TE MANA WHATU AHURU
TE MANA WHATU AHURU

Report on Te Rohe Pōtae Claims

Pre-publication Version

PART III

WAI 898

WAITANGI TRIBUNAL REPORT 2019
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The Honourable Nanaia Mahuta
Minister for Māori Development

The Honourable Andrew Little
Minister for Treaty of Waitangi Negotiations

The Honourable Kelvin Davis
Minister for Crown and Māori Relationships

Parliament Buildings
WELLINGTON

4 June 2019


We present to you part III of our report on claims submitted under the Treaty of Waitangi Act 1975 in respect of the Te Rohe Pōtai inquiry district. This district extends from Whāingaroa Harbour to northern Taranaki, and inland to the Waikato River and Taumarunui.

The report addresses 277 claims that have been brought to the Waitangi Tribunal on behalf of iwi, hapū, and whānau, people representing their tupuna, and current-day entities such as trusts, boards, incorporations, and owners of certain land blocks.

This part of the report follows the release of parts I and II in September 2018 and addresses the land policy and legislation that the Crown imposed after 1900 in Te Rohe Pōtai and the implications these had on Māori.
The Tribunal reserves the right to make further recommendations concerning parts I, II, and III once the complete report is finalised.

Nāku noa, nā

Deputy Chief Judge Caren Fox
Presiding Officer
Nā te Rōpū Whakamana i te Tiriti o Waitangi
PREFACE

This is a pre-publication version of part III of the Waitangi Tribunal’s *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*. As such, all parties should expect that in the published version, headings and formatting may be adjusted, typographical errors rectified, and footnotes checked and corrected where necessary. Maps, photographs and additional illustrative material may be inserted. The Tribunal reserves the right to amend the text of these parts in its final report, although its main findings will not change. It also reserves the right not to address certain issues in these parts of the report, and further parts, until the final report is released. The Tribunal reserves the right to make further recommendations on the matters addressed in part III up to and including in the final published report. The Tribunal reserves the right to refuse any applications to exercise its resumptive powers based on this pre-publication report until the final report is released.

In preparing this pre-publication report, the Tribunal has noted variation in spelling and in the use of macrons for a number of words and phrases referred to in evidence on the record of inquiry, particularly in regard to the names of people and places. Parties are therefore invited to submit corrections to these, or any other words and phrases used in the report. Parties must indicate where in the report the term is used, their desired spelling or macron use, and any relevant explanation or evidence. The Tribunal will consider parties’ submissions and incorporate any resulting changes into the final published version of the report.
Parts I and II of this pre-publication report focused on an extensive range of issues stemming from the relationship between Te Rohe Pōtae Māori and the Crown following the signing of the Treaty of Waitangi on 6 February 1840.

In particular, we looked at old land claims and early Crown purchasing, the impacts of war and raupatu, the establishment and maintenance of the aukati, the Te Ōhākī Tapu agreements, the construction of the North Island Main Trunk Railway, and the operation of the Native Land Court in the district.

In part III of our pre-publication report, we consider issues concerning land block and title administration in Te Rohe Pōtae during the twentieth century.

Te Rohe Pōtae Māori expected, following the Te Ōhākī Tapu agreements (1883-85), that they would continue to exercise mana whakahaere, or self-government, over their whenua. They demanded that the Crown give expression to their tino rangatiratanga by enabling them to administer their lands.

The claimants stressed this point as a matter of principle, before detailing the issues before the Tribunal. The Crown took a more claim-specific approach to issues the claimants raised. Both parties agreed that the Crown responded to Māori demands at the national and regional level for more control over the administration of their lands by constituting the Māori land councils under the Māori Lands Administration Act 1900. The Crown also slowed down its large-scale purchasing programme in Te Rohe Pōtae, which had led to the loss of 639,815 acres during the period 1890 to 1905 (most of those alienations occurred prior to 1900).

The Crown briefly pursued this policy whereby the land councils, with significant Māori membership, took over the administration of leases and sales of Māori land alongside land development. This experiment lasted only until 1905 when the Crown, under pressure from Pākehā settlers to open up more Māori land, replaced land councils with land boards. In addition to a Crown-appointed (inevitably Pākehā) president, these new bodies had only two members (also Crown-appointed), only one of whom had to be Māori. This calculated reduction of Māori representation in land administration, coupled with legislative enactments vesting broad discretions in the land boards, enabled a period of large-scale alienation by sale. By 1909, 934,367 acres of Māori land, nearly half of the entire district, had passed from Māori to Pākehā hands. By 1966, only 18 per cent of the district, or 342,722 acres, remained in Māori ownership.

Te Rohe Pōtae Māori had also expected, following the Te Ōhākī Tapu agreements, that the Native Land Court would establish a secure form of title that would enhance their participation in the burgeoning local economy. The claimants argued that Te Rohe Pōtae Māori were not able to realise this expectation and
that later Crown attempts to simplify and consolidate titles became another means of alienating Te Rohe Pōtae Māori from their whenua.

The chapters in this part address these concerns and are organised as follows:

- **Chapter 12**: Ngā Kaunihera me Ngā Poari Whenua Māori: The Māori Land Councils and Boards.
- **Chapter 13**: Whenua i Mauheretia: The Vested Lands in Te Rohe Pōtae.
- **Chapter 14**: Ngā Rīhi me Ngā Hoko Whenua: Leasing and Purchasing, 1905–50.
- **Chapter 15**: Ngā Papatāone Māori: Native Townships.
- **Chapter 16**: Te Hangahanga Taitara: Title Reconstruction in the Twentieth Century.
- **Chapter 17**: Te Ahu Whenua: Land Development Schemes.

Part III of our report indicates that, far from working in accordance with the principles of the Treaty of Waitangi on the various issues above, the Crown pursued a policy of purchasing and making more land, including Māori land, in Te Rohe Pōtae available for Pākehā settlement until approximately 1930.

Among other things, and at various times, the Crown legislated to:

- Substitute land councils for land boards, dominated initially by the (inevitably) Pākehā president. It then changed the membership to a judge (always Pākehā) and clerk of the Native Land Court.
- Compulsorily vest Te Rohe Pōtae land in land boards that the Crown or the land boards deemed surplus to their needs.
- Impose a ratio of 50 per cent lease and 50 per cent sale of land compulsorily vested from 1907 to 1909.
- Enable the land boards to conduct (or approve) all leasing and purchasing of Māori lands in Te Rohe Pōtae.
- Facilitate the purchasing of Te Rohe Pōtae Māori land by removing all restrictions on alienation for the sale of that land. However, it then preserved its own interests in purchasing blocks by promulgating orders in council that prevented alienations with respect to the blocks it was interested in acquiring.
- Elevate the interests of lessees, in terms of compensation for improvements and rights of renewals, over the rights of landowners.
- Provide a discretion in the Crown Ministers or the land boards as to what development finance should be made available for Māori lands they could retain until the 1920s.
- Establish, without informed consent from Māori landowners, ‘Native Townships’ to make ‘surplus’ land available for Pākehā settlement.
- Grant to the land boards the power to administer native township lands, which they did against the interests of the owners.
- Impose title reconstruction schemes and legislative enactments causing forced consolidations and exchanges.
- Enable alienations by sale associated with the Māori Affairs Act 1953 and its various amendments, including the 1967 amendment.
- Initiate the compulsory Europeanisation of land between 1967 and 1974 and the compulsory acquisition of ‘uneconomic’ share interests.
Provide for land development schemes administered by the land boards, and then the Board of Māori Affairs, that limited the rights of Te Rohe Pōtae landowners to exercise their mana whakahaere over their lands, subject to these schemes, until the 1980s.

For these, and a number of other reasons, we found that the Crown’s actions, policies, or legislation (or a combination of the three), were inconsistent with the principles of the Treaty of Waitangi.

As a result of the above legislative actions, Te Rohe Pōtae Māori suffered long-lasting prejudice, becoming progressively disempowered from being able to control, manage, and administer their lands and resources and having their ability to exercise mana whakahaere over their lands and communities further diminished.

The graph above demonstrates one of the ways in which these actions are clearly evident. It shows the disposition of land vested in the Waikato–Maniapoto District Māori Land Board under the Native Land Acts 1909 and 1931 and the great majority of land that was sold to the Crown and private buyers, which we discuss in chapter 12 of this report.

Therefore, following on from our recommendation in parts I and II of this report, we recommend that the Crown discuss with Te Rohe Pōtae Māori, or their mandated settling group or groups, during Treaty settlement negotiations a possible legislative mechanism (should they wish it) that will enable iwi and hapū of Te Rohe Pōtae to administer their lands, either alongside the Māori Land Court and Te Tumu Paeroa (the Māori Trustee) or as separate entities. The choice is one that depends on the need to thoroughly consult landowners and one that has no coercive or compulsory elements.
We reserve the right to make further findings and recommendations with respect to Te Rohe Pōtae Māori and their lands at the conclusion of our report. We also reserve the right to refuse any applications to exercise our resumptive powers based upon this pre-publication report until the final part of our report is released.

We note that in this part of the report we refer to a number of Waitangi Tribunal reports that were not published at the time that closing submissions were received from counsel. Our references to such reports are merely descriptive and do not form the basis of any of our findings.

The remaining chapters of our report will address issues of local government and Māori political autonomy, health, education, environmental management, and economic development, as well as claims relating to particular takiwā.
### ABBREVIATIONS

<table>
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<th>Abbreviation</th>
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<td>AJHR</td>
<td>Appendix to the Journals of the House of Representatives</td>
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<td>AUC</td>
<td>Auckland Crown purchase deed</td>
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<td>CA</td>
<td>Court of Appeal</td>
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<td>NIMTR</td>
<td>North Island Main Trunk Railway</td>
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<td>NZCA</td>
<td>New Zealand Court of Appeal</td>
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<td>NZLR</td>
<td>New Zealand Law Reports</td>
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<td>OLC</td>
<td>old land claim</td>
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<td>PWD</td>
<td>Public Works Department</td>
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<td>ROI</td>
<td>record of inquiry</td>
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<td>RUP</td>
<td>recorded under parent</td>
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<tr>
<td>s, ss</td>
<td>section, sections (of an Act of Parliament)</td>
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<td>SC</td>
<td>Supreme Court</td>
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<td>Wai</td>
<td>Waitangi Tribunal claim</td>
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<td>WMS</td>
<td>Wesleyan Missionary Society</td>
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Unless otherwise stated, footnote references to briefs, claims, documents, memoranda, papers, submissions, and transcripts are to the Wai 898 record of inquiry. A copy of the index to the record is available on request from the Waitangi Tribunal.

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CHAPTER 12

NGĀ KAUNIHERA ME NGĀ POARI WHENUA MĀORI: THE MĀORI LAND COUNCILS AND BOARDS

Those who have railed at the curse of Maori ownership should pause before passing final judgment to consider certain facts in the recent history of the King-country Maoris and of their lands, and the legislation affecting the same.

—Robert Stout and Āpirana Ngata¹

12.1 Introduction

The late nineteenth and early twentieth centuries brought enormous change for the Māori communities of Te Rohe Pōtae. Until then, as parts I and II of this report have demonstrated, they had governed their own affairs according to tikanga, exercising mana whakahaere over the rohe. Following the negotiated lifting of the aukati in the 1880s, the arrival of Pākehā infrastructure, and eventually settlement, curtailed this status quo. In chapter 8, we described the series of negotiations and agreements known to claimants as Te Ōhākī Tapu. We recognised the 1883 petition of the ‘four tribes’ as a declaration that should give practical effect to the terms of the Treaty of Waitangi. This extended to the exercise of rangatiratanga or mana whakahaere over their own affairs including the administration of their lands. By the end of the nineteenth century, however, the actions of the Crown had severely undermined the mana whakahaere of Te Rohe Pōtae Māori. Yet, as part II of the report illustrated, at every step Te Rohe Pōtae rangatira had made clear their peoples’ expectations, based on a right to autonomy the Crown had guaranteed to them in both the Treaty and the Te Ōhākī Tapu agreements. In line with this objective, the 1890s saw the people of Te Rohe Pōtae, along with Māori outside the district, pressuring the Crown for self-government over their own affairs and lands.

In response, the Crown created a suite of new institutions and legislation ostensibly providing a degree of Māori self-determination over the administration and development of their lands. The ability of Te Rohe Pōtae Māori to exercise mana whakahaere in respect to their land would, nonetheless, erode further in the decades through to the mid-twentieth century.

¹. Robert Stout and Āpirana Ngata commenting on the outcomes of their investigation into Te Rohe Pōtae Māori lands: AJHR, 1907, G-1B, pp1–2.
12.1.1 The purpose of this chapter
By the late nineteenth century, serious concerns had emerged from Māori regarding the rate of alienation (including from leasing) of their land and the legislative barriers they faced to leasing Māori land privately. Also apparent were the difficulties of developing their land given the nature of the system of land tenure imposed by the Crown through nineteenth-century native land legislation and its impact on iwi and hapū social cohesion. We discussed these impacts in chapters 10 and 11 of this report.

The purpose of this chapter, and those that follow in part III of this report, is to examine in detail the Crown’s legislative and policy framework for managing the administration and alienation of Māori land through Māori land councils and boards established in 1900. It also reviews the impact of this framework on Te Rohe Pōtae Māori, with a view to make findings on the consistency or otherwise of these measures with respect to the principles of the Treaty of Waitangi.

This chapter broadly considers whether the Crown’s policies concerning the land councils and boards and their governing legislation addressed Te Rohe Pōtae Māori expectations for mana whakahaere over their lands and if these interventions were consistent with the principles of the Treaty of Waitangi. It also provides the legislative detail for the land administration and alienation processes that the following five chapters address in Te Rohe Pōtae.

12.1.2 How this chapter is structured
The chapter begins by examining the conclusions of previous Tribunal inquiries about the efficacy and Treaty-compliance of the legislation that created Māori land councils and boards from 1900. This survey of Treaty jurisprudence is followed by a summary of the claimants’ and the Crown’s positions, to draw out the key points of difference between the parties in this inquiry.

The main portion of the chapter investigates the evolution of the Crown’s land policy and legislation in the first half of the twentieth century, with special reference to the role the land councils and boards played in relation to Te Rohe Pōtae Māori expectations for autonomy. In doing so, it will focus on what drove this policy framework, how the provisions of the various regimes compared with the degree of autonomy Māori were seeking, and the extent to which Te Rohe Pōtae Māori embraced them.

The chapter is divided into three chronological sections. The first examines the Māori land council regime established by the Māori Lands Administration Act 1900. The second covers the operation of the land councils’ successors, the Māori land boards, which, in turn, were enabled by the Māori Land Settlement Act 1905 and ran through to the 1920s. The final section considers the late operations of the Māori land boards from the 1930s through to their dissolution in 1952. The Treaty analysis and findings sections address whether the Crown’s policies and actions were consistent with the Treaty and its principles, as well as the Te Ōhākī Tapu agreements, which were intended to direct the way the Treaty was implemented in the inquiry district.
12.2 ISSUES

12.2.1 What other Tribunals have said

The Te Urewera Tribunal noted that fundamental elements of the Treaty included that ‘Maori and settlers would both benefit and prosper, and that both Māori and the Crown recognise the authority of the other.’ Both the Te Urewera and Central North Island Tribunals stressed the importance of Māori having suitable institutions through which they could exercise local self-government, which included ‘the ability to fully manage and control their own resources as a community’.

The Tribunal has found previously in district inquiries that such institutions were not provided, despite the Crown’s initial promises of delivering meaningful self-government. Instead, the Crown’s Māori land policy and legislation in the first half of the twentieth century diminished the ability of Māori to play an active role in managing their lands. It also provided opportunities for forced alienations. The Central North Island Tribunal, for example, found that the Crown did not give the system of land administration it introduced in 1900 a fair trial. The report in that inquiry found that the Crown failed to provide the new Māori land councils with sufficient support and resourcing, nor did it ‘do enough to engender Maori confidence in the land councils’. It concludes that ‘the Crown’s failure to give full support to the land councils was in breach of the duties of partnership and active protection’.

The Central North Island Tribunal found that when the Crown later changed this system, it carried out only limited consultation with Māori and did not secure Māori consent to the changes it introduced. When Māori land boards replaced the councils in 1905, the Crown neglected to provide for elected Māori representatives on those bodies, meaning that there was no longer any possibility of Māori being ‘the predominant voice in decision-making about their own lands’. Moreover, the inquiry concluded, the demise of the councils resulted in Māori being deprived of the potential benefits of what had been a major new land administration initiative – including less immediately obvious benefits such as the opportunity to acquire management experience. Commenting on the same legislation, the National Park Tribunal found that it reduced the degree of Māori control over the disposal and management of their lands.

