed by counsel for Wai 36 Tuhoe would ordinarily be inappropriate for settling contemporary Treaty claims, which settlements are based on a different set of criteria. But the question before us is whether the 1958 settlement was adequate compensation for the Crown's failure to meet its obligations under the Urewera Consolidation Scheme. By this measure, the settlement is clearly found wanting, and we have been significantly aided by the criteria counsel for Wai 36 Tuhoe put to us.

The settlement was first and foremost unfair because the Crown deliberately shut off the legitimate option of returning the land, which was the Maori owners' preferred form of compensation after the Crown had ruled out the possibility of completing the roads. Both Judge Harvey and the Under-Secretary for Maori Affairs considered that returning the land was the most sensible course of action to compensate the owners. And in fact there is no reason why the land could not have been returned, even if it was not in the form of an addition to each of the 183 blocks from which deductions were made. It would have been difficult to return the land in this way to each of these blocks: although the approximate amount

882. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 139–140

883. Crown counsel, closing submissions (doc N20), topics 18–26, pp 102–103

of land deducted was known, the boundaries of the blocks were only roughly drawn according to 'good fencing lines'. The boundaries of each of the 183 blocks would have required re-surveying to include the additional area, and given how this played out in the consolidation scheme it is unsurprising that this was never contemplated. But other options could have been explored, similar to Knight's early proposal to take land for survey costs from a single area from the lands considered unsuitable for settlement. A single area within the Crown's award could have been returned to the co-ownership of all the Maori owners of consolidated blocks in accordance with their shares. Other areas were available for return, such as the part of the Ruatahuna township reserve that was utilised by the Ruatahuna Development Scheme, as well as some of the land around Minginui and on the Whirinaki block which the Crown set aside to exchange with lands subject to milling restrictions. Instead, Corbett simply told Maori owners in the October 1957 meeting that the land could not be located, and therefore could not be returned. There were any number of permutations that might involve the return of land, but the Crown would not consider any of these because it had its own agenda. It wanted more land, not less.

In fact, Corbett's statement at the meeting with Maori owners disguised the Crown's true intentions, which were disclosed in Gerard's memorandum to Cabinet: the Crown would not return the land to Maori because it in fact wished to acquire more land from them (for the national park). Ultimately, the Crown was only motivated to come to a settlement when it was in its interests to do so. Maori owners had to wait 20 years after they began making forceful protests, because the Crown did not consider it a priority. The fact that Ministers only took action to compensate the owners when it was anxious to negotiate to acquire even more Maori land is a further indictment on the settlement. Had their petition been addressed with some degree of urgency, land might have been returned to them. Instead, the Crown proceeded from the early 1950s with its plans for the creation of the national park. At a crucial point, when it was decided to put all of its land into the park (which included the Maori owners' land contribution for the roads), the owners were told that no land was available for a settlement. In chapter 16, we consider these events in the context of the park's history, and whether the park's creation and management constituted a fresh Treaty breach against the Maori owners of the former reserve. At the very least, it is clear that the settlement cannot be considered 'reasonable in all the circumstances' when it was achieved primarily to facilitate Crown acquisition of Maori land, as the broken promises of the reserve resonated decades later. It can hardly be considered as the basis of a settlement for one of the key failed promises of the Urewera Consolidation Scheme, which Maori owners had been led to believe would see the end of Crown purchasing, as well as assistance in development opportunities through the construction of arterial roads. Such a settlement can hardly be considered appropriate restitution for one of the key broken promises of the consolidation scheme: that Maori owners would secure arterial roads as the basis for economic development.

But given the circumstances of the negotiations, it is not surprising that Maori owners quickly gave up their long-standing quest to have land returned and

instead agreed to the Crown's cash offer. Counsel for Wai 36 Tuhoe questioned the process through which the negotiations took place and whether the Maori owners were given adequate opportunity to seek legal advice in the negotiations.⁸⁸⁴ From the records of the meetings on 1 October and 6 November, the Maori owners appear to have had no legal representation or professional advice. They were subsequently left to negotiate directly with Ministers who had already established that no land would be offered back and that a cash settlement would be offered instead that would merely compensate for the value of the land plus interest. The owners' rapid acceptance of the first offer is perhaps understandable, given their repeated failures to have their protests taken seriously. But more importantly, their discussions with Gerard and Corbett left them with little choice: the land, they were told, could not be returned to them because it was now part of the national park. This was, in fact, not true. Yet, Corbett (like Coates in May 1921) had assured them of his determination to see justice done – and he did so at what was effectively his farewell meeting with Tuhoe leaders – which must have carried considerable weight with those leaders when they came to consider the offer. It is also possible that the impending general election (held on 30 November) impinged on the negotiations. Indeed, Sonny White questioned whether the assurances relative to the National Park would be affected by it.⁸⁸⁵ Certainly it would have been difficult for the Crown to revise its offer if the owners had rejected it on 6 November. Given that the Crown had delayed negotiating a settlement with the Maori owners for so long, it should have done more to ensure that the negotiations took place on a more even footing.

These circumstances alone mean the settlement was improper. But it is also clear that what was agreed to was less than generous, in light of the full range of impacts of the Crown's failure to meet its promise. The monetary compensation offered was less than the face value of the original contribution, plus the 5 per cent compounding interest over the 35 years the Crown had been the beneficiary of the contribution. It cannot be said that this final reduction to £100,000 made the offer 'a fair amount, satisfactory to the honour of Government'. Purely on a financial basis, the £100,000 payout compares very unfavourably with the recommendation made by R G Dick in his report written 20 years earlier, that the estimated expenditure needed to complete the roads (some £230,000) 'should be expended in the development' of areas at Ruatahuna and in the Whirinaki Valley instead. And although the Crown did spend some £73,500 on constructing parts of the arterial roads (according to Dick's 1937 figures), this does not make the settlement 'reasonable' either. The Crown's promise under the consolidation scheme was to complete two arterial roads, not a small portion of them. Indeed, when the Crown reneged on its obligation to build the roads, it was saved a great deal of expenditure which

884. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p139

885. 'Report of a Meeting Held at . . . Ruatoki . . . on Wednesday 6 November, to Discuss a Settlement of the Urewera Roothing Petition', 1957 (Parker, supporting papers on Urewera consolidation and roading (doc M31(a)), p1703)

it would have otherwise incurred. Its failure to properly estimate the cost of the roads was a mistake entirely of its own making. So in our view, it would be reasonable to expect that the Crown would share with the Maori owners the huge saving it obtained by being released from its obligation to build the roads, and that saving must have been much greater than R G Dick's figure 20 years earlier.

The settlement also made no attempt to address the very obvious prejudice suffered by Maori owners of the consolidated blocks located along the promised arterial road lines. This is what counsel for Wai 36 Tuhoe identified as the 'reliance' and 'expectation' interest. As we have explained, Maori owners were led to believe that their contribution would ensure the roads were built promptly. The prospect of having these roads was one of the key reasons why they agreed to the consolidation scheme in the first place. In the next chapter, we explain how the partially completed roads provided little practical benefit to the Maori owners, especially after maintenance work was abandoned. Yet, significant effort was expended in developing farming operations in the expectation that the roads would provide access to markets.

On top of this, officials failed to give notice to Maori owners that the Crown was abandoning its commitments to the roading scheme. It was not until 1946, when the court deputy registrar, Dillon, travelled to Maungapohatu to ascertain whether the community would accept evacuation, that the Crown seems to have made an effort to have its policy explained on the ground. Only after this did Takurua Tamarau petition for the return of the owners' roading contribution. And it took another eight years before the Crown made the owners an offer of settlement. Equally, the settlement offered no remedy for the ongoing costs such blocks would be faced with after 1957 because of the lack of roads.

Some claimant groups also raised concerns about the way the settlement money was transferred to Maori owners. Counsel for both the Tuawhenua and Nga Rauru o Nga Potiki claimants submitted that the Crown should have ensured that compensation was made directly to the owners, rather than to a newly formed trust board.⁸⁸⁶ We have not seen any evidence to indicate that Maori owners at the time were unhappy with this decision. Although it was Corbett who first suggested a trust board at the 1 October meeting,⁸⁸⁷ Sonny White observed at the hui on 6 November that 'in their earlier meetings, they had decided on a trust board to administer the moneys for the benefit of all the Tuhoe people.'⁸⁸⁸ In their letter accepting the Crown's offer the day after it was made, Takurua Tamarau, Sonny White, and Tui Tawera stated that a unanimous decision had been reached to form a Tuhoe trust board to be the recipient of the compensation. There is no clear evidence, therefore, to indicate that a Trust Board was imposed on Tuhoe

886. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), pp 72–73; counsel for Tuhoe Tuawhenua, second amended statement of claim, 30 September 2004 (claim 1.2.12(b)), p 234

887. Cleaver, 'Urewera Roading' (doc A25), p 115

888. 'Report of a Meeting Held at . . . Ruatoki . . . on Wednesday 6 November, to Discuss a Settlement of the Urewera Roading Petition', 1957 (Parker, supporting papers on Urewera consolidation and roading (doc M31(a)), p 1704)

against their wishes.⁸⁸⁹ The claims now made indicate current dissatisfaction with the trust board rather than a legitimate complaint as to the recipient of the settlement moneys. Further, it seems reasonable that the settlement was handled on a collective basis, since all blocks (except for the majority of those in the Te Whaiti series) had been subject to the same one-quarter deduction for roading costs, irrespective of their location. Had the Crown returned land, as we have noted, we would expect it to have been returned to a collective body or bodies that would have administered the land on behalf of the people. The trust board was probably the best equivalent to a committee of management available at the time to receive the settlement money.

While we are unable to fault the manner in which the settlement money was handed over, this does not alter our overall assessment of the settlement itself. It was unreasonable that the Maori owners had to wait until 1957 before the Crown was willing to offer any compensation. The road work itself was quickly abandoned shortly after the discovery that the Crown's land would not be suitable for settlement. By the end of 1929, the Public Works Department had determined that the roads would not be worth completing; a policy that was formally adopted by Ministers in 1937, following increasingly insistent protests from Maori owners who wanted either the return of land or the completion of the roads. Given these factors, and given the importance of the roading promise to the Urewera Consolidation Scheme, some form of settlement should have been immediately forthcoming. Instead, the Maori owners had to wait another 20 years. A fair settlement would have seen the return of the land plus adequate compensation for the reliance and expectation interest. As it stands, Maori owners received a payment that has been of great benefit to them, but the land remains in Crown ownership.

14.9.7 Conclusions – roads

The Consolidation Scheme Report had noted that the promise of arterial roads was one of the key factors that persuaded Maori owners of the reserve to support the proposed consolidation scheme. The authors noted: 'the Urewera Natives were moved to agree to the consolidation proposals chiefly by the consideration that out of the scheme would emerge for the non-sellers defined sections, ready surveyed and accessible by or handy to arterial roads.'⁸⁹⁰ Sonny White repeated these themes in 1957, during the settlement negotiations:

This land. The Tuhoes that didn't want land, the Crown bought them out; the Tuhoes who wanted land kept it but contributed a substantial amount towards roading. I was only 20 at the time. At that time the only outlet for the Ruatahuna people who were trying to eke out a living was from Whakatane, and the mere fact of the Crown promising a road down the Whakatane was the thing that these people – who

889. Tamarau, White, and Tawera, to RG Gerard, Minister of Lands, 7 November 1957 (Parker, supporting papers on Urewera consolidation and roading (doc M31(a)), p 1705A)

890. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 7

were the only land-minded ones of the Tuhoes – grasped because they wanted to make progress. They thought that the Crown was going to put roads in straight away and it would then be a means to open up country, and at that time they were living off the land. These were hard years and they were trying to make a living off the land, and they did this fully expecting that the road would be put in very shortly. So I think, Sir, that most of those people, because of the promise to put these roads down the rivers, felt they would consolidate their interest down the rivers because of the promise of the roads going down the rivers. That was the biggest factor in their giving land for roading.⁸⁹¹

Seen in the light of these hopes, the quick abandonment of the Crown's promise and the final decision in 1937 not to deliver upon it is particularly egregious. Maori owners of the reserve, from the proposals of Numia Kereru and Rua Kenana in 1908, had placed considerable stock in the development potential associated with the introduction of main roads in their rohe. Yet, in return for giving up a quarter of what would have been their future lands, the Maori owners (apart from those who had land lying along the Rotorua–Waikaremoana road, or the Whirinaki Valley road), were left with either no road access at all or access from unmaintained roads and tracks that rapidly deteriorated.