On the subject of owner consent and the Native Land Act 1909, the Tauranga Moana Tribunal agreed with the finding of the Ōrākei Tribunal that the potential for collective decision-making through meetings of owners introduced in

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the period was undermined by the small quorum required. The Central North Island Tribunal said that the fact that the stipulated quorum was ‘unrelated to the number of owners in a block, or the size of their interest in it’, tended to suggest that ‘ease of transfer was considered more important than the protection of owners’ rights.’ In effect, an alienation might occur even when only a handful of owners had given consent. The Hauraki Tribunal called the quorum provision a ‘manipulative’ device, by which ‘minorities of owners in a block could alienate the land without the consent or even the knowledge of other owners’. The Central North Island Tribunal noted, furthermore, that it was not necessarily the case that all owners would have received notification of the meetings. ‘This unwilling and involuntary disposition of shareholders’ interests in their land’, said the Ōrākei Tribunal, ‘is clearly inconsistent with the protection afforded by Article 2 of the Treaty.’ A further concern that arose from the Tauranga Moana Tribunal was that under the 1909 Act, court orders and confirmations of alienation could not be declared invalid even where there were irregularities.

The Wairarapa ki Tararua Tribunal found that the Native Land Amendment Act 1913 further expanded the Crown’s power to buy Māori land. The Crown no longer had to obtain land board confirmation for purchases of land with more than 10 owners. Land boards now consisted of only a Native Land Court judge and registrar, meaning that the local land court and land board comprised the same officials. The National Park Tribunal noted that this effectively merged the boards and the court, taking control of land transactions further away from owners and ‘into the hands of what was now practically a State agency’. The Tauranga Moana Tribunal likewise commented: ‘It is difficult to see how this Crown policy provided for rangatiratanga or gave effect to the principle of partnership.’

Treaty jurisprudence has established that while the Crown may legitimately delegate powers and responsibilities to purpose-specific councils, boards, and other entities, ‘[it] may not avoid its Treaty obligations by unilaterally deciding that Crown functions will be carried out by others.’

15. Waitangi Tribunal, Tauranga Moana, vol 1, p 146.
12.2.2 Crown concessions

With respect to native land legislation as a whole, the Crown accepted that its implementation ‘in the long term . . . affected the exercise of traditional leadership and community decision-making in respect of land’. It conceded that this failure to protect tribal structures was a Treaty breach. The Crown also made specific concessions on lands vested under the provisions of the Native Land Settlement Act 1907, which are considered in depth in chapter 13.

12.2.3 Claimant and Crown arguments

The Tribunal received several specific claims relating to the establishment of Māori land councils and Māori land boards and the effects these administrative bodies had on Te Rohe Pōtae Māori and their ability to retain and use their lands. The effects of these bodies were broad and long-reaching and are discussed in more detail in the chapters that follow.

Te Rohe Pōtae claimants described the loss of tangata whenua control over land through these bodies as prejudicial to the interests and expectations of Māori in the district. They pointed to Prime Minister Seddon’s comment that land councils had been introduced partly in response to the difficulty of purchasing land in the King Country. The claimants rejected the Crown’s assertion that it had sought to protect Māori land while opening it up for settlement. Rather, they said that pressure from Pākehā settlers propelled an evolution from a voluntary scheme in 1900 to a fully compulsory scheme by 1907. Claimants saw the land councils and boards as examples of the way in which the Crown promised autonomy but instead retained control of the way in which Māori exercised authority.

The Crown, for its part, submitted that the land councils and boards were ‘not under the control of the Crown and were not its agents’: rather, the Crown’s responsibilities extended only to the underlying statutory framework and policies. However, the claimants said that, in the Crown’s administration of the land council and boards, it delivered bodies that were ‘underfunded and overly bureaucratic’. The Crown accepted that a lack of government funding meant the land councils were seriously hampered in their work.

As to the philosophy behind the Crown’s policy, claimants stated that in contrast to the ‘very few if any’ acres vested with the councils for leasing, a significant number of private leases were entered into once this became permissible under the

17. Submission 3.4.305, p 84.
20. Wai 551, Wai 948 (submission 3.4.250); Wai 846 (submission 3.4.521); Wai 2084 (submission 3.4.174); Wai 762 (submission 3.4.170(a)); Wai 928 (submission 3.4.175(b)); Wai 399 (submission 3.4.159(b)); Wai 125 (submission 3.4.210); Wai 2273 (submission 3.4.141).
21. Submission 3.4.119, p 33; submission 3.4.304, pp 13–14; submission 3.4.402, p 2.
22. Submission 3.4.251, p 18.
1905 Act.\textsuperscript{26} That is, the problem was not with leasing itself but rather with Te Rohe Pōtæ Māori being able to retain control of the process and to lease directly. The Crown accepted that the lack of enthusiasm for vesting 'shows that Rohe Pōtæ Māori did not find the 1900 scheme . . . to be very attractive.'\textsuperscript{27} The Crown also admitted that 'the available evidence shows that no Rohe Pōtæ Māori ever agreed to vest their lands voluntarily in the Māori Land Board under the 1905 Act.'\textsuperscript{28} It maintained, though, that the 1905 Act answered 'many, if not most' of the requests made in a petition that same year by Te Wherowhero Tāwhiao (the Māori King) and 276 others, in which they detailed their criticisms of 'the principal provisions of the Act and its administration.'\textsuperscript{29}

The claimants asserted that when lands were vested with the land board, the Crown then failed to protect them.\textsuperscript{30} They were particularly concerned by the permanent loss of vested land that occurred under the board regime.\textsuperscript{31} From 1905 onwards, large areas were alienated without adequate consultation, and without obtaining 'proper consent from the individuals or . . . rangatira' affected.\textsuperscript{32} Once the land was vested, owner control was gone: '[t]he scheme of management for the vested lands did not provide for any significant owner involvement. In effect, it nationalised their lands.'\textsuperscript{33} Moreover, the Crown failed to check adequately, through the land board, whether the beneficial owners had sufficient other lands.\textsuperscript{34}

The claimants alleged that the passing of the Native Land Settlement Act 1907, which brought compulsory vesting to Te Rohe Pōtæ, was hasty because it occurred before the Native Land Commission had even completed its hearings in Te Rohe Pōtæ.\textsuperscript{35} The Crown accepted that Te Rohe Pōtæ Māori had 'strongly objected' to some 'arbitrary provisions' of the 1907 Act.\textsuperscript{36} The Crown also acknowledged that compulsory vesting occurred under the Native Land Settlement Act 1907, but said the evidence suggested it was limited to a period of only three years (1907 to 1910). The Crown said that the scheme was part of 'a national policy to bring as much land into production as possible' and was needed because there was 'a great deal of Maori land in the North Island lying unused.'\textsuperscript{37} It was 'a genuine attempt . . . to protect and facilitate the development of remaining Māori lands for the benefit of Māori, while at the same time opening up what were considered to be unproductive and surplus Māori lands for settlement.'\textsuperscript{38}
Turning to the Native Land Act 1909, the Crown submitted that it ‘gave owners greater control over alienations’. It also noted that the Native Land Amendment Act 1913 included protections for non-sellers. However, the claimants contended a large burden was placed on owners in that the success of these provisions depended on their vigilance. They noted that, in fact, the pace of land sales in Te Rohe Pōtae only accelerated under the 1909 Act, and quoted Dr Terry Hearn’s comment that the Act ‘empowered the Crown as purchaser and disempowered . . . Maori as owners and vendors’. They say that although the Act nominally ended the Crown’s privileged position as sole purchaser, the Crown could still effectively block private purchase in any given block by merely indicating that it had an interest in buying.

In their generic closing submissions on land alienation, the claimants summed up the position of Te Rohe Pōtae Māori as follows:

Rohe Pōtae leaders continuously strived to maintain their leadership and control and protect the district from the rampant alienation and loss of governance and control they had seen elsewhere. Instead[,] the ‘opening up’ of the region and the breaking of key promises and assurances had a snowball effect. One that saw governance and control pass out of the Rohe Pōtae leadership and into the hands of the Crown, and the settler communities.

The Crown’s overall position was that whatever the outcome may have been, its legislation had been well-intentioned.

12.2.4 Issues for discussion

Based on the arguments advanced by claimants and the Crown, previous Tribunal findings, and the Tribunal’s statement of issues, we focus on the following questions in this chapter:

- To what extent did the Crown consult Te Rohe Pōtae Māori over the introduction and amendment of legislation regarding Māori land councils and boards?
- Was the legislative framework of the Māori land council regime (1900–05) and the Māori land board regime (1905–35) Treaty-compliant?
- To what extent were the councils and boards the local, representative bodies Te Rohe Pōtae Māori had been seeking? Did they allow Māori to play an active role in the management of their lands?
- Did the Māori land boards fairly balance the interests of lessees with those of Te Rohe Pōtae Māori?

41. Submission 3.4.112, pp 12, 14.
42. Submission 3.4.119, p 52.
43. Submission 3.4.298, p 9; submission 3.4.304, p 75.
Did the Māori land boards effectively manage income owing to Māori landowners?  
Was Māori land legislation and policy in the post-1940 period Treaty-compliant?

12.3 The Māori Land Council Regime, 1900–05

12.3.1 The policies underpinning the Māori Lands Administration Act 1900

This section considers the establishment of the Māori land council regime under the Māori Lands Administration Act 1900. The introduction of this new land administration system must be seen in two contexts.

First, it must be seen in the political context, namely the opposition of Māori leaders to the Crown's extensive land purchasing policy under the Liberal Government as discussed by the Central North Island Tribunal. That policy is also discussed in chapter 11 of this report, and appendix 1 of that chapter contains a copy of the 1897 petition of the five tribes led by Pepene Eketone against the Crown's purchasing policy and the native land administration legislation as it existed by 1897. In passing the 1900 Act and establishing a new system for administration of lands, the Liberal Government gave expression to Native Minister James Carroll's 'Taihoa' policy, which called for a halt to Crown purchasing of Māori land.

Secondly, the Crown's policy was not simply to create a system of tenure based on individualised title, but also to replace or displace customary tenure. In the land administration context, the Crown sought to displace customary tenure by introducing a tenure system based on individualised title (as opposed to collective title). The resulting legislative, management, and alienation issues arrived at by 1900 resulted in the owners being left in a position in which they 'could not collectively manage their lands, or transfer title to purchasers or lessees themselves'.

As the Central North Island Tribunal noted, problems with land administration and the transfer of title had been identified by the Native Land Laws Commission in 1891. That Tribunal commented:

The commissioners pointed out that such problems could have been avoided if there had been recognition that 'all lands in New Zealand were held tribally', if certificates of title had been issued 'to the tribes and hapus by name', and if a simple method of dealing in land based on working with a corporate body had been devised. . . .

The commission recommended that a native land board should be established, with full power to act as trustee and with the power to lease Maori lands, but the Government did not immediately adopt this recommendation.

44. See detail of the political context in Waitangi Tribunal, He Maunga Rongo, vol 1, ch 7, vol 2, ch 10.
45. Waitangi Tribunal, He Maunga Rongo, vol 2, p 671.
46. AJHR, 1891, G-1, p vii (Waitangi Tribunal, He Maunga Rongo, vol 2, p 672).
However, the Government did later set up the Validation Court to deal with difficulties with transactions affected by the tenure system, and it enacted the Native Land Court Act 1894. This legislation was discussed in part 11 of this report. In summary, under the legislation, if Māori wanted to sell their land, they had to set up an incorporation and a majority of owners had to agree to the sale. Alternatively, a majority of owners could apply to the district land board to dispose of the land. In the latter case, the approval of the governor was needed and, once given, the land was vested in the district land board and declared Crown land. Before approving the transfer, the governor had to be satisfied that the owners had sufficient land for their support.\footnote{Waitangi Tribunal, \textit{He Maunga Rongo}, vol 2, p 672.}

The enactment of the Māori Lands Administration Act 1900 followed and drew upon the district land board model, with some variation, in response to growing Māori demands for management of their own lands. The Act was in many respects a response to the concerns expressed by Māori over the Crown’s policies concerning Māori land and the operation of the Native Land Court. It was a well-intentioned attempt to address their desire to maintain and manage their own land. This aspiration was captured in the preamble to the Act which provided that the chiefs and other leading Maoris of New Zealand, by petition to Her Majesty and to the Parliament of New Zealand, urged that the residue (about five million acres) of the Maori land now remaining in possession of the Maori owners should be reserved for their use and benefit in such wise as to protect them from the risk of being left landless.\footnote{Māori Lands Administration Act 1900, preamble.}

This was an important advance on the previous legislation dealing with Māori land, but then the quid pro quo of the Crown’s policy was declared as follows:

\begin{quote}
And whereas it is expedient, in the interests both of the Maoris and Europeans of the colony, that provision should be made for the better settlement and utilisation of large areas of Maori land at present lying unoccupied and unproductive, and for the encouragement and protection of the Maoris in efforts of industry and self-help: And whereas it is necessary also to make provision for the prevention, by the better administration of Maori lands, of useless and expensive dissensions and litigation, in manner hereinafter set forth.\footnote{Māori Lands Administration Act 1900, preamble.}
\end{quote}

Clearly, the policy of ensuring that Māori land be made available for Pākehā settlement never ceased, even under this legislation. The Act provided for the establishment of district Māori land councils that would include several (mostly elected) Māori members.\footnote{Māori Lands Administration Act 1900, s 6.}
In several respects, this legislation appeared to give Māori some of what they had been seeking throughout the 1890s and it attempted to address the challenges of preventing wholesale alienation, whilst still making land available for Pākehā settlement.

12.3.2 Important features of the Māori Lands Administration Act 1900

One example of a potential legislative protection for Te Rohe Pōtae Māori was the papatupu block committees which could be constituted under the Act.\(^{51}\) Essentially, the owners of any papatupu land (customary land not subject to a title issued by the Native Land Court) could elect a ‘papatupu’ or ‘block’ committee to investigate ownership of that land. Named after the block of land for which it was established, each papatupu committee could comprise of at least five, and no more than nine, members. They could determine their own procedures but had to pay due regard to tikanga while conducting their investigations.\(^{52}\) They had to commission sketch-plans from authorised surveyors and adopt hapū boundaries as far as practicable.\(^{53}\) The committees’ reports named all owners, grouped families together, and worked out the relative share of the block to which each family was entitled. Then, they were required to work out the relative interests.\(^{54}\) When completed, the reports and sketch-plans were forwarded to land councils. The councils, after giving all parties concerned a full opportunity of being heard, could make orders giving effect to the decisions of the committees. Matters could also be referred to the papatupu or block committees by the land councils for further investigation or report.\(^{55}\)

Amendments made to the 1900 Act in 1903 extended the papatupu committees’ powers to recommend and vest the interests of people with disabilities in trustees, and the district land councils could produce an order giving effect to such a recommendation. These orders were to be considered orders of the Native Land Court under the Māori Real Estate Management Act 1888.\(^{56}\) Other provisions placed time limits on the production of reports, and gave the councils the power to dissolve committees where they failed to furnish reports.\(^{57}\) The opportunity to be heard by the councils was also repealed or removed from the legislation and substituted with a power of the councils to confirm committee report recommendations or make such other orders as the councils found consistent with the evidence before them. It also gave the councils the power to refer matters back to committees for any purpose which it deemed necessary.\(^{58}\) A right of appeal after review by the chief judge of the Native Land Court was also provided.\(^{59}\)

51. Māori Lands Administration Act 1900, s16.
52. Māori Lands Administration Act 1900, ss16–17.
53. Māori Lands Administration Act 1900, s17.
54. Māori Lands Administration Act 1900, s18.
56. Māori Land Laws Amendment Act 1903, s5.
57. Māori Land Laws Amendment Act 1903, s6.
58. Māori Land Laws Amendment Act 1903, s11.
59. Māori Land Laws Amendment Act 1903, s11.
While the papatupu committee approach looks like it could have fitted with the kinds of processes Te Rohe Pōtae Māori had expected as a result of their 1880s agreements, the Tribunal received no evidence of papatupu committees being established in the Te Rohe Pōtae district.

Papakāinga certificates were another means by which the legislation had potential to deliver the kinds of protections Te Rohe Pōtae Māori had sought mai rā anō. These were designed to ensure Māori did not become landless. The land councils were required to set aside land as a papakāinga for each man, woman, or child for their maintenance and support. An amendment was made in 1903 to allow the councils to issue, in the first instance, one papakāinga certificate for a hapū or family, or group of two or more Māori, thereby providing some form of recognition of the collective nature of customary tenure. The land councils could also set aside and reserve land for commercial, cultural, and customary purposes such as burial grounds, fishing grounds, and other food gathering places, or for ‘the conservation of timber and fuel for [their] future use.

Another example involved owners, whether incorporated or otherwise, transferring their land (or any part of it) by way of trust to the land councils, upon such terms as to the manner of leasing, cutting up, managing, improving, and raising money, that they determined in writing and as agreed between the owners and councils. The benefit for Te Rohe Pōtae Māori was that they were able to set the terms of such alienations.