One of the worst aspects of the consolidation scheme is that the Maori owners need never have sacrificed a single acre to pay for arterial roads. As we have seen, Government policy at the time was to fund main roads from the public works account. Sometimes, the Crown was reimbursed for part of the cost, whether by local contributions or by charging a higher price for Crown land, but by no means always. Mostly, the Government expected to be repaid in a more general way through economic development and an increased tax base. The problem for Maori was that all this funding was focused on opening up new districts or 'back-blocks' for European settlement. In the meantime, the Crown had steadfastly resisted pressure to build roads in Te Urewera (to keep the prices paid to Maori lower), but it was finally ready to provide roads in 1921 in expectation of an influx of settlers. Thus, neither law nor policy required the Maori owners to contribute towards the payment for these roads. They need never have lost a quarter of their remaining land for roads that – to make matters worse – were never built. In our view, the Maori owners were misled into thinking that a contribution for roads was required. Ultimately, the responsibility for misleading the owners lay with Ministers at the May 1921 Ruatoki hui.

In the event, the roading commitment made by the Crown in the Urewera Consolidation Scheme was more than Government departments were willing to fulfil after plans for settlement were abandoned; the revised and increased estimates for the cost reminded officials that the Crown did not fund main road construction through Maori land, and diverted the work elsewhere. The difference can be seen today in the upper Waimana Valley and the Waioweka Gorge, but also

891. 'Notes of a Deputation which Waited on the Hon RG Gerard, Minister of Lands', typescript, 1 October 1957 (Nikora, 'Urewera Consolidation Scheme' (doc E7), app D, p 76)

in all the land remaining in Maori ownership in Te Urewera, which was 25 per cent smaller than it would have been otherwise. The discovery that Maori owners alone would use the roads meant that there was no longer a sufficient justification for the investment, because their needs did not factor in the Crown's plans for regional economic development. This was the ultimate outcome of the Urewera Consolidation Scheme: the failure of the Crown's promises to create a self-governing native reserve and the failure of the Crown's alternative plans for the land, which only served to further undermine the hopes of Maori owners to develop their remaining lands.

Tuhoe persistence finally secured a Crown response to their search for the return of land for the roads that had been promised. In 1957, the Minister of Lands was prepared to acknowledge (in a memorandum to Cabinet) a 'moral obligation' to either return land or compensate the owners. But Tuhoe leaders were told that the land could not be returned because it was not clear how it could be done – and in any case the land was 'tied up' in the Te Urewera National Park. It was not, in fact, as no Order in Council had been issued; only the Cabinet decision had been taken. But that decision reflected the Crown's anxiety to acquire more Maori land for scenery and catchment conservation purposes, and for the national park. Putting its own land in the park, and settling the roading grievance, Cabinet understood, were the preconditions for success in purchasing Maori land. Gerard's proposed settlement figure of £113,400, that is £19,975 with 5 per cent compound interest from January 1922, was then cut back to £100,000 (plus interest until payments were made) – a less than generous offer in all the circumstances. Tuhoe, evidently without legal representation, were left with little room to negotiate; they were told at the outset that the offer on the table was a cash settlement. It was not surprising, after so many years, that they accepted it.

14.10 TREATY ANALYSIS AND FINDINGS

Broken promises piled upon broken promises: that is the story of the UDNR Act and the Urewera Consolidation Scheme.

In essence, the Crown argued in our inquiry that a consolidation scheme was the fairest and most effective way to divide the interests of the Crown and Maori in the reserve, that the surviving Maori owners consented to the scheme in principle and in its details, and that the scheme was carried out fairly and with an eye to the mutual benefit of both parties. While survey costs 'roused suspicions', cheaper methods of survey were not viable and there is simply insufficient evidence to determine whether Maori were treated unfairly, or to explain why they had not received land transfer titles after the surveying was completed (and, therefore, to determine whether the Crown was at fault). The Crown's one concession of Treaty breach was in respect of roads. While it affirmed the principle that Maori should have contributed land towards the costs of roads, the Crown conceded that the roads were never completed, which was fatal to the integrity of the scheme, prejudicial to Maori, and in breach of the Treaty. In respect of the Waikaremoana block, the Crown admitted that it was 'unconscionable' for it to have acquired Ruapani

interests worth 15 shillings an acre for the price of six shillings per acre, but it made no other concessions.

The claimants, on the other hand, argued that they never gave their free, willing, or informed consent to the Urewera Consolidation Scheme. Because the Crown had closed the avenue of partitioning in the court, they were left with no choice. They did not consent to the scheme. Further, they argued that the Crown favoured its own interests at the expense of theirs in the division of the land. In particular, the Crown acquired the whole of Waikaremoana by the threat of compulsion, leaving Tuhoe no choice but to exchange their interests, and leaving Ruapani and Kahungunu with no choice but to sell at the Crown's price. It was unconscionable, the claimants said, that the Crown obtained not only Waikaremoana but also almost half of the land with which they entered the scheme by means of improper survey costs, the roading contribution, and fresh Crown purchase of individual interests during the scheme. Also, the claimants argued that they effectively paid twice for the survey of their lands (because the cost of survey had been factored into the low valuations made in the 1910s), that they were over-charged for the surveys, that the resulting land loss was excessive, and that cheaper methods could have safely been used since they never got the promised land transfer titles. The claimants agreed with the Crown that its failure to complete the promised arterial roads was in breach of the Treaty, but they also argued that they should never have had to make a contribution in the first place, and that the contribution was excessive because (once again) they were paying twice.

In our analysis of these arguments, we paid particular attention to the origins of the scheme and the question of Maori consent to it (in principle and in its particulars). In our view, the Crown had indeed left those among the peoples of Te Urewera who still clung to their unsold individual interests with little choice; since the option of partitioning in the Native Land Court had been taken away by law, and since they could do nothing else legally with their remaining land except sell it to the Crown, a consolidation scheme was literally the only game in town. Having said that, however, the non-sellers were aware of consolidation in a more positive sense as a tool to rescue scattered and unusable interests and to pool them for the purposes of economic development. Although they had no choice, in effect, they welcomed the outcomes they expected to be achieved by a consolidation scheme. They wanted to separate their interests from the Crown and locate them on the ground. They also wanted to stop the bleeding of individual interests and guarantee their ownership of what they had left; land transfer titles, they were told, were the answer. Although Ngata advised that Crown financial and business assistance would be required before Maori farming could really be made a success on their consolidated lands, this advice was ignored for at least a decade.

Thus, we cannot find that the peoples of Te Urewera were coerced into accepting a consolidation scheme. Rather – in the circumstances in which a decade of unremitting Crown purchasing had left them – they welcomed it as the only possible way forward.

This does not mean, however, that the surviving Maori owners gave their free, willing, and informed consent to the particulars of the scheme that was put in

front of them. This question turns on the events of two hui: the May 1921 hui at Ruatoki, at which the assembled owners agreed in principle to a scheme; and the August 1921 hui at Tauarau, at which the owners organised themselves into consolidation groups and negotiated many of the details of the scheme with the Crown's representatives, Knight and Carr, assisted by their selected representative, Apirana Ngata. In this respect, the Tauarau hui was crucial. Officials had had months to prepare a draft scheme that would deliver the Crown's objectives: as much land as possible for settler sheep farms, timber milling (especially at Te Whaiti), and watershed conservation. The Maori owners, however, were only given two days to respond to the Crown's proposals, and they did not have the kind of information or advice that Mr Nikora suggested was essential for owners to make informed choices in a consolidation scheme. As a result, the Maori owners were clearly on the back foot at Tauarau, and the Crown had a significant advantage. As one example, we note that Maori might have organised the size and location of their consolidation groups differently, had they been properly informed as to how much greater were the costs for surveying remote blocks that were small in size and (because of the number of blocks) had so many boundaries.

Nonetheless, we agree with the Crown that the Maori owners bargained hard and with some success. Ngati Whare and Ngati Manawa leaders, for example, were able to secure separate arrangements for Te Whaiti in recognition of their limited interests in most of the lands that would form part of the scheme. Tuhoe acquired much more of what was thought to be the farmable land in the north of the reserve than the Crown had planned to allow them, and they forced the inclusion of Waikaremoana lands in the scheme by threatening a total withdrawal if their wishes were not met. Ngati Ruapani secured agreement to separate arrangements with them, since they had no land in the scheme outside Waikaremoana into which their interests could be exchanged. Also, the Maori owners were allowed complete autonomy as to the size, number, and composition of their consolidation groups, and exercised a significant degree of choice as to where those groups would have their interests located. We see no reason to doubt that the owners' committee was representative, and that it was – for the brief period it operated – a vehicle for the autonomy of the surviving owners. To that extent, the claimants shaped many of the outcomes of the scheme, since the Tauarau hui decided the division of four-fifths of the land in a relatively final fashion. (The exact location of boundaries still had to be established on the ground.)

According to the Crown, we should judge the outcomes of the Tauarau hui by the promises made by Ministers to Maori, especially at the preceding May 1921 hui at Ruatoki. In sum, Coates and Guthrie promised that the scheme and its outcomes would be to the mutual benefit of Maori and the Crown (meaning future settlers), that Maori interests would be protected (especially by 'their' Native Minister), that the Government desired to do them justice, and that the Government desired justice for both its peoples. A previous generation of Maori leaders had heard these kinds of promises before, when Seddon and Carroll toured Te Urewera in 1894, and when they had assembled in Wellington to negotiate with Seddon in 1895. According to Crown counsel, this time the promises were kept: the consolidation

scheme was of genuine mutual benefit to Maori and the Crown, and Maori interests were protected (except in the failure to build roads).

As we discussed in section 14.5.1(6), we accept these standards as minimum standards for judging the scheme. At the time that Seddon first promised the mutual benefits and protection inherent in the Treaty (see chapter 9), the reserve lands were still the undisturbed rohe of the autonomous peoples of Te Urewera. But at the time that Coates and Guthrie made similar promises at Ruatoki, the supposed reserve was in ruins, Maori autonomy had been gravely undermined, and a consolidation scheme was only necessary because the Crown had created what it called a 'parlous' state of affairs by breaking its promises and relentlessly purchasing individual interests. Mutual benefit and equally fair outcomes for Maori and the Crown would have been the appropriate Treaty standards, where there was a level playing field for both Treaty partners, but that was not the situation in Te Urewera in 1921. Essentially, the Crown put to us that it should benefit mutually with Maori from a consolidation of interests which it had purchased in massive breach of the Treaty, and to the great prejudice of the peoples of Te Urewera. We cannot agree with that proposition. Mutual benefit and equally fair outcomes for both 'co-owners' in the reserve are *minimum* standards for the Crown to have met in carrying out the Urewera Consolidation Scheme.

To a large extent, the Taurarau hui did meet those minimum standards. As Coates had instructed, there was a 'round-the-table conference' characterised by 'give-and-take' and the 'spirit of reasonableness'. A significant degree of autonomy was accorded to the Maori owners: they organised their own consolidation groups and locations through their own elected committee; and the committee bargained with the Crown and secured agreement to some of its wishes. But there were also ominous signs for how the scheme might be carried out after the hui: Maori had agreed to pay for surveys in land without knowing how expensive the surveys would be or how much land might be taken; Maori had agreed to a roading contribution to the tune of £20,000 worth of land; and Maori had agreed to what was in fact a draft scheme but no process had been set down for how that scheme would be finalised or how future decisions would be made. In the event, the owners' committee never met again and the Crown dealt only with the much smaller collectives (the consolidation groups) created at the hui, which (as we have seen) operated from a more unequal position of power after the Taurarau hui.