Alternatively, owners could take a leap of faith for their unincorporated blocks and vest these in the councils. This was not compulsory. For land to be vested in a land council, owners had to meet and agree on this (unless the land was incorporated, in which case a simple majority of owners consenting sufficed). Although the requirement for a unanimous vote in unincorporated blocks was quickly amended under section 6 of the Māori Lands Administration Amendment Act 1901, there still had to be a genuine majority of owners voting for the decision to vest their land in the council and direct the council how to deal with it. The 1901 amendment provided that vesting could happen where there were 10 owners or more, or where all the owners, if less than 10, executed the necessary instrument of transfer. This concession to obtaining consent for vesting from the owners was further amended in 1903.

Once transferred, the councils were authorised to accept the lands on trust. With respect to any Māori land which was transferred in this manner, the councils had full power and authority, at the request in writing of a majority of owners, to reserve and render inalienable such portion of land as they required for their

60. Māori Lands Administration Act 1900, s 21.
62. Māori Lands Administration Act 1900, s 29(1).
63. Māori Lands Administration Amendment Act 1901, s 6.
64. See Māori Land Laws Amendment Act 1903, s 20.
65. Māori Lands Administration Act 1900, s 28.
occupation and support.66 This requirement for the owners to consent in writing was repealed in the 1903 amendment of the legislation.67 Regarding the balance of the land, the councils had the full power and authority to lease the same by public tender upon such terms and conditions it deemed fit.68 They could also borrow money using the land as security.69 These early vesting provisions were not heavily utilised in Te Rohe Pōtæ, as discussed in more detail below. However, the scheme of vesting land in the land councils did lay the basis for what followed in 1905 and 1907 when the Crown moved to introduce legislation to abolish the councils in favour of land boards, coupled with its enactments that compelled owners to vest their lands, a matter which will be discussed in chapter 13.

Where land was vested under the 1900 legislation, councils could borrow money from the Public Trust Office, and various other government funds, but they could not borrow money from any bank, private institution, or person without the consent of the governor.70 The amount that could be borrowed was capped at £10,000.71 In utilising such moneys, the councils could pay debts owners incurred within the six years preceding the passing of this Act in perfecting their titles to their lands or to any other lands owned by the same Māori owners. This authority extended to paying any survey liens. They could then apply the balance in cutting up, surveying, roading, opening up, preparing, and advertising such land for lease, or generally improving such land or any other land of the same owners.72 These costs then became charges on the land, a policy that would have a major impact on the Te Rohe Pōtæ Māori landowners, as discussed below. This theme of charging the landowners for developing lands for Pākehā settlement pervades all chapters in this part of the Tribunal’s report.

To avoid full vesting and the consequences that flowed from that, including the potential burdening of the land with debt, any 10 or more owners of Māori land held under Crown grant or certificate of title could constitute body corporates and then transfer the land for administration by the land councils, similar to the administration of Crown lands by a district land board under the Land Act 1892.73 Alternatively, Māori could still retain direct control of their land if they wished, but there were strict controls over how they could alienate it, including by lease.

12.3.3 Restrictions on alienations in the Māori Lands Administration Act 1900
As detailed in part 11 of this report, Te Rohe Pōtæ Māori leaders wanted restrictions to be placed upon alienations by way of sale to ensure that they retained a sufficient land base to maintain tribal cohesion. Their preference to promote settlement was to release land that they did not need.

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66. Māori Lands Administration Act 1900, s 29(1).
67. Māori Land Laws Amendment Act 1903, s 17.
68. Māori Lands Administration Act 1900, s 29(2).
69. Māori Lands Administration Act 1900, s 29(3).
70. Māori Lands Administration Act 1900, s 29(6).
71. Māori Lands Administration Act 1900, s 29(7).
72. Māori Lands Administration Act 1900, s 29(3).
The 1900 legislation did provide for restrictions on alienation, but not in the form that had long been preferred by Te Rohe Pōtae Māori. Under section 22 of the 1900 legislation, any alienation (including private leasing) would require the sanction of the new land councils. Under the Act, Māori land could not be alienated by way of lease either to the Crown or to any other person except with the consent of the councils and only in accordance with the provisions of the Act. Under section 26, it was unlawful for any person to acquire, for himself or on behalf of any other person, either by purchase, lease, or gift, any Māori land, unless prior to acquisition he deposited with the council a declaration stating that he was acquiring the land for his own use. He also had to state that, along with the land purchased, he would not hold or own more than 640 acres of first-class, or 2,000 acres of second-class, land. The council then issued a licence permitting him to acquire such land. This measure was a useful protection mechanism to inhibit sales, but the transfer of control from Te Rohe Pōtae Māori landowners to the land councils over how they could lease their lands was not a protection that they had asked for.

In the case of sales, a further protection mechanism provided that land held by more than two owners, could only be sold with the consent of the governor in council. Te Rohe Pōtae Māori could not alienate any of their land, either to the Crown or to any other person, without a papakāinga certificate or where they held a notice from the council stating that the lands had been allocated to him prior to the issue of a papakāinga certificate. Upon the recommendation of the council, and only then, the governor could remove and revoke any and all restrictions existing against the alienation of Māori land, whether contained in any Crown grant certificate or other instrument of title, or under any enactment. Importantly, there could be no alienation of papakāinga lands.

Another important restriction was that alienations had to comply with section 25 of the Act, including the need to provide translations in te reo Māori of contents of instruments of alienation certified as correct by a duly licensed interpreter, along with a plan of the land dealt with. These documents had to be signed in the presence of either a member of the council, a stipendiary magistrate, a justice of the peace, or a postmaster, and a licensed interpreter, as the attesting witnesses. They had to be satisfied that each alienating Māori understood the meaning and purpose of the instruments of alienation. As a result of the 1901 amendment, a certificate was added from a Native Land Court judge demonstrating that he was

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74. Māori Lands Administration Act 1900.
75. Māori Lands Administration Act 1900, s 22.
76. Māori Lands Administration Act 1900, s 22.
77. Māori Lands Administration Act 1900, s 23.
78. Māori Lands Administration Act 1900, s 24; see also Māori Land Laws Amendment Act 1903, s 14; repeal of section 24 of the 1909 Act and substitution of new provision which still authorised the governor to remove restrictions, but all alienations were to be completed in accordance with section 25 of the Māori Lands Administration Act 1900.
79. Māori Lands Administration Act 1900, s 24.
satisfied, after due inquiry, that the Māori alienating had sufficient other lands for his maintenance and support, or for the purposes of a papakāinga.  

12.3.4 Membership of the Māori land councils under the Māori Lands Administration Act 1900

Land councils were not made up entirely of Māori, and those Māori selected did not have to come from the district. The Act provided for a Crown-appointed president, two to three Crown-appointed members (one of whom had to be Māori), and two to three elected Māori members. Under part III of the Act, the council could exercise all the powers of the Native Land Court to ascertain ownership, undertake partition, administer successions, define relative interests, and appoint trustees for native owners under disability. The 1903 amendment made it clear that in sitting to review the recommendations of a papatupu committee and in all other decisions before it, if the president (who was always Pākehā) was present, the councils could exercise all the powers of the Native Land Court. However, it could not undertake any of these functions unless directed to do so by the chief judge of the Native Land Court. Appeals could be made to the chief judge for an inquiry, or he could refer the appeal to the Native Appellate Court.

12.3.5 Implementation of the Māori Lands Administration Act 1900 in Te Rohe Pōtæ

Although the Government moved quickly to create the new Māori land districts and representative councils, there was initially what was called ‘a mid-western [North Island] gap’. Five districts were created in December 1900, but districts to cater for the Māori of Te Rohe Pōtæ and the Waikato did not come into existence until a year later. The delay was largely due to a dispute over the district boundaries caused by the Crown’s failure to recognise a district that resembled what Te Rohe Pōtæ Māori had fought so hard for. Throughout October and November 1900, Ngāti Maniapoto, Tūwharetoa, and Whanganui agreed to form a district separate from Waikato. In January 1901, they followed up with a petition to the premier saying that they wanted the boundary of their district to be as defined in their 1883 petition – a boundary which extended eastward to Lake Taupō. They did not want part of their area to be included in a Waikato district. Of concern was that Waikato’s voting power would exceed theirs, leading to a Waikato-dominated council. Above all, they wanted to keep their district and maintain mana whakahaere over it. ‘It is a very foolish proceeding’, they said:

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80. Māori Lands Administration Amendment Act 1901, s 5.
81. Māori Lands Administration Act 1900, s 6.
82. Māori Land Laws Amendment Act 1903, s 12.
84. The title ‘premier’ was used to describe the leader of the colonial government until 1906 when the title changed to ‘prime minister’, the latter a title reserved for self-governing dominions.
‘He mea pohehe rawa kia uru noa mai nga tangata whenua ki te whaka haere i nga whenua o etahi ara e pera i runga i te tikanga pooti.’
‘to allow landless natives to administer the lands of others, which might happen through the voting.’

King Mahuta (also known as both Mahuta Tāwhiao and Mahuta Te Wherowhero) and his supporters, meanwhile, wanted a land district with the same boundaries as the Western Māori electoral district.

In the end, sub-commissioner to the Native Land Court Lawrence Grace carried out a poll on behalf of the Government. It involved Māori landowners living in the Waikato, Te Rohe Pōtae, and around Taupō. The options presented to the voters were either a Waikato–Maniapoto district (‘Boundary No 1’) as proposed by the ‘Mahuta Tawhiao party’ (aligned with King Mahuta), or a Hikairo–Maniapoto–Tuwharetoa district (‘Boundary No 2’). Those who voted for the first boundary tended to come from the northern half of the district, while those voting for the second boundary were generally from ‘the great Rangitoto–Tuhua Blocks, Maraetaua, Mokau, and other adjoining blocks, thence extending to Taupo’. Those who voted for the second boundary also held the largest area of land. A Hikairo–Maniapoto–Tuwharetoa Māori Land District was duly proclaimed in the Gazette of 19 December 1901 (although the names of those who would serve on it were not confirmed until mid-1902).

The Hikairo–Maniapoto–Tuwharetoa Māori Land Council, when finally constituted, had six members. The Crown appointees were G T Wilkinson as the president, John Elliot of Mahoenui, and John Ormsby. The elected members were Pepene Eketone, Eruiti Arani (from Moawhango), and Te Papanui Tamahiki (Taupō). The council was, therefore, predominantly Māori. In late October 1902, ‘Hikairo’ was dropped from the title of both the district and the council, and the body became the Maniapoto–Tuwharetoa Māori Land Council. The membership of the council remained fairly stable over the next few years except that Elliot was replaced by William McCardle of Kāwhia, later replaced by James Seymour.

The boundaries of the Waikato district were gazetted in July 1902 and an election was held shortly thereafter. The Waikato Māori Land Council initially comprised William Gilbert Mair (a judge of the Native Land Court), William Duncan (an Auckland land valuer), and Henare Kaihau, as the three government appointees,

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85. Wiremu Te Huihi and 54 others to Premier Seddon, 18 January 1900 (doc A71(a) (Robinson and Christoffel document bank), vol 2, pp505–518); doc A93 (Loveridge), pp 26, 31–32; doc A73 (Hearn), p 63.
87. L M Grace to premier, 26 July 1901 (doc A71(a), vol 1, pp300–305).
88. L M Grace to premier, 26 July 1901 (doc A71(a), vol 1, pp300–305); Loveridge, Māori Land Councils, pp 29 n, 33.
89. Loveridge, Māori Land Councils, p 33; doc A93, p 34; doc A55, pp146–147; doc A73, pp63–64; doc A71, pp138–139.
90. Loveridge, Māori Land Councils, pp 29–30; doc A55, p146.
with the elected Māori members coming from Thames (Mare Tereti), Patetere (Hare Teimana), and Te Akau (Wirihana Te Aoterangi). Mair was president and, like the Maniapoto–Tūwharetoa council, the council had a Māori majority. Kaihau said he had accepted his seat on the council, even though he had ‘consistently opposed the Māori Land Administration Act in its present form’, because he ‘wished to become personally acquainted with the working of the Act, and be able to suggest beneficial amendments’ to Parliament. In the meantime, he intended to ‘carefully watch over the interests of the Māori people’ under the Act as it stood.

12.3.6 How well did the councils function and how did Te Rohe Pōtae Māori react to the Crown’s new regime?

The land councils had the potential for significant Māori control over the administration of their lands, and as a result, the legislation had potential to deliver a limited form of mana whakahaere sought by Māori in Te Rohe Pōtae and other districts.

First, however, it is necessary to address the issue several claimants raised before the Tribunal about the fate of certain Rangitoto–Tuhua blocks that appeared to have been vested shortly after the Maniapoto–Tūwharetoa Māori Land Council began to operate.

On 25 July 1904, Wilkinson (the president of the Maniapoto–Tuwharetoa Land Council) told Sheridan (the officer in charge of the Native Land Purchaser Office) he was sending him deeds of transfer for four Rangitoto–Tuhua blocks. Wilkinson claimed these blocks had been ‘transferred to the Maniapoto–Tūwharetoa District Māori Land Council by the ten owners authorised for that purpose by a majority of their co-owners in each Block, in accordance with the Māori Land Administration Act, 1900’ and comprised part of Rangitoto–Tuhua 55 (also known as Aurupu, 1,448 acres, 28 owners); Rangitoto–Tuhua 57A (Mapara, 6,772 acres, 134 owners); Rangitoto–Tuhua 71 (Te Tawai, 1,513 acres, 36 owners); and part of Rangitoto–Tuhua 72 (Otamati, 15,874 acres, 44 owners). Wilkinson indicated that not all owners had yet signed the deeds of transfer.

Reference to ‘ten owners authorised . . . by a majority of their co-owners’ suggests that the lands were being vested under that Act, since such a procedure was not necessary if the lands were being transferred for administration, in which case only a simple majority was required. In fact, though, by 1904 10 owners did not need to be authorised anyway, because an amendment had been passed late the previous year, whereby a vesting could be executed by ‘a majority of the owners in number and interest’. So, although Wilkinson seemed to be implying that the

95. Wilkinson to Sheridan, 25 July 1904 (doc A73(a) (Hearn document bank), vol 5, p 280).
96. Māori Lands Administration Amendment Act 1901, s 6 (which repealed section 28 of the Māori Lands Administration Act 1900) as compared with Māori Lands Administration Act 1900, s 31.
97. Māori Land Laws Amendment Act 1903, s 20.
intention was that blocks had been vested under full land council authority, it is not possible to know from this evidence alone.

The inference that a full vesting was, nevertheless, intended is supported by a later communication from William Bowler, signed on behalf of the Under-Secretary of the Native Department, to Āpirana Ngata. In July 1907, he wrote that the land had been ‘transferred in trust’ to the board (emphasis added). But, Bowler added, although the deeds had in each case been signed by a large number of owners, he was ‘not in a position to say whether the necessary majority of signatures [had] been obtained’. This would suggest that the vesting of these blocks, even if intended, was not yet finalised.

Alongside this information, a letter from P E Cheal, dated 9 March 1905, complained that he had held charging orders over Rangitoto–Tuhua 72 and other blocks since July 1900 and he did not see ‘how any title could be given to the Council to administer [them]’. Of further relevance in this context is that Bowler’s letter of July 1907 indicated, by then, that the Crown had ‘acquired interests in some, at least, of these blocks’, suggesting that the vesting land had never been completed. There is also Stout and Ngata’s August 1907 report on their investigations into certain blocks in Te Rohe Pōtae. They noted that, in the case of both Rangitoto–Tuhua 55 (Aurupu) and Rangitoto–Tuhua 71 (Te Tawai), ‘a deed of transfer to the Board’ had been signed by some of the owners but never registered.

Other evidence on the record of inquiry shows that, after 1905, the Crown had purchased interests in all four blocks. Moreover, in the case of Rangitoto–Tuhua 72A, the purchase covered an area ‘taken for survey lien payable by non-sellers’ (this presumably relates to the money owed to Cheal). These pieces of evidence, taken together, support the conclusion that even if vesting in the land council was intended, it had never been completed. In short, the only Te Rohe Pōtae land that was vested fully under land council authority prior to 1905 was around 394 acres of native township land. In addition, as far as can be ascertained, no land was transferred for land council administration either.