Finally, in respect of the arrangements negotiated between the 'co-owners' of the reserve at Taurarau, the Crown had made three definite promises to the Maori owners, all of which it failed to keep. These promises were recorded by Ministers and officials at the time as being: first, a promise that no more individual interests would be purchased, at least until after the scheme was completed (a promise confirmed by Coates after the hui); secondly, a promise of land transfer titles (at the cost of full surveys by theodolite, to be paid for in advance by a deduction of land prior to survey); and, thirdly, a promise of two arterial roads and side roads to provide access to the newly consolidated Maori-owned lands. To have met its own standards of mutual benefit, protection of Maori interests, and justice to Maori, the Crown at least had to honour these definite undertakings to Maori.

After the completion of a draft scheme at Tauarau, the Crown's conduct changed considerably. It did not – as Mr Nikora suggested would have been appropriate in a well-conducted scheme – refer the final version of the scheme back to its co-owners for their approval before setting its terms by statute. Then, consolidation commissioners were appointed with sole authority to make final decisions about the location of awards and any other matters to do with the scheme. While the officials themselves had recommended giving the Maori owners a right of appeal to an independent arbiter – by their reckoning, the chief judge – the legislation did not include this safeguard. Thus, the Urewera Lands Act 1921–22 gave the Crown co-owner absolute power to make all further decisions in the scheme. This Act was in breach of the Treaty principles of partnership and autonomy, depriving Maori (who were co-owners with the Crown) of any further powers of decision-making, and giving them no avenue of redress if the Crown co-owner made decisions that favoured its own interests.

In terms of prejudice, we note that the commission was in fact commendably flexible in its decisions about the northern parts of the reserve, and met the wishes of the Maori co-owners there to a considerable extent. It was otherwise, however, in the case of the Te Whaiti and Ruatahuna lands.

In the case of Te Whaiti, the commission refused to alter the provisional arrangements negotiated at that place after the Tauarau hui, wrongly stating that those arrangements had been final. Instead, it used its absolute powers in favour of the Crown's interests, so as to obtain the lion's share of the millable timber on the blocks. Maori interests were, on the whole, relegated to a comparatively worthless residue block, instead of the Te Whaiti Valley where the owners had wished to locate them. We agree with Ngati Whare and Ngati Manawa that the Crown has breached the principles of the Treaty of Waitangi, to their significant prejudice. As we found in chapter 13, the Crown acquired its interests in the Te Whaiti blocks in breach of its Urewera District Native Reserve promises and in breach of the Treaty. It should, therefore, have accorded the Maori owners first choice for the location of their remaining interests, and it should have done everything in its power to honour that choice. Instead, the Crown breached the principles of partnership, active protection and – particularly – redress of past breaches when it forced its own choices on the peoples of Te Whaiti, sacrificing their interests in favour of securing their valuable timber for itself.

At Ruatahuna, the situation was somewhat different. Te taha apitihana leaders did not dispute the location of their interests so much as the conduct of the scheme as a whole. They wished to withdraw unless the Crown met their concerns, especially in respect of its ongoing purchase of individual interests, the amount of land being taken for surveys, the taking of any land at all for roads, and what they considered to be their forced evacuation of Waikaremoana.

This opposition to the scheme did win one major concession: survey costs for their lands were significantly lower than for other lands in the reserve, after the passage of special legislation to permit cheaper survey methods at the discretion of the commissioners. Otherwise, however, the commission simply imposed its will on te taha apitihana, as the law allowed it to do, locating all their interests in

one 'composite title' regardless of their wishes. Ultimately, the passive resistance (through non-participation) of te taha apitihana may even have made it easier for the commission to secure a significant amount of southern Ruatahuna lands for the Crown, which it wanted for watershed conservation purposes. This ran contrary to the decisions at Tauarau, which had seen Maori interests concentrated in the old (reserve) Ruatahuna blocks and the Crown's interests excluded. Some of those who had wanted to protect the heartland (Te Manawa o Te Ika) were forced to take part of their interests elsewhere. Also, the Crown awarded itself a 60-acre township reserve without the consent of the local community to either the creation or the location of the proposed township.

As at Te Whaiti, the Crown's previous Treaty breaches in its acquisition of interests meant that it had to put the wishes of the Maori owners first. Whether or not they should have been allowed to withdraw from the scheme altogether – which was not the majority wish at Ruatahuna – the commission should never have been empowered with sole decision-making authority. Its use of this power to crush te taha apitihana and locate their interests despite their opposition and non-participation, and to secure for the Crown land sought by both co-owners (Tuhoe and the Crown), was in breach of Treaty principles. This was not the partnership, the active protection, or the redress of just grievances that the peoples of Te Urewera had been promised in the Treaty.

Not all of the claimants' contentions, however, can be upheld. We are satisfied from the evidence before us that the Crown did not acquire a 'windfall' of 45,000 acres, nor did it acquire land for public works over and above its existing entitlement. Further, it agreed to set aside 27 small papakainga and urupa reserves free of charge to the Maori owners, over and above Maori entitlements as at the beginning of the scheme in 1921. While we cannot accept the claimants' contention that there was a 'general failing' to make the reserves sought by Maori, we do note that six proposed reserves (including Maungapohatu, Huiarau, and Waikokopu) remained Crown land and were not set aside in the proper manner, despite legislative authority to do so. This appears to have been a deliberate move on the part of the Crown. Officials' immediate reaction (prompted by the commissioners) was to consider the value of the area to the Crown for 'forest or climatic' reserves. They at once also costed the surveys for setting aside Maori reserves and concluded that Maori interests needed no more protection than was afforded by the creation of the Crown reserves. Even though a survey of the proposed Maungapohatu burial reserve was made in 1924 after Tuhoe leaders continued to raise the matter with the commissioners, and a list of names was forwarded, the reserve was not vested in Maori. The commissioners further failed to recommend to Ministers that the Waikokopu hot springs be vested in Maori, once the provisions of the 1923 amending legislation provided them with the opportunity to revisit their earlier decision that the springs be vested in the Crown. These decisions had very important consequences for Maori, since all the reserves remained in Crown ownership. The failure to make these reserves, which Maori had sought and (in most cases) understood the commissioners to be recommending on their behalf, was in breach of the principle of active protection.

We also note here that the commissioners refused what was, in all the circumstances, a modest increase of Ngati Ruapani's reserves in 1925 (from 607 to 3,220 acres, or one-tenth of what they had sold to the Crown). Ruapani made this request after the Tapper's farm deal had fallen through but the Crown had nonetheless proceeded with the taking of two of their four southern reserves, which was finalised in January 1925, thus leaving them with even less land south of the lake instead of the promised increase. The commissioners found Ruapani's request for more reserves 'unreasonable' and saw 'no reason why the original agreement to return 600 acres should not be adhered to'.⁸⁹² In our view, circumstances had clearly changed by 1925 and the commissioners were not justified in refusing the Ruapani request. We thus find the Crown in breach of its Treaty duty of active protection.

What was particularly worrying about the Crown's conduct, however, and did not bode well for the promises made at the Ruatoki and Tauarau hui in 1921, was the commissioners' purchase of individual interests while they were implementing the consolidation scheme. Despite Coates' acknowledgement of a promise to the Maori owners, and despite Maori protest, the Crown purchased individual interests equivalent to 5,976 acres during the course of the scheme. This was in violation of the Treaty principle of active protection. It was not the honourable conduct required of a Treaty partner.

Overall, we find that Maori did consent to the Urewera Consolidation Scheme but that they lacked the technical information and advice at Tauarau that might have enabled them to make the best or the most strategic choices. Much of the Crown's conduct at Tauarau, however, was in keeping with Treaty principles. Although Maori owners were inevitably on the back foot in responding to the Crown's proposals, we do see signs of the give and take, the spirit of reasonableness, and above all the making of decisions at a round-table conference of equals, which Coates had instructed the officials to pursue. Certainly, what happened at Tauarau was much more 'equal' than what was to follow.

Nonetheless, the origins of the scheme in the broken promises of the UDNR and the Crown's purchase of undivided individual shares, in breach of the Treaty, meant that the interests of the Maori owners now had to come first. 'Mutual benefit' and equality of outcomes was not something to which the Crown was entitled, given the manner in which it had made itself a co-owner in the reserve. The Crown agreed to some of the owners' requests at Tauarau, and their committee had considerable autonomy in determining both the consolidation groups and the broad location of their interests. But what followed the Tauarau hui was not consistent with Treaty principles. The Crown co-owner legislated itself absolute power to make all further decisions. The draft scheme was made final (and changed in significant ways) without referring it back to the Maori owners' committee for their consent. And the commissioners used their power to favour the Crown's interests at Te Whaiti and Ruatahuna, imposing decisions on the peoples

⁸⁹² Urewera minute book 2A, 22 February 1925, p228 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(a)), p 333)

there in violation of the Treaty and to their prejudice. Even worse, the commissioners resumed purchasing individual shares as if they were Crown purchase agents, in violation of the Crown's promise and Treaty principles.

We turn next to three features of the consolidation scheme which require more detailed consideration and findings: the Crown's acquisition of the Waikaremoana block; the Crown's acquisition of one-fifth of the remaining Maori land for survey costs with a promise that full surveys would result in land transfer titles; and the Crown's acquisition of a quarter of the remaining Maori land on the basis that this contribution was necessary in return for its promise to build arterial roads – a promise that the Crown concedes it did not keep.

Dealing with Waikaremoana first, we find that there was a degree of compulsion in the Crown's acquisition of that block. First, Ministers made their intention to acquire Waikaremoana clear at the May 1921 hui; the only question, as far as they were concerned, was *how*. As a result, Tuhoe were alarmed at Tauarau when the Crown proposed to exclude the block from the scheme. The alternatives were compulsory takings under the scenery legislation and – once again – the purchase of individual interests outside the control of Maori collectives and of no permanent benefit to them. When Tuhoe expressed their desire to have Waikaremoana in the scheme, so that they could exchange interests and thereby save more land at their main settlements, Guthrie was in favour but Coates preferred to use the scenery legislation. When that became known, Tuhoe were so alarmed that they threatened to overthrow the scheme and Coates relented. While compulsion was not overt, therefore, it was a definite factor in the choice made at Tauarau to vacate the Waikaremoana block in favour of other lands.

Secondly, Ngati Ruapani and Ngati Kahungunu were left with little choice but to agree to sell their interests to the Crown. Neither could exchange Waikaremoana lands for lands elsewhere in the scheme, and the Crown's decision to acquire the whole block had been confirmed at Tauarau. Again, the question was *how*. Ngata negotiated their asking price down from £1 per acre to a minimum of 16 shillings, then agreed with Knight to a price of 15 shillings per acre, which was imposed on Ngati Ruapani and Ngati Kahungunu without their consent. In a way, this was less important for Ngati Ruapani because by 1921 they were confined to small reserves on the south shore of the lake, all that was left to them of the four southern blocks. Their agreement with Ngata was based more on the key promise that the Crown would buy farmland for them south of the lake (for which they were prepared to give up part of their purchase money and two of their less useful reserves), and that they would be paid in debentures (which would give them some immediate cash but also a longer-term investment).

Subsequent events reflect no credit on the Crown. Ngati Ruapani refused to accept the 800 acres of farmland purchased for them south of the lake because the Government had paid £9 an acre for it (almost twice the Government valuation). They would not accept the loss of one-third of the value of their Waikaremoana lands for so little land in return. The outcome was that Ngati Ruapani received no extra land south of the lake, still lost two of their four reserves, but without payment, and retained only tiny reserves (607 acres) north of the lake. This was

a serious breach of the Treaty, by means of which Ngati Ruapani were rendered virtually landless.