There are several potential reasons why Te Rohe Pōtae Māori were cautious of vesting lands in the council. Asked for his views on the matter, Jeremiah Ormsby later said the Act was ‘unpopular with the Natives’ because it allowed the council to ‘practically do as they like’ with the land, adding: ‘There is no limit set to the time they can hold it, and that is very unsatisfactory.’ He also pointed to doubt

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98. Bowler, for Under-Secretary, to Ngata, 15 July 1907 (doc A73(a), vol 5, p 132).
100. Bowler, for Under-Secretary, to Ngata, 15 July 1907 (doc A73(a), vol 5, p 132).
101. AJHR, 1907, G-1D, p 1.
102. Document A60, p 970; doc A60(a) (Berghan document bank), vol 16, p 12215; doc A92 (Te Rohe Pōtae map collection), Memo-transfer folder, TAR-399-Rangitoto-Tuhua-72A.pdf; Document A92 (TRP map collection), Memo-transfer folder, TAR-405-Rangitoto-Tuhua-57A.pdf; Document A92 (TRP map collection), Crown-purchase-deeds-Auckland-district folder, AUC-3809-Rangitoto-Tuhua-71A; see also doc A60(a), vol 16, p 12236.
103. AJHR, 1905, C-4, p 968 (doc A93, p 48).
about the financial side of the scheme: the amount the council could deduct for expenses was unlimited ‘and of course people do not care to hand land over to the council under those circumstances’. His brother John expressed a similar concern, despite serving on it himself: ‘As the Act stands at present the Native lands are saddled with the whole cost of administration, and, roughly speaking, we find that this would practically swallow the whole of the revenue and leave nothing for the beneficiary owners.’ Certainly the councils were not particularly well-resourced by the Crown. They were provided with no fixed base: meetings of the Maniapoto–Tūwharetoa land council were held either at Ormsby’s office or at Wilkinson’s home or office. Nor, initially, did they have any clerical assistance: the council later had to request that the Government supply them with a clerk to help them cope with the paperwork.

But the leasing of vested land was not the council’s only function. It was also responsible for administering and approving private leases and Te Rohe Pōtæ Māori used the council most for this purpose. As Wilkinson observed, private leasing was by far ‘the most popular way amongst the Natives (and Europeans also) of this district of making use of the local land Council.’ By August 1904, the Maniapoto–Tūwharetoa land council had dealt with 42 applications to remove restrictions, relating to around 16,500 acres of land, and granted all but two of them. It also approved 33 private leases, again affecting over 16,000 acres.

By the end of its tenure, the council had approved the leasing of over 41,000 acres of land, including 7,751 acres covered by timber leases and 4,830 acres by coal-prospecting rights. On 8 November 1904, a new Native Land Rating Act was passed making it possible – from 1 April the following year – for Māori land with unpaid rates to be compulsorily vested in the council, adding another strand to its work.

While these events were unfolding, Ngāti Maniapoto met with the Kingitanga. In June 1903, a large hui took place at Te Tokanganui-a-Noho in Te Kūiti, involving ‘all the tribes of the Rohe-Potae’. King Mahuta Te Wherowhero attended, as did Te Heuheu Tūkino – the latter describing those present as being of Ngāti Maniapoto, Waikato, Ngāti Tūwharetoa, Whanganui, and Ngāti Raukawa. Native Affairs Minister Carroll was also there. When it came to Carroll’s turn to speak, he told those present to hurry up and hand their lands over to the councils: ‘kia tere te tuku i nga whenua ki nga Kaunihera.’ However, as discussed later, Te Rohe Pōtæ Māori did not listen to him.
12.3.7 Te Rohe Pōtae Māori views about the Maniapoto–Tūwharetoa council and its work

The imperative for Native Minister Carroll was to respond to settler pressure by demonstrating that Māori would voluntarily release land to the land councils. However, that did not happen. As the pressure to release more land for purchase and settlement grew, in September 1904, Parliament decided to set up a royal commission on Crown lands, ‘with a view to further encouraging and promoting land-settlement and removing any anomalies and disabilities, if found to exist’.

Ten Pākehā were appointed to the panel, with one of them being a prominent Kāwhia settler, William Wilson McCardle. In June 1905, the Royal Commission on Land Tenure, Land Settlement, and other matters affecting the Crown Lands of the Colony sat in Ōtorohanga and Te Kūiti.

Appearing before the commission, John Ormsby and his brother Jeremiah put forward a number of reasons for owners’ reticence over vesting land with the Maniapoto–Tūwharetoa land council. One reason was the loss of control and another was the cost of administering the scheme. Jeremiah Ormsby thought that the greater part of this should instead be borne by the Crown. After all, the scheme was being ‘forced on the Natives by the demands of settlement and civilisation’ and it was not fair ‘that everything they have should be eaten up in expenses’.

Both John and Jeremiah were disappointed that the system did not better assist private leasing. John spoke of Māori landowners’ frustration over the ‘very intricate and cumbersome machinery’ now in place: both the council and then the governor in council had to approve applications to remove restrictions. He pointed to cases that remained unresolved even after two or three years. Responding to a suggestion that the Maniapoto–Tuwharetoa Māori Land Council be merged with the Waikato Māori Land Council, he said that would be against their wishes. The Ormsbys and others evidently wanted the council improved rather than merged with its neighbour.

The brothers noted that Māori of the district had recently met to discuss better ways of dealing with their land, with Jeremiah estimating overall attendance at about 300 people. At one of the meetings, apparently held in Te Kūiti on 28 April, ‘leading chiefs’ had proposed the establishment of a council to control and administer all Māori-owned land. The council was to have a Pākehā as president and six elected Māori members. John Ormsby said his evidence to the commission had summarised the views from the various meetings, but attendees had also prepared a petition.

113. AJHR, 1905, C-4, p 969 (doc A93, p 48).
116. ‘Where the White Man Treads’, New Zealand Herald, 6 May 1905, p 9 (doc A146 (Hearn), p 87); AJHR, 1905, C-4, pp 956, 969 (doc A93, p 49).
The petition, signed by Te Wherowhero Tāwhiao and 276 others, came before the Native Affairs Committee in September 1905. The petitioners said that they had been ‘a long time turning over and considering the provisions of [the 1900 Act] and its amendments’ before arriving at their conclusions. Pepene Eketone emphasised that copies of it had been ‘taken round to each of the various kaingas throughout the district’ and signed by the people resident there. It was therefore representative not just of those who had attended the meetings but of Māori in the district as a whole, whom he estimated to number over 2,000. He added that the signatures included a few from the Waikato.

Over time, John, Jeremiah, and Arthur all became prominent in King Country local affairs. John was the first chairperson of the Kawhia Committee. He was also made an assessor of the Native Land Court for the Waikato district. Then, in 1902, he was appointed to the local Māori district land council, on which he served for four years. In 1907, it was John who presented a letter to Stout and Ngata on behalf of Taonui and 16 others of Ngāti Maniapoto, offering suggestions with regard to the protection of their lands while at the same time allowing for more settlement.

Subsequently, he also held positions as clerk of Te Kuiti Borough Council, clerk of Waitomo County Council, and chairman of the Otorohanga Town Board and, in 1920, he was appointed to the Native Land Claims Commission. All this was in addition to ad hoc contributions on both the local and national stage and also his various business activities (which included farming and being a shareholder in the Te Kuiti Co-operative Dairy Factory Company).

Older brother Arthur, meanwhile, was instrumental in getting a native school set up at Te Kōpua in the 1880s and then served on its school committee. He also lobbied against the sale of alcohol within the King Country. On other occasions, he made his views known – in no uncertain terms – about the Crown’s policy with regard to Māori-owned land, including its measures on rating, roading, and noxious

The Ormsby Brothers

Arthur, John, and Jeremiah Ormsby were all born at Te Kōpua, near Pirongia, to Mere Pianika Rangihurihia of Ngāti Maniapoto and Robert Ormsby, a school-teacher. A month before the outbreak of the war in the Waikato, when John was about nine years old, most of the family shifted to Auckland. Arthur, then aged about 10, remained behind with Ngāti Maniapoto. Another brother, somewhat older, fought with the government forces. Later, the family returned to Waipā.

Over time, John, Jeremiah, and Arthur all became prominent in King Country local affairs. John was the first chairperson of the Kawhia Committee. He was also made an assessor of the Native Land Court for the Waikato district. Then, in 1902, he was appointed to the local Māori district land council, on which he served for four years. In 1907, it was John who presented a letter to Stout and Ngata on behalf of Taonui and 16 others of Ngāti Maniapoto, offering suggestions with regard to the protection of their lands while at the same time allowing for more settlement.

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As the Ormsby brothers had foreshadowed, the petition highlighted the costs and delays of the council system. It also pointed to the councils’ lack of power and

\(^{117}\) AJHR, 1905, i-38, pp 3, 11, 14 (doc A73, pp 68, 70; doc A93, p 52).
weeds. At one point, he was also an advisor to Tāwhiao. Then too, there were his farming ventures. Alongside brother John, he was, in 1892, owner of one of the biggest sheep flocks in Te Rohe Pōtae and in 1898 was regularly providing the local dairy factory with milk from his cows.

Jeremiah was one of the inaugural councillors on the Waitomo County Council when that body was set up in 1905 and remained a council member until his untimely death in July 1909. In his last year of service, he was the council’s chairman. Like his two brothers, he was also involved in farming.

In 1905, John, Arthur, and Jeremiah all gave evidence to the Royal Commission on Crown Lands, speaking on a wide range of issues.

Arthur lived till 1926 and John till June 1927. Jeremiah died as the result of an unfortunate accident in 1909: walking home late one night from Te Kūiti to his farm at Waiteti and, using the railway track because of the bad state of the road, he was killed by a passing train.¹

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118. AJHR, 1905, I-3B, pp 2, 4, 6 (doc A73, p 68; doc A93, p 51).
on, and they say, ‘What have you done with all you have got?’ . . . It is all the fault of Parliament; they go and pass a law and they give nothing to back it up with.”

The petitioners proposed several remedies, including:
- that the councils be given the exclusive right to administer the lands placed under their authority;
- that the state assume the expense of that administration;
- that there be three elected Māori members on each council and two nominated Pākehā members (thus giving Māori a guaranteed majority); and
- that any trusteeship of lands by the council be limited to 42 years.

Eketone said that Māori in the district were satisfied with the main policy of the Act, but wanted the council to have a strong Māori voice and to be accorded greater power:

We want to be treated by legislation as though we were responsible human beings; we do not want to be treated as we have been hitherto under every Act passed by the Legislature – as mere things. We maintain that under the Treaty of Waitangi in 1840 we were recognised as a distinct people, and our rights and privileges were assured to us – our rights to land, and so on – under that treaty.

He stressed the importance of elected representatives being answerable to the Māori community that had put them there. Ngāti Maniapoto, he said, were against the idea of only having members appointed by the governor because it was ‘the absolute taking-away of the Maori voice’:

What we want to have is this: we want to have Maori members in the Council, and we want to have the right to vote them to that position, and we want a man sent there to do what we expect of him, and if he fails to do so, we want to have the right to take him away and put some one else in his position . . .

There was no need for the governor in council to approve land council decisions, he said, because that merely slowed things down. Questioned by the committee, Eketone did, however, concede that the governor’s approval was desirable where any land was to be sold, ‘because that is an absolute alienation.’ It is clear from the tenor of his overall responses that he expected such cases to be the exception.

Indeed, Eketone argued firmly against free trade in land and individualisation of title. The petitioners wanted people to be accorded an absolutely inalienable papakāinga, plus some land they could farm and work themselves – preferably with monetary assistance from the Government, as was provided to Pākehā farmers.

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120. AJHR, 1905, I-38, p 3 (doc A73, p 69; doc A93, p 52).
122. AJHR, 1905, I-38, pp 7, 12 (doc A93, p 56).
The rest could then be entrusted to the council to lease, but ‘it must be distinctly understood that the Council is merely a trustee, and not the owner.’ To that end, they wanted a guaranteed maximum lease period, because they wanted to be sure they could get the land back for the use of the next generation. They would have preferred short leases but were pragmatic enough to realise that people probably would not take up the lands on short terms. Under questioning, he agreed the maximum might be set at 50 years rather than 42.  

While the petition proposed voluntary vesting, Eketone indicated that Ngāti Maniapoto were willing to contemplate a degree of compulsory vesting ‘under certain circumstances’, but only ‘if the law were once amended so as to make it entirely satisfactory’ – for example, to cover cases where (after thorough investigation) it was found that owners were ‘merely holding on to their lands for an obstructive motive’. They were also positive about the idea of consolidating scattered interests (but only at the request of owners), because those owners might have ‘many separate interests of not much individual value in themselves scattered about all over the country’.  

As to the council’s sphere of activity, Eketone indicated that Te Rohe Pōtae Māori were now agreeable to retaining the Native Land Court, to keep the administrative aspects of dealing with Māori land separate from the judicial aspects. Otherwise the councils, ‘instead of doing the proper work of Councils, have their time taken up in doing Native Land Court work’. This was a particular problem where, as in the case of the Maniapoto–Tūwharetoa council, the council president was also a land court judge: ‘nearly all his time is occupied in doing Native Land Court work’, said Eketone, ‘and the immense amount of Council work that should be done is simply left undone’. They wanted the two bodies to operate in their separate spheres and thought that the only judicial work to be left in the hands of the council should be dealing with successions. Eketone additionally made the point that since the Native Land Court was funded by the Crown, it seemed only reasonable for the land councils to be granted similar assistance. When Carroll suggested that the councils might be reduced to three members each, Eketone rejected the idea, saying it would not allow for Māori members standing aside from debate when their own land interests were being discussed.  

Tureiti Te Heuheu also appeared before the committee in support of Ngāti Maniapoto and their petition. Adding to Eketone’s comments about the delays involved in seeking consent from the governor in council, he asserted that it gave the opportunity for interference from ‘people behind the Government, in the Government Departments here’. He particularly mentioned Sheridan and Waldegrave (Under-Secretary of the Justice Department): ‘if they oppose the
recommendation of the Council which inquired into the matter when it was passed before them, then the recommendation of the Council is not given effect to.\textsuperscript{129} Alternatively, officials would sometimes just ‘hang things up’ until six months had elapsed and the recommendation of the council ‘die[d] through effluxion of time’.\textsuperscript{130}

On the issue of cost, Te Heuheu suggested that the Crown had already done very well out of Ngāti Maniapoto: ‘Within the Ngatimaniapoto Rohe Potae many lands have been sold to the Crown . . . How many millions of pounds have the Crown received of profit over and above the prices at which they purchased these land . . . ?’ Not to contribute to the cost of the councils’ administration would therefore be ‘most miserably miserly’.\textsuperscript{131}

Te Heuheu also noted that, in some instances, different laws applied to Māori in Te Rohe Pōtae compared to Māori in other areas. In particular, where lands were owned by only one or two owners, Te Rohe Pōtae Māori were not allowed to ‘sell, lease, or deal with their interests in the lands, but outside the Rohe Pōtae they can do so’. Moreover, they were not alone in being subject to targeted legislation. Te Heuheu cited the West Coast Settlement Reserves Act (affecting Taranaki Māori), the Urewera District Native Reserves Act, and the Thermal Springs Act as other pieces of legislation that applied selectively to different Māori groups. He pointed out that this was not the case for Pākehā.\textsuperscript{132}

Picking up on Eketone’s reference to the land council as ‘a machine to deal with the land’, he went on: ‘We have tried to work the machine and put it into operation, but it will not work. Now, what we want to do is to remedy the blemishes in the machine so that it will work.’\textsuperscript{133}

When the committee questioned Te Heuheu about how much power he thought the petitioners envisaged the land councils having over their land, Te Heuheu summed it up succinctly: ‘The Maoris are to retain the mana of the land; the Council is to have the mana of the law’.\textsuperscript{134}

Te Rohe Pōtae Māori were obviously cautious about the land councils and other aspects of the 1900 regime. They wanted to see the system improved before they fully invested their land in the scheme, but they did not want it to be abandoned altogether. Eketone had come to see that councils were becoming an instrument for Te Rohe Pōtae mana whakahaere, including enabling their participation in the farming economy on their own terms. Te Heuheu seemed to be in support, as expressed in his view that Māori should retain ‘the mana of the land’. They seem to have arrived at this view despite the councils being made up of almost equal numbers of Pākehā and Māori members, with some council members elected, while others were appointed by the Crown.

\textsuperscript{129} AJHR, 1905, i-38, p 15 (doc A73, p 71).
\textsuperscript{130} AJHR, 1905, i-38, p 15 (doc A73, p 71).
\textsuperscript{131} AJHR, 1905, i-38, p 17 (doc A93, p 50; doc A73, p 70).
\textsuperscript{132} AJHR, 1905, i-38, p 15 (doc A73, p 71).
\textsuperscript{133} AJHR, 1905, i-38, p 16.
\textsuperscript{134} AJHR, 1905, i-38, p 20 (doc A73, p 71).
Despite these reservations, those who supported the 1905 petition seem to have been willing for the councils to continue, albeit with better funding and certain administrative improvements. They wanted, for instance, an assurance of Māori influence on the councils, and they did not want the size of council membership to be significantly cut. They had also come to see some merit in retaining the Native Land Court, if only as a way of splitting the workload and costs. They were even apparently willing to contemplate a degree of compulsory vesting in exceptional circumstances, and they were interested in being allowed to consolidate their interests if they so chose.

12.3.8 Treaty analysis and findings

In the late nineteenth century, the Crown clearly was struggling to reconcile three demands: the expectation from Māori that they would retain tino rangatiratanga over their lands and communities; in the case of Te Rohe Pōtae Māori, that the Crown would honour its political commitment to provide for their continued mana whakahaere over their district; and political pressure from settlers to acquire more Māori land. The policies reflected in the Māori Lands Administration Act 1900 were the outcome of a negotiated settlement with Māori leadership at a national level. This appears to have been supported by a number of leaders in Te Rohe Pōtae, as they could see possibilities for making Māori land available for settlement under certain circumstances and with their own mana whakahaere protected.

As the new century dawned, given the Liberal Government’s policies on opening up land for Pākehā settlement, the Crown was determined to find middle ground between settlement and providing Te Rohe Pōtae Māori with full mana whakahaere over their own land and resources. The Crown offered a much more limited land administration system with the 1900 Act, and at least some Te Rohe Pōtae Māori agreed to try to work with that. At the least, the new system offered a limited degree of control over their lands and the sale and leasing of those lands. Certainly, the papatupu committees (although apparently of limited use in this district) and the voluntary element of the legislation were advances on the previous land policies.

The Māori Lands Administration Act 1900 also offered some form of mana whakahaere over Te Rohe Pōtae lands, although one not fully consistent with the guarantee of tino rangatiratanga that the Treaty had promised. Nor did it fully provide for what Te Rohe Pōtae Māori believed they had secured through the Te Ōhākī Tapu negotiations, the detail of which we discussed in chapter 8 of this report. However, the legislative scheme did improve a Māori land administration system that, until this point, did little but promote alienation. Furthermore, it offered a limited form of co-management with Crown-appointed members within the significant constraints of the 1900 Act. The 1900 Act was also an improvement on previous Crown systems for administering Māori-owned land in that the
primary method of making land available for settlement under the Act was by lease, not sale. Vesting land in the councils was a voluntary process, requiring a high level of consent from owners, though subsequent amendments to the legislation eroded the level of consent required.

The Central North Island Tribunal put it this way:

Though it did not provide the total control that Maori had sought, it did provide for joint Crown–Maori administrative bodies which might have played a useful role in Maori land management, and assisted Maori to gain experience in administrating trusts and leases. The 1900 Act also responded to long-expressed Maori wishes to limit land loss through purchasing. In establishing a system that was based on leasing rather than purchasing, the 1900 Act represented a real attempt by the Liberal Government to put alienation on a basis which Maori could accept.136

Of significance, though, is that once the land had been vested or was before the councils’ administration, the owners lost a measure of control over their land. As the September 1905 petition revealed, they were concerned that land was before the councils, waiting to be approved for private leasing. If this land was to be vested in the councils, Te Rohe Pōtae Māori were rightfully nervous about the fate of that land and any other land they might hand over as a result, since there was no provision for its immediate return. They were also sceptical about the potential for government influence and intervention. They wanted improvements as they did not see the scheme as responding fully to their aspirations for their lands. They also felt that the Government owed the scheme better financial support, especially in light of the amount of profit the Crown had already derived from Te Rohe Pōtae lands it had acquired.

We find that the legislative framework and the evidence from this inquiry district indicates that the Māori Lands Administration Act 1900 and its amendments were not consistent with the guarantee of tino rangatiratanga under article 2 of the Treaty of Waitangi. However, Te Rohe Pōtae Māori were prepared to adjust their desire for complete control over their lands and instead express their mana whakahaere through the land councils. The legislative scheme had the potential to be a system consistent with the Treaty principles of partnership, reciprocity, and mutual benefit. What the land councils needed to fulfil their potential were some key adjustments to the legislation and targeted funding and resourcing, as Te Rohe Pōtae Māori themselves identified. The potential benefits of such improvements were also identified by the Central North Island Tribunal.137

We find that in failing to give full support to the delivery of mana whakahaere to Te Rohe Pōtae Māori through the land councils, the Crown acted in a manner inconsistent with the principles of partnership, reciprocity, and mutual benefit derived from article 2 of the Treaty of Waitangi.

137. Waitangi Tribunal, He Maunga Rongo, vol 2, pp 676–677, 681–682.
12.4 The Māori Land Board Regime, 1905–08

12.4.1 The policies underpinning the Māori Land Settlement Act 1905

The Central North Island Tribunal has observed that the Liberal Government changed tack from supporting the land councils to seeking their replacement with land boards. In that Tribunal’s opinion, the resumption of wide-scale Crown purchasing reflected the Government succumbing even further to political pressure, as they ‘constantly had to fend off allegations from the Opposition.’\(^{138}\) The Government was also confronted with the report of the Royal Commission on Land Tenure, Land Settlement, and other matters affecting the Crown Lands of the Colony. The Central North Island Tribunal highlighted a quote from the commission which captures the prevailing attitude of the time:

> The settlement of the North Island is very much retarded by the extensive areas of unoccupied Native lands that are scattered over it, producing nothing, paying no rates, and yet participating in the advantages of the roads, railways, and other public and private works and settlement that surrounds them . . . The Natives show no disposition to . . . [develop this land] so that so far as they are concerned, it will probably remain for many years a wilderness, and a harbour for noxious weeds and rabbit pest.\(^{139}\)

The Liberal Government thus capitulated and repeatedly voiced its concern to Māori that they were not releasing land fast enough for settlement, that the land council system was cumbersome and slow, and that there had been too much ‘taihoa.’

As a result of these views, without consulting Te Rohe Pōtae Māori or Māori generally, by June 1905 the acquisition of surplus lands to be dealt with through land boards had become official Crown policy.\(^{140}\) At the end of October that year, Parliament passed the Māori Land Settlement Act 1905.

12.4.2 Important features of the Māori Land Settlement Act 1905

The 1905 Act was to be read as forming part of, and together with, the Māori Lands Administration Act 1900 (the principal Act). The most obvious changes were to the land administration bodies, which is discussed further below. Notable, too, are the many substantive provisions of this Act that demonstrate a high degree of Crown control over the boards and the Native Land Court.

Under section 6, and for the purpose of enabling the issue of papakāinga certificates, the Native Minister was required to compile from the records of the Native Land Court, or otherwise, a list showing the lands, the owners of that land, and the interests in lands held or owned by them. The Native Minister could also apply under section 7 to the Native Land Court to investigate title and ascertain the

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\(^{139}\) AJHR, 1905, C-4, p xviii (Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 678).

\(^{140}\) Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 679.
owners according to native custom of any papatupu land. Where this was done, the court had to proceed in all respects as if the application had been made by some person claiming an interest in such land.

Any Māori land which, in the opinion of the Native Minister, was not required or not suitable for occupation by the Māori owners could be dealt with in the manner, and subject to the conditions, listed in section 8. This provision declared that the governor could, by order in council, declare that the land be vested in the board, subject to any valid incumbrances, liens, and interests. The land was to be held and administered by the board for the benefit of the Māori owners in accordance with the provisions of the Act. The board could move to deal with the land surplus to Māori needs after first classifying it as:

- first-class land, comprising agricultural land;
- second-class land, comprising mixed agricultural and pastoral land;
- third-class land, comprising pastoral land of a character that can be profitably worked in areas of 5,000 acres or less; and
- fourth-class land, comprising pastoral land of a character that cannot be profitably worked in areas of 15,000 acres or less.

The board was required, under the direction of the Native Minister, to survey and subdivide such surplus land into allotments in areas:

- in the case of first-class land, not exceeding 640 acres;
- in the case of second-class land, not exceeding 2,000 acres;
- in the case of third-class land, not exceeding 5,000 acres;
- in the case of fourth-class land, not exceeding 15,000 acres; or
- where, in the opinion of the board, the land was of such poor quality that it could not be profitably worked in areas of 15,000 acres or less, the land could be surveyed and subdivided into allotments in such areas exceeding 15,000 acres as will ensure the taking up of such lands.

The board could dispose all these allotments by way of lease for any term or terms not exceeding 50 years and could offer them for public auction or tender.\(^{141}\) For such purposes, the registrar, whenever requested by the Native Minister to do so, was empowered and directed to do all things necessary in order to call in outstanding instruments of titles, issue new instruments of titles, and duly record the titles of the board.

The board could set aside any number of such allotments for use, in the first instance, by the Māori owners of the land.\(^{142}\) All such lands allotted were to be included in a schedule showing the area, locality, and quality of each block, and these were to be laid before Parliament.\(^{143}\)

Under the Act, the boards could, with the consent of the Native Minister, raise mortgage finance on security of the land to deal with existing incumbrances, charges, liens on the land or title improvement issues designed to prepare the land

\(^{141}\) Māori Land Settlement Act 1905, ss 8–9.
\(^{142}\) Māori Land Settlement Act 1905, s 8.
\(^{143}\) Māori Land Settlement Act 1905, s 8.
for leasing. Alternatively, the colonial treasurer (with the consent of the Native Minister) could, in his discretion, authorise advances to be made to the boards out of moneys to be appropriated by Parliament out of the Public Works Fund. In both cases, repayments, interest, and administration fees were to be paid out of income from the land. All restrictions relating to the disposition and administration of any land vested in the boards could be removed so as to carry into effect the purposes of the legislation. Again, this provision ensured that Te Rohe Pōtae Māori landowners were responsible for the development costs associated with preparing their lands for leasing or sale.

As to land retained by Māori for their own use, the Minister of Lands could authorise loans by way of mortgage to the owners for the purpose of stocking, improving, or farming it. These loans could be up to one-third of the value of the land concerned provided that, for any mortgage granted for this purpose, all restrictions affecting the land were removed. In respect of any moneys advanced, the Minister could make such conditions as he deemed necessary to secure the proper expenditure for the purposes the mortgages were given. In terms of these arrangements, Māori had some degree of control over the decision whether to raise finance and accepted the risks associated with it. This was also an improvement on previous legislation, making it clear that there was some opportunity to raise finance for farming operations. However, even where they did so, the Minister controlled the terms of such support.

The Native Minister’s oversight only concluded when the land was revested in the owners. That could occur upon the expiry of 50 years, and upon discharge of all incumbrances affecting the land. At that point, the boards were required, upon request in writing by the Māori owners possessing a majority of the interests in the lands vested in them, to recommend to the governor that he annul, by order in council, the title of the boards. Upon the issue of such an order in council, the land was revested in the Māori owners.

12.4.3 Restrictions on alienations in the Māori Land Settlement Act 1905
The board could reserve and render inalienable any portion of the land for the use and occupation of the Māori owners, or for papakāinga, burial grounds, eel pā, fishing grounds, bird reserves, timber or fuel reserves, or for such other purposes as it may consider expedient.

However, the legislation then removed, all restrictions, conditions, or limitations against the alienation by lease of any lands owned by Māori. That partially addressed what Te Rohe Pōtae Māori wanted, but what they gained was again limited. That is because the legislation provided that no lease of any share or interest
in land owned by Māori was valid unless the terms of the lease were endorsed with the approval of the boards.\textsuperscript{151} Thus, the boards maintained a veto power over the leases. They could withhold approval where satisfied, for example, that the rent proposed was inadequate. They had discretion to waive the rent formula to be applied, after concluding an assessment on whether the rent was excessive, having regard to any circumstances affecting the land.

The restriction on the exercise of the boards’ powers was that they had to ensure that the owners alienating had a papakāinga, or sufficient other land for the purposes of a papakāinga, or (with the rent payable under such proposed lease) an income sufficient for their support.

Another important restriction on alienation was that the boards also had to be satisfied that the proposed leases were for the benefit of the Māori lessors, and that such leases took effect on possession and not when a prior lease terminated. Such leases were restricted to terms not exceeding 50 years. The leases could not relate to areas exceeding the respective classes of land identified in the legislation. The minute of approval of the board upon release to the parties had the same effect as confirmation by the Native Land Court.\textsuperscript{152}

Other than vesting in the boards, the owners could apply to the boards to dispose of the land by way of lease upon such terms and conditions as they specified in their applications. This acted as a form of restriction on alienation. Effectively, where the number of owners exceeded 10, such applications had to be signed on behalf of all of the owners by those selected in the manner provided for in section 20 of the Māori Land Laws Amendment Act 1903. The terms of the leases were determined by the boards, but the costs of administration for leasing were to be agreed between the owners and the boards, and in no case could they exceed 5 per cent of the rentals received by the board.\textsuperscript{153}

Under sections 20 to 22, the Crown could buy Māori land as long as the governor was satisfied that the Māori owners had ‘other land sufficient for their maintenance’. Alternatively, where there was no other land held, land had to be reserved from the sale for this purpose. ‘Sufficiency’ was defined as 25 acres of first-class land, 50 acres of second-class land, or 100 acres of third-class land for each man, woman, and child affected – figures which, as Stout and Ngata would later observe, may have sufficed for a Māori at that time, but failed to provide ‘in any way for his descendants’.\textsuperscript{154}

Even before the payment of the purchase money for any land, the Native Minister could advance to, or for the benefit of, the owners of the land such sum or sums as he thought fit for the roading, fencing, clearing, erection of buildings, or other improvements on any other land belonging to the said owners. This power also applied to the case of any owner who had not executed a transfer to the Crown. In those cases, such advances could not exceed one-half of the value.

\textsuperscript{151} Māori Land Settlement Act 1905, s16
\textsuperscript{152} Māori Land Settlement Act 1905, s16.
\textsuperscript{153} Māori Land Settlement Act 1905, s17.
\textsuperscript{154} AJHR, 1907, G-18, p 5.
of the share or interest of that owner in the land. These advances were deducted from their shares or interests in the purchase money and in the case of owners who had not executed the transfers, the sums advanced had to be secured to the satisfaction of the Native Minister who had the first charge on the share or interest of such owners in the land. The values attributed to the land could not be less than the capital value of those lands provided for in the Government Valuation of Land Act 1896.\textsuperscript{155}

\textbf{12.4.4 Membership of the Māori land boards under the Māori Land Settlement Act 1905}

Under the 1905 Act, the councils were reconstituted as boards, with two members, one of whom had to be Māori.\textsuperscript{156} They were presided over by a president (inevitably Pākehā), and all three were appointed by the governor.\textsuperscript{157} Only one member, with the president, had to be present for the signing of orders and other instruments made by the board.\textsuperscript{158} The membership and their authority were a far cry from the three elected Māori and two nominated Pākehā representatives that Te Rohe Pōtae Māori had called for in their petition only a short time earlier in 1905.

Kaihau’s outrage at the idea of boards being made up only of Crown-appointed members was palpable. In parliamentary debate, he had objected strongly:

\begin{quote}
under no circumstances can I agree to clause 2 of this Bill, which provides that the Governor shall nominate or appoint the members of the Board . . . It should be the exclusive privilege of the Maori owners of the land within these districts to appoint people to exercise these privileges in the direction of conserving the interests of the owners of the lands and their customs and desires.\textsuperscript{159}
\end{quote}

Hone Heke Ngāpua, for his part, had attempted to ensure that the two Crown appointees would be Māori, but his proposal was defeated by 48 votes to 14.\textsuperscript{160}

\textbf{12.4.5 Implementation of the Māori Land Settlement Act 1905 in Te Rohe Pōtae}

In March 1906, the members of the Maniapoto–Tuwharetoa Māori Land Board were gazetted as Alfred Puckey (president), John Ormsby, and James Seymour. All three had previously served as the appointed members on the former council. Puckey served for only six months before being replaced by Judge Robert Sim. Sim, in turn, was replaced after only three months by Judge James Wakelin Browne. Ormsby also resigned during 1906, citing conflict with his business interests and poor remuneration for the significant amount of work involved. He was replaced by Hare Hemara Wahanui, who held his position until 1909 before also

\begin{footnotes}
\item \textsuperscript{155} Māori Land Settlement Act 1905, ss 24–25
\item \textsuperscript{156} Māori Land Settlement Act 1905, s 2.
\item \textsuperscript{157} Waitangi Tribunal, \textit{He Maunga Rongo}, vol 1, p 383.
\item \textsuperscript{158} Māori Land Settlement Act 1905, s 5.
\item \textsuperscript{159} ‘Māori Land Settlement Bill’, 13 October 1905, NZPD, vol 135, p 717 (Wai 1200 ROI, doc A59 (Hutton), p 24).
\item \textsuperscript{160} Document A62, p 139.
\end{footnotes}
resigning. He was replaced by Eketone.\(^{161}\) Thus, it was some time before any stability of personnel was achieved. The evidence presented to the Tribunal does not reveal what impact this had on the council’s work.

As to the Waikato board, its membership was not gazetted until the September. It comprised James Wakelin Browne (president), James Mackey, and Mare Tereti. Previously, Browne had served as a member of the Waikato council and as president of the Tokerau council at the same time.\(^{162}\) He assumed his presidency, from December 1906, of both the Maniapoto–Tūwharetoa and Waikato boards.