Also, while the Crown agreed in 1923 to pay Ngati Ruapani for their northern reserves and then return them free of charge, in order to offset lowering the price per acre to 15 shillings, the commissioners then purchased some individual interests for cash instead of debentures, and at a rate of six shillings per acre instead of the promised 15 shillings per acre. Ngati Kahungunu owners, on the other hand, received nothing in return for the Crown's unilateral lowering of the price from 16 to 15 shillings an acre. Tuhoē, in the meantime, had exchanged their interests at only six shillings an acre, a rate set unilaterally by officials at Taurau, which bore no relation to what both Knight and Ngata thought was the real value of the land (Knight thought it was worth 13 shillings an acre on average).

This aspect of the Crown's acquisition of the Waikaremoana block was also in breach of the principles of the Treaty of Waitangi. Not only was there an element of compulsion in the Crown's dealings with all three groups – Tuhoē, Ngati Ruapani, and Ngati Kahungunu – but it also breached the principle of equal treatment when it purchased the interests of two groups at a much higher rate than those of Tuhoē, when all three groups were tenants in common and entitled to the same increase in value. The principle of equal treatment, as the Tauranga Tribunal described, applies to 'the Crown's treatment of Maori, one with another, and one iwi with another.'⁸⁹³ It was not consistent with the Treaty for the Crown to 'allow one iwi an unfair advantage over another'. For the Tauranga Tribunal, this principle applied to whether the Crown treated hapu equally in its land dealings in the aftermath of the Tauranga confiscation. Here, we note that the Crown was in breach of the Treaty when it 'underpaid' Tuhoē (by exchange of interests, not in a literal payment) at a rate of nine shillings per acre. Also, as Crown counsel accepted in our inquiry, it was 'unconscionable' for it to have paid Ngati Ruapani owners six shillings per acre in cash when they were specifically entitled to 15 shillings per acre. It was no less unconscionable, in our view, that their shares that were exchanged were valued at six shillings per acre. In addition, the Crown should not have denied Ngati Kahungunu compensation for lowering their price to 15 shillings an acre, when it was prepared to compensate Ngati Ruapani for the same action. In all these ways, the Crown treated the various tribes unfairly in relation to one another. All owners lost out: Tuhoē were 'underpaid' by nine shillings an acre; Ngati Kahungunu were 'underpaid' by 1 shilling an acre, and some Ngati Ruapani owners were 'underpaid' by nine shillings an acre for their individual shares.

Finally, the Crown failed to deliver on its undertakings with regard to the Waikaremoana debentures. First, the Crown's chosen administrator – the Native Trustee – failed at times to pay interest on the debentures during the Depression. Secondly, the Crown unilaterally altered the terms of the debentures, ultimately extending their period 25 years past the point when they should have expired, and paying lower interest rates than originally agreed – again, without consultation or

893. Waitangi Tribunal, *Te Raupatu o Tauranga Moana* (Wellington: Legislation Direct, 2004), pp 24–25

consent. When the Crown finally paid out the principal in 1958, it did so without regard to inflation and thus underpaid owners who had so long been denied the principal. These shameful actions were in breach of the principles of partnership and active protection. Any private debtor would have ended up in court but the Crown simply legalised its actions, as so often has been the case in its dealings with the peoples of Te Urewera.

Next, we turn to survey costs and the Crown's promise of land transfer titles. After an extensive review of the evidence, we find that the Crown completely defaulted on its promise of indefeasible titles to the Maori owners; the only co-owner to obtain a land transfer title was the Crown. Although the Urewera Lands Act imposed hurdles in the way of registration, the reality was that the Maori-owned blocks were not registered because their surveys were not completed to the requisite standard. While the Crown's award was supported by a full survey plan, the Maori-owned blocks had only a topographical plan, which precluded their registration in the land transfer system.

Nonetheless, the commissioners took 31,500 acres – almost one-fifth of the land left to Maori at the beginning of the scheme – to pay for full surveys by theodolite, on the justification that such surveys were needed to support land transfer titles. Since the Maori owners ended up with topographic plans anyway, we cannot escape the conclusion that they would have been just as well served by cheaper methods of survey. Such methods would have allowed them to keep significantly more land for the same result (topographical plans). The Maori owners thus got the worst outcome in both respects – excessive land loss for survey costs and no land transfer titles. The Crown's failure to keep its promise was inconsistent with the honour of the Crown and in breach of the principle of active protection. This failure exacerbated its refusal to use cheaper survey methods, which was also in breach of its obligation actively to protect Maori and their lands. This was not the 'mutual benefit' promised by the Crown, since the Crown got the only land transfer title as well as a large new area of Maori ancestral land.

Further, the Crown's acquisition of almost one-fifth of the remaining Maori land for survey costs fell short of Treaty standards in a number of ways.

First, since the surveys were only necessary because the Crown had undermined the collective authority of Te Urewera tribes, broken its UDNR promises, and purchased one half of the inalienable reserve by obtaining individual interests in breach of the Treaty, the Crown should have borne the full costs of the surveys. No Maori land should have been taken to pay for them.

Secondly, the acquisition of such a large extent of the Maori owners' remaining land for surveys was far in excess of what was reasonable, even if they had obtained land transfer titles (which they did not). As we found in chapter 10, Maori owners who wanted to clothe their land with titles and use it in the colonial economy might have expected to lose about 5 per cent for that purpose. But the surviving Te Urewera owners in 1921 were already in possession of titles from the Urewera commissions and the Native Appellate Court, and they had been the most steadfast opponents of selling; hence, to lose well in excess of 5 per cent of their land for surveys because other owners had sold undivided interests and because their

old titles were now considered worthless was in breach of the Treaty principles of equity (fair play) and active protection. Maori non-sellers should not have lost a single acre, let alone 18 per cent of their remaining land. Some owners lost much more than 18 per cent of their blocks because of the relatively low valuation of their lands, as compared to other, more highly valued blocks. We suspect that all Maori owners lost out, however, because their survey deductions were calculated at unfairly discounted, out of date valuations, instead of at new, proper, up-to-date Government valuations.