The Maniapoto–Tūwharetoa board, like its predecessor, initially met in Ōtorohanga. From the time of Judge Browne’s appointment as president, however, it shifted its base to Auckland. The evidence does not reveal whether Browne’s appointment was a determining factor in this shift. The board did travel to Te Kūiti for meetings on a fairly regular basis, and also occasionally to Ōtorohanga and Taumarunui. The extent to which this affected the board’s work is not clear, but Te Rohe Pōtae Māori made ‘strong representations’ to have the board’s office moved back to their district.\(^{165}\)

From 1906, the newly reconstituted Native Department took over responsibility for administering both the boards and the Native Land Court. For the first time, the boards had been provided a uniform set of guidelines for dealing with applications for approval of leases and various other procedures. The same year, the Māori Land Settlement Act Amendment Act 1906 provided for the compulsory vesting of any Māori land infested with noxious weeds, or ‘not properly occupied by the Māori owners’ but ‘suitable for Maori settlement’. This came on top of compulsory vesting provisions introduced in 1904 – but not, as it happens, applied to any land within the inquiry district – for Māori land with unpaid rates, mortgage, or survey debt.\(^{164}\)

Te Rohe Pōtae Māori showed no enthusiasm for the new arrangements. Puckey had been president of the Maniapoto–Tūwharetoa board for only three months when he reported an ongoing Māori reluctance to ‘convey their lands to the Council’.\(^{165}\) In the months that followed, there was little or no new vesting. By mid-1907, the only vested lands in Te Rohe Pōtae were still those in the Ōtorohanga and Te Kūiti native townships.\(^{166}\) Nor, it seems, were owners much inclined to request the board to administer their land, though Puckey noted that quite large areas had

\(^{161}\) Document A\(71\), pp 153, 163; doc A\(115\) (Marr), p 9; doc A\(62\), p 93.

\(^{162}\) Document A\(71\), pp 153–154, 140 n

\(^{163}\) Document A\(71\), p 163; AJHR, 1907, G-1B, p 7 (doc A\(55\), p 149); ‘Topics of the Day’, King Country Chronicle, 3 August 1910, p 2 (doc A\(93\), p 118 n).

\(^{164}\) Document A\(71\), pp 152, 156; Loveridge, Māori Land Councils, p 64; Richard Boast, Buying the Land, Selling the Land: Governments and Māori Land in the North Island, 1865–1921 (Wellington: Victoria University Press, 2009), p 225.

\(^{165}\) A F Puckey, 22 June 1906 (doc A\(55\), p 149).

\(^{166}\) Document R2\(0\)(a), p 7; doc A\(71\), pp 145, 149.
come under board control ‘owing to moneys becoming due for survey costs, [and] the surveyors or their representatives pressing for payment.’

The more streamlined process for approving private leases, however, was met with a very different reception. Here, at least, was a measure that went some way towards recognising the mana whakahaere that Te Rohe Pōtē Māori wanted and they made the most of it, despite its limitations. Puckey was soon reporting that applications for approval of leases already made up ‘a major part’ of the board’s work. In little more than the first 18 months of the Act’s operation, some 84,000 acres were leased or under negotiation for leasing, more than double the total amount of land leased under the 1900 regime. It was Puckey’s view that private leasing ‘seem[ed] to meet with greater favour with the Natives for it allows them a say in the settlement of terms &c’. He did note, however, that he thought it was ‘the more expensive course’.

As chapter 14 details, in April 1906 the Crown decided to embark on extensive purchasing in Te Rohe Pōtē following a brief period of slowing down. Native Land Purchase Officer William Grace was put in charge of purchasing in the area from Mercer south to Taumarunui. He began work in October 1906 and in little more than six months had already purchased, or claimed to be in negotiation for, over 160,000 acres – most of it within the present inquiry district. This includes the land in Rangitoto–Tuhua 55, 57, 71, and 72. Grace believed that he could have purchased more, but funding did not allow him to do so. As a protective measure, the Crown could not buy for less than the capital value as assessed under the Government Valuation of Land Act 1896. Without additional funding, this limited the amount of land Grace could acquire.

### 12.4.6 Te Rohe Pōtē Māori responses to the increasing pressure for Māori land

Prior to passing the 1905 Act, the Crown had already begun a preliminary investigation into what was considered to be unproductive Māori land in the North Island. The results, published in September 1906, showed nearly one-fifth of the land identified as being in this inquiry district. The Tribunal did not see any evidence that Māori were consulted during this earlier investigation, and how land was determined to be ‘unproductive’ is unclear, especially as the return recorded that some of the blocks were occupied by their owners or leased out.

More significant for Te Rohe Pōtē Māori would be the Native Land Commission, also known as the Stout–Ngata commission after Sir Robert Stout

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167. Puckey to Under-Secretary, 22 June 1906 (doc A55, p 149).
168. Puckey to Under-Secretary, 22 June 1906 (doc A93, p 78); doc A55, p 149.
169. Document A115, p 48; doc A73, pp 72–73; Boast, Buying the Land, Selling the Land, p 224.
170. Grace was the brother of Lawrence Grace who had carried out the poll on the boundaries for the land districts.
171. Document A73, pp 88–89; doc A73(c), p 7; doc A93, pp 76–77.
and Āpirana Ngata, who were appointed as commissioners in early 1907. They were tasked with investigating areas of Māori land that should be made available for purchase or lease and that should be retained for the use and occupation of Māori owners. In preparation for their work, department officials drew up a second, confidential, document entitled *Return of the Native Lands in the North Island suitable for Settlement*. It was finalised at about the same time Stout and Ngata set to work and provided a county-by-county list of some 950 blocks, giving the acreage of each along with its physical characteristics and estimated value per acre. It was this information that would form the basis of their inquiry.\(^{175}\)

Over two years, the commissioners investigated lands in a number of districts throughout the North Island and filed upwards of 20 reports as a result, including several that discussed lands within Te Rohe Pōtae. The process by which Stout and Ngata undertook their investigation in Te Rohe Pōtae is discussed in chapter 13, along with a detailed consideration of their findings and recommendations about how particular blocks within the district should be dealt with. Here, the Tribunal briefly assesses what the commission’s hearings (and associated newspaper reports) reveal about the attitudes of Te Rohe Pōtae Māori.

The commission held formal sessions in three main centres in the district, beginning in Te Kūiti on 24 May 1907 and then travelling to Taumarunui and Ōtorohanga.\(^{176}\) Their last session ended on 6 June.\(^{177}\) They did not get as far as Kāwhia, despite noting that there was ‘a great area of unoccupied land’ around the harbour there.\(^{178}\) In their subsequent report, presented to Parliament in July, they stressed that a large area of land in the district remained to be inquired into, and that they would need to visit Te Rohe Pōtae again to complete their investigations.\(^{179}\)

Māori met several times in advance of the commission’s hearings in an attempt to agree on a position on land administration, but apparently did not achieve consensus.\(^{180}\) According to reports at the time, Ngāti Maniapoto were divided between those who opposed all Crown involvement in Māori land administration and wanted to be left entirely alone to deal with their own lands, and those who were willing to work with the commission and Māori land boards.\(^{181}\)

The former group, according to the *King Country Chronicle*, had aligned themselves with the Kingitanga, and were ‘in the majority’ among Ngāti Maniapoto.\(^{182}\) The latter, led by John Ormsby and Pepene Eketone, were far from satisfied with

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176. Document R20(a), p 6; ‘Native Land Commission’, *King Country Chronicle*, 31 May 1907, p 3; doc A93, p 94. The commissioners, in their formal report, say that proceedings opened in Te Kūiti on [Friday] 24 May; newspaper reports of the time say ‘Thursday last’, which would have been 23 May.
178. Document R20(a), p 12; doc A73, p 137.
181. ‘Māoris and Their Lands’, *King Country Chronicle*, 11 January 1907, p 3; doc A73, pp 125–127.
182. ‘Māoris and Their Lands’, *King Country Chronicle*, 11 January 1907, p 3; doc A73, pp 125–127.
existing Māori land policies, but saw engagement as their best chance of influencing the commission and achieving change. ‘They seemed to regard vesting – on a voluntary basis – as having potential economic benefit, if it could make land available for leasing at good prices.

The differences among Te Rohe Pōtae Māori were not resolved before the commission came to the district in May 1907. Indeed, the time between the commission’s appointment in January and its arrival in May was probably insufficient for such complex issues to be fully ironed out and some kind of consensus reached. And although this was to be the most robust consultation process yet undertaken with Māori, the commission was given less than two years to complete and report on all of its inquiries. Even then, the 1907 legislation was passed while the commission was still sitting.

In their July 1907 interim report on Te Rohe Pōtae, the commissioners commented on the existence of the two different groupings. On the one hand, they said, there were what they called the ‘oppositionists’ who insisted on their right to deal with their lands ‘without the interference of any Native Land Board or Council’. People holding this point of view stayed away from the commission’s hearings. Principal among them were the Ngāti Raukawa occupants of the Wharepuhunga block who, according to Stout and Ngata, were ‘dominated by the Waikato movement’ and ‘merely desired to be left alone and to live in the old style.’ Also part of the grouping were Ngāti Rereahu, Ngāti Whakatere, Ngāti Matakore, Ngāti Tūtakamoana, Ngāti Te Ihingarangi, and Ngāti Rōrā.

Then there was the group labelled by the commission as ‘the progressives’. This group recognised the necessity of a comprehensive form of administration which would open large areas of general land for settlement while reserving areas adequate for the occupation of the present owners and for their use and training as farmers. They were, on that basis, willing to see lands placed before Māori land boards for administration and hoped that the board’s intervention would bring greater returns than direct dealing for any lands that they chose to lease.

Nevertheless, while the ‘progressives’ opted to participate in the commission’s hearings, it is obvious that their support of land board involvement was conditional. John Ormsby presented the commissioners with a letter signed by Taonui and 17 others of Ngāti Maniapoto, which is produced in full below. When John Kaati gave evidence during this inquiry, he said that to him the letter embodied

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183. AJHR, 1907, G-1B, pp 6–7; ‘Government Dealings with Māori Lands’ (by Arthur Ormsby), *King Country Chronicle*, 31 May 1907 and 7 June 1907.
185. Document A73, pp 125–127; see also AJHR, 1907, G-1B, pp 5–7; ‘Māoris and Their Lands’, *King Country Chronicle*, 11 January 1907, p 3.
189. AJHR, 1907, G-1B, pp 5–7.
the Ngāti Maniapoto vision: namely that ‘[t]he land be owned by Maniapoto; Managed and worked by Maniapoto; For the benefit of Maniapoto.’

These positions were similar to the views expressed in the 1905 petition of Maniapoto and Tūwharetoa leaders to the House of Representatives. Then, the district’s leaders had been concerned about Pākehā demands for land to be taken by coercive means, and they had offered land for settlement if the Crown met some reasonable conditions. Indeed, the King Country Chronicle opined that Ormsby and others were seeking only what they had already sought for many years, and ‘had the progressive Maori been heeded in the past,’ much more land might have been developed than was the case.

In May 1907, Arthur Ormsby wrote to the King Country Chronicle, just after the Native Land commission’s first session in Te Kūiti, and reminded readers that Te

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190. Document s12 (Kaati), pp 8–9; doc A73, pp 133–134; doc A93, pp 94–96; doc R20(a), pp 6–7, 11.
191. AJHR, 1905, 1-38, p 2; doc A93, pp 51–52.
192. King Country Chronicle, 31 May 1907, p 2 (doc A73, p 134).
1. All lands to be administered by a Board with extended powers, and under conditions similar to the provisions of section 17 of ‘The Maori Lands Settlement Act, 1905.’ The members of such Board shall be men having special knowledge of land-settlement. The President to reside in the district.

2. Practical farmers to be appointed as instructors, and paid by the State. They shall travel through the district, giving advice in practical farming, and where necessary supervise the expenditure of loans.

3. Loans under the Advances to Settlers Act be granted to Natives with the approval of the Board, and when necessary expended under its direction. Where Native proves incapable, the Board may take and lease the land.

4. Papakainga to be inalienable.

5. Land in suitable areas to be set apart for farming by the owners, also reserves for minors.

6. Surplus lands to be leased or sold by auction.

7. The Board to have discretionary powers either to withhold or to direct the expenditure of rents and proceeds of land-sales, so as to prevent squandering.

8. Exchanges of land to be simplified.

9. Sales of land to the Crown in this district to be discontinued.

10. All restrictions to be removed from lands of capable Natives.

[Signed by Taonui and others.]$$

1. AJHR, 1907, G-18, pp 5–7.

Rohe Pōtae Māori had been willing to see the settlement of their surplus lands, provided there was ‘benevolent legislation to protect them from “land sharks”’. He then flatly rejected the prevailing Pākehā and Crown views that Te Rohe Pōtae Māori possessed large areas of unused land that they were failing to cultivate on two counts. First, he objected to Māori land being singled out for scrutiny. From reading the newspapers, he wrote, one could be forgiven for forming the impression that all unoccupied land was Māori-owned: ‘Unoccupied lands and “black blots” are now made synonymous terms for Native lands by the Auckland press . . . By implication the public are led to believe that the unoccupied lands of this district are all Native lands.’


Were there not also large areas of unused land in the possession of the Crown and Pākehā? Moreover, all of it, he said, had been acquired from Māori unfairly as a result of Crown-imposed land titling and purchasing without competition. \(^{195}\)

Of relevance here is that the commission later reported the Crown owned more than 220,000 acres of ‘undisposed-of’ land in the Aotea–Rohe Potae block, which would appear to support Ormsby’s view. \(^{196}\)

Then there was the question of whether Pākehā would indeed make better use of such land. In Ormsby’s estimation, population density on land owned or made available by the Crown was not more than about one Pākehā per square mile. By comparison, he thought that Māori-owned land was supporting around five or six people per square mile ‘besides a large number of Pakeha engaged in timber-milling, lime burning, flax milling, and stock-raising.’ \(^{197}\)

Large numbers [of Te Rohe Pōtai Māori] are landless, more are practically so, and a few have plenty. Yet the cry of ‘Unoccupied Native lands’ waxes louder and louder, and probably, in some sections, nothing but the very last acre will satisfy. Perhaps the prospect of 40,000 pauperised Natives may raise the cry of ‘halt’ at last, although recent speeches [by settler politicians] . . . do not give any indication that they fear such a contingency. \(^{198}\)

Ormsby protested, too, that Te Rohe Pōtai Māori very much wanted to develop their own lands, but were continually frustrated by Crown policies, including its land tenure system and its lack of support, financial or otherwise, for Māori farmers. An owner could sell his land to the Crown ‘at the stroke of a pen’, but should he wish to borrow money to develop it, he would find himself ‘immediately confronted with all kinds of safeguards, which invariably prevents him from getting a loan’. This was demoralising even to the ‘industrious and provident’. In contrast, any Māori willing to part with the fee simple of his land could do so and squander the proceeds without let or hindrance: ‘The State has made our lands valueless as security, without any compensating advantages. It has broken down our ancient institutions and customs, without honestly trying to replace them with better, thus leaving the multitude like rudderless ships, drifting to destruction.’ \(^{199}\)

Summing up, he said the Crown’s record of improving the situation of Māori was ‘anything but . . . creditable.’ \(^{200}\) Ormsby was making it ‘abundantly clear that Ngati

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196. AJHR, 1907, G-1B, pp 10–11.
Maniapoto placed little if any trust in the Crown to respond to the wishes and aspirations of Ngāti Maniapoto or to conserve and enhance the iwi’s interests.\textsuperscript{201}

Indeed, when Ormsby presented the commissioners with the letter signed by Taonui and other Ngāti Maniapoto ‘progressives’, another group of Ngāti Maniapoto, labelled ‘oppositionists’ by the Native Land Commission, submitted other proposals. The latter instead insisted on the right to deal with their own lands as they chose and without the ‘interference of any Native Land Board or Council’.\textsuperscript{202}

\subsection{12.4.7 The Native Land Commission’s recommendations on Te Rohe Pōtæ}

The commissioners published three reports of relevance to Te Rohe Pōtæ during 1907. The first, released in early July, was their interim report on the district.\textsuperscript{203} The commission’s specific findings and recommendations on the various lands are considered in detail in chapter 14. In general, the commissioners expressed considerable sympathy for the position of Te Rohe Pōtæ Māori. Despite the late arrival of the land court, they said, much of the land west of the railway was now ‘minutely subdivided’. They added: ‘We are not aware of any Native district, which until 1888 was closed to the law-courts, where the Native Land Court has been so active and where subdivision has proceeded so far as in this portion of the Rohe-Potae.’\textsuperscript{204}

Even to the east of the railway line, much of the delay in subdivision had been because of the length of time needed to complete surveys, they said. The commissioners thus felt it their duty ‘to discharge the Maori owners from most, if not all, of the responsibility for the tardy settlement of these lands’. They instead criticised the Crown’s restrictions against private dealing, which had affected not only the speed of Pākehā settlement but also the owners’ own usage of their residual land.\textsuperscript{205}

Stout and Ngata recommended that where Te Rohe Pōtæ Māori had requested land be set aside for them, the Crown should heed those requests ‘over and above what we deem necessary for papakaingas’.\textsuperscript{206} Māori had told them they did not see the need for such land to be made inalienable ‘at the present time’, as there was ‘the possibility of adjustment on further consideration’.\textsuperscript{207} Although the commissioners thought that the 1905 Act’s sufficiency provisions had marked ‘a distinct advance in policy’, they highlighted the need to provide for future, as well as present, generations. As mentioned previously, while the stipulated per capita area might meet the needs of Māori at the time, they said, it would not be enough to provide for his or her descendants.\textsuperscript{208}

\begin{footnotes}
\item[201] Document A73, p 129.
\item[202] AJHR, 1907, G-18, p 7.
\item[203] AJHR, 1907, G-18.
\item[204] AJHR, 1907, G-18, p 2 (doc A73, pp 87–88).
\item[205] AJHR, 1907, G-18, pp 1–5.
\item[206] AJHR, 1907, G-18, p 9.
\item[207] AJHR, 1907, G-18, p 12.
\item[208] AJHR, 1907, G-18, p 5.
\end{footnotes}
In terms of land administration, Stout and Ngata supported Ngāti Maniapoto’s call for the land board to have an office within Te Rohe Pōtae if at all possible. But they made no comment about how ‘existing institutions established amongst Natives’ might fit into the picture (which had been in their terms of reference). Of course, since the demise of the Kawhia Committee, there were no officially recognised Māori bodies that could have played a role in local land matters, other than a solitary papatupu block committee set up under the 1900 Act. But the commissioners made no attempt to identify whether there were other non-land-specific bodies that could have been brought into play.

As will be examined in detail in chapter 14, of the 292,440 acres of Te Rohe Pōtae land considered by the commission at this time, they recommended that over half (163,769 acres) be made available for lease. Around one-third (94,148 acres) was to be reserved for the owners’ use and farming. Only 34,523 acres (less than 12 per cent) was identified as potentially available for sale. Overall, they thought that ‘the present system of purchasing Native lands should, so far as the Rohe-Potae is concerned, be discontinued.’

The commissioners issued a follow-up report on 11 July, drawing together some common threads emerging from their various district investigations. Pointing to the longstanding lack of any scheme that might encourage and assist Māori to develop their own land, they concluded that ‘the settlement of the Maoris should be the first consideration.’ To this end, they recommended not only discontinuing Crown purchasing under existing rules, but also prohibiting direct negotiation between owners and private individuals. Instead, any and all transactions should be carried out only through the land boards, either as agent for the owners or, where lands were formally vested, as the legal owner of those lands. Lands identified for Māori occupation and farming should also be administered by the boards. And those boards, they said, should remain ‘constituted as at present.’

Another report presented on 5 August addressed various residual parts of the North Island, including lands in the Rangitoto–Tuhua and Wharepuhunga blocks. For the latter, they recommended a mixture of sale, leasing through the land board, and native occupation. For the Rangitoto–Tuhua blocks (Aurupu and Te Tawai), they recommended leasing through the board. Nonetheless, the Crown soon began purchasing interests in these and two other Rangitoto–Tuhua blocks.

Given the effort that had gone into preparing the Stout–Ngata reports, by both the commission itself and the many Māori who had taken the time and trouble to present their views, hopes were high that legislation would be passed to give effect to its recommendations. Native Minister Carroll anticipated that the commission’s
work would carry ‘great weight’ with Parliament. He also hoped to get Māori better access to financial assistance for land development. Before Stout and Ngata had time to complete their investigation of outstanding areas, however, the Crown had passed interim legislation, the Native Land Settlement Act Amendment Act of August 1907, to further assist Crown purchasing. More legislation soon followed.

12.4.8 The policies underpinning the Native Land Settlement Act 1907

Just two months later, in October 1907, a new Native Land Settlement Bill was tabled in the House. It dealt only with land identified as available for ‘General Settlement’ through sale or leasing and did not mention the land identified for Māori use and occupation. Moreover, although it followed Stout and Ngata’s recommendation for handling sale and lease transactions through the land boards, it ignored all the information about which areas Māori submitters had said they wanted leased and which they were willing to sell. Instead, it stipulated that the board should lump both types of land together and simply divide the resultant area into ‘two portions approximately equal’, one half for leasing and the other for sale.

On its second reading, the opposition spokesman on native issues, William Herries, claimed that the 50:50 split was a compromise designed to get the Bill passed by a House that was divided between those who supported leasing and those who wanted more freehold sales. The premier denied this, saying that the proposed proportion of leasehold vis-à-vis freehold ‘would not meet the requirements of European settlers’ – and anyway, Māori needed the money from sales to give them ‘the wherewithal to carry on their farming operations’. Carroll, furthermore, thought the legislation should apply not only to lands on which the commission had already reported, but also to lands on which it was yet to report. In urging Parliament to assent to the Bill, he made specific reference to Te Rohe Pōtae: ‘the great demand for land and the amount of unsettled land in the King Country’, he said, meant that ‘it was essential that this Bill should pass.’

Kaikhau tried to get the Bill held over till the next session, thus giving Māori time to consider it. Herries, too, urged more Māori input to the proposed legislation: ‘If the Maoris are liable to have all their lands taken away, ought they not to have the right to know, and also have a voice in the framing of the Bill which affects them so much? They have not had that right.’

A meeting of ‘all the principal chiefs of the North Island’ was held in Wellington, while the parliamentary debate was still going on, and it too called for a postponement. It is not clear exactly which chiefs attended the meeting, but King Mahuta,
Taingakawa, and David Eketone were present. They were not pleased when Carroll declined to meet them because of ‘pressure of business’. The Evening Post was not impressed either: when legislation was being passed, Māori were ‘certainly entitled to a respectful hearing on the general principles at stake’. The newspaper added that, on this occasion, ““taihoa” [was] a sound watch-word.” The Auckland Star also thought delay was advisable, saying it was certain that many of the Bill’s provisions would not meet with the approval of those whose land had been investigated by the royal commission.

Conscious of another imminent election, however, the Government persisted. In a last push to get the Bill passed, it made several changes. One of these provided for a four-month hiatus before the legislation came into force, to allow the commissioners time to modify their previous reports ‘having regard to the provisions . . . of [the] Act’. During that period, none of the land in question was to be vested. A major change was to add a second part to the Bill, to deal with lands recommended for Māori occupation.

12.4.9 Important features of the Native Land Settlement Act 1907

The Act’s preamble explicitly stated that its measures were addressing Stout and Ngata’s recommendations. However, the wording was careful: it was ‘expedient to give effect to [those] recommendations . . . in manner hereinafter appearing.’ That is, as Hearn told us, the Act was ‘expressly designed to allow [the Crown] to implement such of the Commission’s recommendations as it chose to adopt’. At section 52, it set an end date for the commission’s work: 1 January 1909. However, the Act did not specify how any further investigations (for example, to complete their Te Rohe Pōtae inquiry), or new recommendations, would be incorporated into the overall scheme of things.

The Act empowered the governor, by order in council, to compulsorily vest any land that Stout and Ngata had reported as available for general settlement in the relevant Māori land board. The Native Land Settlement Bill initially did not mention land for Māori use and occupation. When it finally passed into law as the Native Land Settlement Act 1907, a section had been added which did provide for assistance for Māori land use and development, but with cumbersome mechanisms requiring consent from the governor.

As under the 1905 Act, lessees would be able to borrow money for farm development, but any residual iwi and hapū control over the land retained was minimal. The board also had to consent to any loans Māori lessees might seek for


224. ‘Taihoa’, Evening Post, 14 November 1907, p.6 (doc A73, p.144).


development. In short, unless reserved, part 11 of the Act essentially meant that land was set aside, then administered by the land boards, and the owners had to lease back their own land before having any hope of borrowing money to stock and improve it, and hence develop a viable commercial farm.

The Native Minister continued to have a high degree of control over the boards. Under section 11, the legislation specified a 50:50 split of any block so vested (subject to the approval of the Native Minister), half for sale and half for lease. With the consent of the Native Minister, this ratio could be varied. This certainly deviated from the recommendations of Stout and Ngata. By that stage, they had recommended that three-quarters of Te Rohe Pōtae land available for settlement be leased, and only about one-quarter be sold. Te Rohe Pōtae Māori thus stood to lose significantly from section 11. And under section 7, there was nothing they could do about it: by virtue of the vesting, owners had no further power of disposition over their land, whether or not the vesting had been voluntary. Thus, as Dr Don Loveridge commented, even land vested compulsorily could now be sold in accordance with the 1907 Act without the owners’ permission.

Under section 38, and for the purpose of making surveys, laying off or forming roads, constructing bridges, and otherwise opening up and preparing for settlement any land subject to the Act, or for the purpose of discharging any mortgage, lien, or charge to which such land was subject, the Minister of Finance (with the consent of the Native Minister) could, in his discretion, make advances to the board up to the amount of £20,000 from the Public Works Fund.

To enhance the boards’ jurisdiction over the lands captured by the 1907 legislation, the boards were prevented from exercising any of their powers and corresponding limitations on those powers provided for under the Māori Land Settlement Act 1905, or the Māori Lands Administration Act 1900. All powers of the Native Land Court or the boards relating to partitions, exchanges, successions, or ascertaining title, with respect to the equitable interests of the owners, were not affected by the 1907 Act, with the exception of partitions, which had to be approved by the boards.

12.4.10 Restrictions on alienations in the Native Land Settlement Act 1907

If leased out, the land board was to act as the owners’ agent. The owners could not organise such leases themselves. The boards had discretion to make any allotment available for lease to any ‘landless Maori’ out of the lands vested in them.

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229. Native Land Settlement Act 1907, s 60; doc A55, p 150; doc A93, p 110; doc A73(c), p 13.
231. Native Land Settlement Act 1907, s 11(2).
235. Native Land Settlement Act 1907, s 47.
236. Native Land Settlement Act 1907, s 7.
237. Native Land Settlement Act 1907, s 27(2).
Section 50 also gave the boards some discretion to set aside reserves for the owners.

The leasing provisions were introduced under section 29 of the Act. Under this section, for every lease with a term exceeding 10 years, the lessees were entitled, on termination of the lease, to a valuation of all substantial improvements made during the period of the lease. Following arbitration with the board, any money payable could be paid from the revenue received by the board from the land. It would be only after the expiration of 50 years from the passing of the 1907 Act that the governor could, by order in council, revest the land in the owners.238 In order to do so, he had to be satisfied that the owners or majority of owners wanted the land to be revested in them, and that the land was not subject to any lease or contract of purchase. He also had to be satisfied that there were no sums of money charged on the revenues of the land.239

Part II of the Act at least acknowledged that Māori should retain some land for occupation. It was intended to give effect to any recommendation of the commission that native land should be either reserved for the use and occupation of owners or leased to the owners. Where this was done, the governor, by order in council, could declare such land subject to part II.240

In terms of leases under part II of the Act, the boards gave effect to the recommendations of the commission by offering the land for lease to the owners rather than by public auction or tender. That is, the owners themselves were to have the first option.241 However, if it was not possible to deal with the land this way, the land was offered to other Māori in accordance with part I of the Act.242 There is a degree of irony about the fact that owners had to lease their own land, but that is what the scheme provided for. Likewise, the rentals were paid to the boards with discretion to determine how it should be utilised or how it should be distributed.

12.4.11 Implementation of the Native Land Settlement Act 1907 in Te Rohe Pōtae

From the time the Native Land Settlement Act 1907 passed into law on 25 November 1907, and over the coming years, just over 200,000 acres of Māori-owned land in this inquiry district was compulsorily vested for lease or sale under this legislation, as will be discussed in chapter 13. There were also further visits of the Native Land Commission to the King Country (along with other districts). They held sittings in Te Kūiti and Ōtorohanga at the end of February and beginning of March 1908.243 They reported soon after that their activities had been hampered by Māori ‘distrust of section 11’ – a provision the commissioners were clearly unhappy with themselves because of its discriminatory nature:

238. Native Land Settlement Act 1907, s 32.
239. Native Land Settlement Act 1907, s 32.
241. Native Land Settlement Act 1907, s 56.
242. Native Land Settlement Act 1907, s 57.
243. AJHR, 1908, G-10, p 1; doc A93, p 111.
If the Maoris as freeholders are not to be permitted to lease their lands when they desire to do so, but are to be forced to sell half of the land they desire to lease, the same law must be applied to Europeans. . . in a free State with a just Government the Maori freeholder cannot be placed in a position inferior to the European landowner.  

The commissioners also seemed shocked to discover that in the few months since their last visit to the region, the Crown had again been purchasing land, including in areas identified for Māori occupation. 

As Stout and Ngata began carrying out their further work, Waikato Māori held hui at Waharoa and Ngāruawāhia in March 1908 to discuss a whole range of issues. Māori from outside Waikato also attended. It is not clear that any were from Te Rohe Pōtāe. The Waharoa event was described as a large gathering with 'many tribes being represented,' and at Ngāruawāhia it was reported that Tūrētē Te Heuheu and other chiefs attended. The governor, Prime Minister, and Native Minister attended both hui.

At Waharoa, Prime Minister Joseph Ward claimed that the Government was assisting Māori in many ways not provided for under the Treaty, including by advancing money for land improvement. The Government, he said, ‘did not want to see the Natives deprived of a single acre of their land,’ nor did it want to continue purchasing. It did, however, want to see that remaining Māori landholdings were ‘put to the best use to the fullest possible extent.’ Any difficulties with Māori land policy, he indicated, were due to Māori failing to cultivate their own lands, and refusing to voluntarily make them available for lease, while taking every opportunity to sell – to a degree that the Government was ‘sick’ of receiving offers of land from Māori owners. The Government had, therefore, established the commission to ‘carry out what was best’ for Māori.

Native Minister Carroll, for his part, told those assembled at Waharoa that the Crown had no wish to purchase more Māori land and that: ‘It was the desire of the Government at the present time to stop land purchase; but they would give effect to the wishes of the natives.’ Carroll’s assertion was at odds with both section 11 of the 1907 Act and the renewed Crown purchasing activity already underway in the district.

At Ngāruawāhia, Māori reiterated (yet again) that they wanted control of their lands. They did not want to sell, but they were willing to lease. In response, Ward made it plain that the Government was not prepared to allow Māori to resume full control. Instead, he urged those present to consider each block they owned and give careful thought to which areas they wanted kept for their use and occupation, which should be made reserves, and which could be sold or leased. Their proposals, ‘if reasonable,’ would be ‘confirmed by the Royal Commission and made

244. AJHR, 1908, G-15, pp 1–2 (doc A73, pp 148–149).
245. AJHR, 1908, G-15, pp 3–4; AJHR, 1908, G-10, p 1.
246. ‘The Māori and his Land,’ King Country Chronicle, 27 March 1908, p 3; ‘Native Land Question: Speech by the Hon Mahuta,’ Evening Post, 4 April 1908, p 9; doc A73, pp 150–151.
247. ‘A Big Māori Meeting,’ Waikato Argus, 19 March 1908, p 2; doc A73, pp 150–151.
248. ‘A Big Māori Meeting,’ Waikato Argus, 19 March 1908, p 2; doc A73, pp 150–151.
law’, he said. He did not define ‘reasonable’ nor did he indicate how matters would be resolved if their proposals did not conform with the 50:50 split required under section 11.

By the end of the Ngāruawāhia meeting, the Māori King had to concede that in light of all that had been said, it was now clear that selling must form part of any scheme of land disposition. ‘Henceforth the dreams and aspirations, the hopes and aims, of those who once guided our destinies are now clearly in the region of the unattainable’, he said. Instead, he and his people agreed to ‘work under the law, and to do [their] best to promote settlement’. In doing so, however, it was his understanding that ‘[b]y the voice of the people shall be decided the various modes of disposition and management of our lands’.

Kaihau subsequently wrote to Carroll summarising suggestions made at the meetings, including that papakāinga be made inalienable; that where lands were sold, some of the proceeds should be used to finance Māori into farming; and also that some sales might perhaps finance the re-purchasing of other lands of historical and cultural importance. When Stout and Ngata issued yet another report at the end of the year, covering blocks not previously dealt with in the Kāwhia, Waitomo, and West Taupō counties, it included lands identified for sale for the purposes of ‘mana’, on the basis that the owners had said they wanted the proceeds from these lands to be held in trust for the re-purchase of lands at Ngāruawāhia and Taupiri. This presumably reflected King Mahuta’s expressed wish to establish a centre for the Kīngitanga there.