Thirdly, due to an error in the earlier part of the implementation of the scheme, land was wrongly deducted at an average rate of 2s 8d per acre instead of 2s 6d, resulting in the Crown's wrongful acquisition of an extra 4,000 acres of Maori land. This error was not corrected in the blocks that had already had land deducted, despite its discovery in 1923, midway through the implementation of the scheme. The failure to correct the error and return the wrongfully acquired land was in breach of the Crown's Treaty obligation actively to protect Maori and their lands.

Fourthly, the set rate of 2s 6d per acre does not appear to have been lowered to account for common boundaries, whether with the Crown or other Maori-owned blocks. The available evidence supports the contention that common Crown-Maori boundaries were surveyed at Maori expense, and that the Crown's award (by default) was surveyed at Maori expense. But a definitive answer is not possible because the final cost of the surveys (as compared to the estimates on which the deductions were made) is not known. From the evidence available to us, it is likely that the estimated and final costs were close, and Maori may well have paid for the Crown's land transfer title, but it is not possible to say for sure. We cannot, therefore, make a finding of Treaty breach on these matters.

We do, however, note the shoddy record keeping and relatively opaque processes adopted by the commission, which resulted in the Crown today excusing itself of Treaty breach because 'suspicions' had been 'roused' in terms of survey costs but could not be proven. Parties in this inquiry have been hampered by the Crown's poor record keeping. The minutes of the commission, for example, are fragmentary at best (and non-existent by the end). While this does not, of itself, constitute a Treaty breach, the scheme failed to meet Mr Nikora's standard of transparency, which, as he observed, is a hallmark of a sound consolidation scheme.

Finally, we turn to the Crown's promise to build roads in Te Urewera, predicated on the Maori contribution of some £20,000 worth of land – one quarter of their remaining land in the consolidation scheme blocks, amounting to almost 40,000 acres.

First, we agree with the Crown's concession that its failure to complete the promised roads was fatal to the integrity of the consolidation scheme, prejudicial to Maori interests, and in breach of the Treaty. We do not, however, accept the Crown's submission that it had, at least, constructed one-third of the promised roads. As we discussed above, the correct figure lies somewhere between one-quarter and one-third, but a failure to maintain the roads fatally compromised the utility of much that was built. The Crown's failure to keep its promise, therefore, is in no way mitigated by its construction of part of the promised roads.

Secondly, we agree with the claimants that they were under no obligation to have provided a single acre of land for arterial roads. We cannot accept the Crown's submission that local contributions of this kind were a prerequisite to attracting Government funding. The evidence before us is that central government funding was mostly reimbursed in the form of economic growth and an increased tax base. Most of the Crown's expenditure on roads in the central North Island, for example, was made without a matching local body subsidy. Loading the costs onto the sale price of Crown land only recovered about one-tenth of the Crown's expenditure. Main roads, therefore, were often – perhaps mostly – built by central government funds without a local contribution. The Maori owners assembled at Ruatoki and Taurarau did not *have* to agree to a contribution, let alone such a large one as a quarter of their remaining land. So why did they?

As we see it, they were misled by Ngata and by Ministers into thinking that they did have an obligation to pay for roads alongside their co-owner, the Crown. Ngata's motive was clear: he knew that most Government money went into building roads for land being opened up for settlement, and very little for Maori land. He hoped to secure swift, early action on roads that would help the development of the surviving Maori land in Te Urewera. Guthrie hastened to agree with the proposition that Maori land in Te Urewera had to pay for its share of roading. By the time the Crown made its detailed proposals at Taurarau, it was seeking £32,000, half the estimated cost of the arterial roads. While Ngata and the owners negotiated this figure down, they did so in a situation where, we are sure, the owners did not realise that they were making a gift to the Crown. Later, when *te taha apitihana* and others objected to the loss of land for roading, the Crown – in all honesty – should have admitted that they were under no obligation and it should have given up its claim to this land. We find that the Maori owners were under no obligation to have given land for roads, that they did so without informed consent, and that the Crown should have immediately returned this land when objections surfaced later during the scheme. Its failure on these counts was in breach of the principle of active protection.

It is equally clear that the 1958 settlement did not adequately address what had become a long-standing grievance: the Crown's failure to complete the arterial roads. The Crown only negotiated a settlement when it suited its own purposes, so as to advance the further acquisition of Maori land. The Crown's roading plans and its eventual settlement of the issues were deeply flawed at every turn. These matters are valid grievances for the claimants in our inquiry.

When we consider the scheme as a whole, taking into account the Treaty breaches in its component parts, we find that the Urewera Consolidation Scheme was conceived and carried out in breach of Treaty principles. A consolidation scheme was only necessary because the Crown broke its UDNR promises, and it resulted in a fresh legacy of yet more broken promises. Knight reminded the Crown of at least some of these in 1929 to no avail.

From at least the death of Seddon in 1906 until the resignation of Ngata as Native Minister in 1934, it seems undeniable that the Crown wilfully misremembered its obligations to the peoples of Te Urewera. And, with Ngata's departure

from the Government, few were left who remembered what the Crown had promised at all, and what it owed to the peoples of the land soon to become a very special form of property for the nation, a National Park.

We turn next to the impacts of the Crown's Treaty breaches, from its first failure to implement the self-government provisions of the UDNR Act, through to its unrelenting purchase of individual interests in the 'inalienable' reserve, and on through its acquisition of Waikaremoana and its implementation of the Urewera Consolidation Scheme in the 1920s. By the scheme alone, the Maori owners lost some 40 per cent more of their land to survey costs, deductions for roads, and the commissioners' purchase of individual interests (not counting the sale of interests in Waikaremoana). What was the cumulative effect of so much loss?