12.4.12 The Māori Land Laws Amendment Act 1908
Native Minister Carroll oversaw the passing of the amended Māori Land Laws Amendment Act 1908. It provided that, on the recommendation of a Māori land board, the governor, by order in council, was authorised to order the unequal division of a vested block to allow more land to be leased or sold. The governor, however, had to be satisfied that ‘an equal division of that block would be impracticable or inexpedient in the public interest or in the interests of the Maori owners’. Moreover, the land boards had to ensure that, for their part, the ratio of sales to leases in any given year stayed 50:50. Thus, if more land was allowed to be leased in one block, then more land would presumably have to be sold in another block in the district, to maintain an equal ratio.
For other lands vested in the land boards, section 12 of the legislation provided some limited participation to the owner by providing that, with respect to lands with 10 or more owners, the boards could decide to occupy and manage certain vested lands as farms. The approval of the Native Minister was necessary for the appointment of managers of the farms with salaries determined by him. Where land was managed as a farm, the owners could, in accordance with the relevant regulations, elect from among their number a management committee, with the farm manager, by virtue of his office, as a member. Subject to the directions and control of the board, the manager of the farm could exercise his powers and functions in accordance with the recommendations made by the committee of management. Section 12 also provided that all expenses and liabilities incurred in the conduct of any farming operations would be a charge upon the revenues received by the board, and upon all revenues received from any other land which was beneficially owned by the persons in whom the beneficial ownership of the farms were vested. However, the catch was that section 12 could not apply to any land which was vested in the land boards under the provisions of part 1 of the Native Land Settlement Act 1907.

Under section 33, the Native Land Court was granted jurisdiction to make orders putting into effect exchanges between owners of any land owned by them or of any part or share owned by them. This covered land not acquired by purchase for valuable consideration or by gift. This could be done where the court was satisfied that: (a) the proposed exchange was for the benefit of each of the parties; (b) that upon such exchange being effected, each of the parties would have sufficient land for their occupation and support; and (c) where the lands proposed to be exchanged were not of equal value, the party taking by exchange the land of greater value paid to the other a sufficient sum by way of equality of exchange, but the sum was not to exceed 15 per cent of the aggregate value of the lands affected by the exchange.

The 1908 Amendment Act also declared that the Native Land Court was to cease exercising its jurisdiction of confirming alienations under section 55 of the Native Land Court Act 1894. But this provision only applied to alienations of property situated within the North Island. The jurisdiction of the Native Land Court with respect to the confirmation of alienations now vested solely in the land boards, with rights of appeal continued under the Native Land Court Act 1894. It also enabled the Native Land Court to issue exchange orders so that Māori could exchange their interests in one block for interests elsewhere, if that was deemed beneficial to the people concerned.

12.4.13 Treaty analysis and findings

The evidence before us indicates that by 1905, Māori were starting to gain confidence in the land council system under the Māori Lands Administration Act 1900 at least in terms of its leasing provisions. Further gains could have been achieved
by a process of dialogue between the Crown and Māori and by working together to amend the legislation in the spirit of partnership, reasonableness, and good faith. Te Rohe Pōtae Māori demonstrated that they were prepared to engage in such a manner. They clearly saw the land council system could be improved by better funding and legislative amendments. The Central North Island Tribunal recognised that funding of the system was an issue, although not as insurmountable as the Government claimed it was.²⁵⁹ Had the Crown entered into good faith dialogue, the improvements to these institutional arrangements could have more appropriately reflected the confluence between kāwanatanga and rangatiratanga and it may have resulted in a mutually beneficial system of land administration.

Instead, the Crown reverted to its former policies of legislative intervention to accelerate the alienation of land from Māori to the Crown for Pākehā settlement. As a result, the opportunity for a meaningful relationship consistent with the principle of partnership in the Treaty of Waitangi was lost.

The Crown did not actively consult over detail or engage with Māori regarding their reversion of policy before it began introducing changes to the 1900 legislation. Te Rohe Pōtae Māori, though, did convey their views to the Crown. In their 1905 petition to Parliament and their associated appearance before the Native Affairs Committee, they and their supporters very carefully laid out what they saw as being wrong with the land council regime. They also gave suggestions on how things could be made to work better – for both Māori and Pākehā. As they explicitly made clear, they did not oppose the idea of Pākehā being allowed to lease or even buy their surplus lands (as long as they were indeed surplus).

In its Māori Land Settlement Act 1905, the Crown’s policies for Māori land resulted in the replacement of land councils with smaller land boards comprised of only three members. Moreover, since all members were to be Crown-appointed, the sole, guaranteed Māori member would be chosen by the Crown and not by Māori themselves.

The Crown submitted that the 1905 Act answered ‘many, if not most’ of the requests made that same year in the petition by Te Wherowhero Tāwhiao and 276 others.²⁶⁰ The claimants alleged that the Crown’s 1905 regime moved further away from recognising the mana whakahaere so important to Te Rohe Pōtae Māori. We agree with the claimants. We note the replacement of the land councils with the totally Crown-appointed boards reduced Te Rohe Pōtae Māori authority over their lands.

Also, the district was huge, encompassing multiple iwi and hapū. The boards operated according to their own convenience, rather than considering accessibility for the owners. A classic example of this concerns the Maniapoto–Tūwharetoa land board. Although it sat in various places around the district, its base moved to Auckland. There was no way that this formula for membership, nor the location of its offices, could provide for the mana whakahaere that Te Rohe Pōtae Māori wanted. Nor was it consistent with their tino rangatiratanga guaranteed

in article 2 of the Treaty of Waitangi. We agree with the Central North Island Tribunal’s finding that the Crown’s decision to reduce the size of the boards and to dispense with elected Māori representatives ‘established Crown expectations of non-involvement of Maori owners in land administration.’\textsuperscript{261} The fewer Māori owners who were involved in decisions over their land, the more easily the Crown could achieve its aim of opening the land up for Pākehā settlement. If Māori had not had the confidence to vest land in the old councils, it is hard to see how the 1905 regime would have encouraged them to start vesting land in the new small, Pākehā-dominated boards.

Coming only five years after the 1900 Act that had slowed down the rate of Māori land alienation by sale, the 1905 Act initiated a marked swing in policy back towards facilitating purchasing by the Crown for Pākehā settlement as it sought to use the legislation to free up more land for purchase or lease. As the Hauraki Tribunal observed: “There is no single fact that more clearly demonstrates the fundamental demand of the settler electorate to acquire the freehold of Maori land, than this sequence of law changes.”\textsuperscript{262}

After the Māori Land Settlement Act of 1905 came the resumption of Crown purchasing. This enabled Crown agents such as William Grace to recommence the proactive buying tactics that had already drawn criticism in earlier times. A slight mitigating factor is that there was, at least, a mechanism for establishing a minimum price. Nevertheless, Te Rohe Pōtae Māori had clearly stated that they did not want Crown purchasing.

Only in respect of leasing did the legislation approach what Te Rohe Pōtae Māori were seeking. They were now able to lease directly to Pākehā, still with a degree of protection (approval from the land board), but without needing the additional layer of approval from the governor. The result was an upsurge in the amount of Te Rohe Pōtae land leased privately.

Other worrying features of the 1905 Act included that the Native Minister controlled most of the substantive decision-making under the 1905 legislation, including deciding what lands could be compulsorily vested in the land boards under certain circumstances. Importantly, restrictions on alienation imposed on land titles were removed.

However, we accept the evidence demonstrates that the legislation had limited impact in Te Rohe Pōtae as, for the most part, vesting in this district generally only occurred where the owners agreed. Notably, Te Rohe Potae Māori continued to use the leasing provisions under the 1905 Act. The importance of the legislation is that it provided a framework for the more draconian amendments to the legislation that followed.

These changes were initiated following the appointment of the Native Land Commission to investigate Māori landholdings. Two years after the introduction of the 1905 Act, Te Rohe Pōtae Māori again put their thoughts in writing, this time to the Native Land Commission, with some of their number also appearing in

\textsuperscript{261} Waitangi Tribunal, \textit{He Maunga Rongo}, vol 3, p 681.

\textsuperscript{262} Waitangi Tribunal, \textit{The Hauraki Report}, vol 2, p 895.
person at the hearings to expand on their ideas. By this time, Te Rohe Pōtae Māori were much more vocal about wanting assistance with developing the land they had left. While there was legislative provision for making finance available, the evidence was that it was rarely made available in this inquiry district during this period.

It is clear to us that Te Rohe Pōtae leaders were still seeking opportunities to work in partnership with the Crown, as they accepted the need to make land available for Pākehā settlement, while seeking equal treatment from the Crown regarding the kind of land development assistance already being given to Pākehā. Before the Native Land Commission, they set out carefully what land they might be willing to make available for settlement by vesting it in the land board for subsequent lease or sale. By far the greater proportion was intended for lease.

The commissioners’ recommendations largely reflected what the so-called ‘progressives’ among Te Rohe Pōtae Māori had told them. The commission recognised the importance of retaining land for Māori use and occupation in Te Rohe Pōtae – taking into account future as well as present needs – and for financial assistance to help the owners develop it. It also supported their preference for leasing over selling, with the proposal that about three-quarters of the land tagged for ‘general settlement’ be made available by lease. Even the King Country Chronicle thought that the commission had done ‘good work’ and that its proposals were on lines that would be ‘fairly acceptable to both Europeans and Maoris’. The Crown, in response, passed new legislation before the commissioners had even finished reporting, making the vesting of their land compulsory and overturning the express wishes of those who had appeared before the commission.

Under the Native Land Settlement Act 1907, any land recommended by Stout and Ngata as available for general settlement could be vested in the land board. Māori had no choice over the vesting. Nor did they have any choice in what happened to it after that: half would be leased out and half would be sold (although from 1908, variation to the ratio was possible).

The 1907 Act, with its compulsory vesting provisions, set it aside in this period as a demonstrable example of the Crown actively prioritising and elevating its policy of pursuing the alienation of Māori land to facilitate Pākehā land settlement above its obligations under the Treaty of Waitangi.

This legislation was draconian in form, effect and result. The Native Minister and the governor were actively involved in every substantive decision concerning alienation made by the land boards. Therefore, we reject the Crown’s arguments made in this inquiry that it had no authority over these boards. When that degree of control is added to the initial 50:50 split of surplus lands (later extended in 1908 to whatever ratio a land board considered appropriate if there was sufficient) for sale and lease under part 1 of the Act, alongside the inadequacy of the formula

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263. ‘Native Land Question’, King Country Chronicle, 13 September 1907, p 2 (doc A73, p 139).
for ensuring that the owners retained sufficient lands for their needs, the result sought by the policy of alienation was inevitable. After all, just over 200,000 acres of Māori-owned land in this inquiry district was compulsorily vested for lease or sale under this legislation, the detail of how will be discussed in chapter 13.

Notably, part 1 of the 1907 legislation was clearly incompatible with what Stout and Ngata had recommended, with their strong emphasis on leasing and retention. The Crown, in this inquiry, recognised that Te Rohe Pōtae Māori ‘strongly objected’ to these ‘arbitrary provisions’. It furthermore acknowledged the provisions as having ‘disregarded the wishes of the beneficial owners and the Commission’s recommendations’.265 In short, the whole scheme failed to recognise the mana whakahaere of Te Rohe Pōtae Māori to deal with their land as they saw fit.

It is small wonder that King Mahuta, while discussing Māori wishes for land disposition vis-à-vis what was now possible under the legislation, described their expectations as being ‘in the region of the unattainable’.266 The words convey a sense of his despair of ever getting Māori views heard and heeded by the Crown, and many Te Rohe Pōtae Māori must have felt the same way. From 1907, King Mahuta no longer spoke in the Legislative Council, even though he continued to attend sessions as a member. According to historian Dr Angela Ballara, he had become ‘[d]isillusioned by the powerlessness of his position’.267

The Crown acquired the right to govern in exchange for the guarantee of tino rangatiratanga of Māori over their lands and other taonga as set out in article 2 of the Treaty of Waitangi. The Crown was obliged to actively protect Te Rohe Pōtae rangatiratanga over their lands and had a duty to act honourably and in good faith. As seen in parts I and II of this report, Te Rohe Pōtae Māori had, over the preceding decades, constantly asked that the Crown use its kāwanatanga authority to give effect to Te Ōhākī Tapu through the practical implementation of mana whakahaere over their affairs including their lands.

In terms of the land administration system the Crown adopted from 1905 up to and including 1908, we find that it failed to actively consult and engage with Te Rohe Pōtae Māori in good faith on the content of its legislation over this period, and we find that the Crown’s policies and legislation were inconsistent with the principles of partnership, reciprocity and mutual benefit as a result. Its actions were also inconsistent with the Crown’s duty to act honourably and in good faith. The Crown’s actions were not consistent with the agreements that comprised Te Ōhākī Tapu, nor with the compromises that Te Rohe Pōtae leaders were prepared to make in terms of their land administration. For failing to have due regard to these matters, the Crown acted inconsistently with article 2 of the Treaty and the

265. Submission 3.4.304, p 27.
266. ‘The Native Land Question’, Waikato Argus, 4 April 1908, p 2.
guarantee of Te Rohe Pōtae Māori tino rangatiratanga over their lands, and failed in its duty of active protection.

12.5 The Native Land Act 1909

12.5.1 The Crown signals further change

In late July 1909, Carroll, as Acting Prime Minister, visited Pāpāwai in the Wairarapa. There he told the assembled gathering that the Government had been further reviewing the situation of Māori land. A subsequent newspaper report described the speech as lengthy and frank. In his view, change was needed. Having in mind, perhaps, the exchange mechanism introduced the previous year, Carroll said the Government wanted to see Māori land ownership rationalised into ‘convenient blocks’ with a ‘conveniently small number of owners’. Moreover, Māori were to be ‘increasingly thrown on their own resources and made to feel the need of sharing increasingly in local and general taxation’.

The Government also intended to make sure that, as far as possible, Crown purchases were conducted through the Māori land boards, which would act as agents for the owners. Provision might be made, he said, for a proportion of the proceeds to go to communal purposes such as education.

He ended by announcing that the Government would shortly introduce legislation to achieve these objectives, including a Native Land Court Bill, a Native Land Settlement Bill, and a Native Land Rating Bill. It would also introduce an amendment to the Advances to Settlers Act so that a portion of the available loan money could be specially earmarked for advances to Māori.

In short, Māori land matters were again in a state of flux, leaving Māori grappling with the complexities of the existing legislation but also uncertain again about what they might or might not be allowed to do with their land in the future.

A few days later, in early August, Carroll travelled to the King Country. At Ōtorohanga, he met with Ngāti Maniapoto, who handed him a petition. The gist of their complaint was that they objected to half their vested lands having to be sold; they objected to being pursued for non-payment of rates when they were not receiving the same development assistance as Pākehā; and they did not want native township land alienated to lessees.

At Taumarunui, Carroll met with Ngāti Hāua, with the main theme of their representations being that they should be able to become farmers.

Between the two meetings with Māori, Carroll attended a banquet in Te Kūiti with ‘a large representative gathering of settlers’, and again outlined the...

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Government’s intentions to introduce new legislation. He said that in recent conferences with Māori, they had indicated that they were ‘practically unanimous that they should undertake the same responsibilities as Europeans when their lands were used by themselves or leased’. However, in exchange, they would claim the right to vote for local bodies. He was glad, he said, that ‘the Maoris had fallen into line’.273

In October 1909, the Liberal Government announced its intention to table a new Bill, ‘revising, recasting, and harmonizing the whole of the Native-land laws’ to achieve a ‘triple gain in . . . simplicity, clearness, and brevity’. This would, it claimed, ‘facilitate the operation of the Native Land Courts, the determination of Native-land titles, and the settlement of Native lands’.274 The Native Land Court judges and presidents of the Māori land boards (effectively one and the same group) had already been invited to analyse and comment on draft text drawn up by the Law Drafting Office.275

Delivering his budget speech in November, Prime Minister Joseph Ward announced that the Crown would be seeking ‘to purchase from the Natives as large an area as possible’ – a stark contrast to his declarations to Māori at Waharoa in March of the previous year. He indicated that this would be achieved through


274. ‘Governor’s speech’, 7 October 1909, NZPD, vol 147, p 4; doc A73, p 168.
275. Loveridge, Māori Land Councils, pp 24–25, 76–78; Boast, Buying the Land, Selling the Land, p 229.
measures such as compulsory acquisition and the removal of ‘all existing restrictions and prohibitions against alienation’, and by using meetings of assembled owners.\textsuperscript{276}

The Act passed in December 1909 and came into effect on 31 March the following year.\textsuperscript{277} It was umbrella legislation, described in its opening sentence as ‘[a]n Act to consolidate and amend the Law relating to Native Land’, and it replaced around 70 existing Acts. It repealed the Māori Lands Administration Act 1900 and its 1901 amendment, the Māori Land Settlement Act 1905, and the Native Land Settlement Act 1907, except to the extent that any of their provisions were preserved by the new 1909 legislation.\textsuperscript{278} This effectively meant that options for papatupu or block committees were no more, as new provisions were continued into the 1909 legislation. There is no evidence of papatupu committees operating in the Te Rohe Pōtae district, but they were available as an option until 1909.

According to Hearn, its many clauses contained few policy innovations or changes, but those that they did contain were ‘of far-reaching significance’.\textsuperscript{279} Speaking about the Act in May 1910, Attorney-General Findlay anticipated that ‘[w]hen the system they had in view was finally worked out’, Māori would be left with an average of about 34 acres a head. That compared with 65 acres a head for Pākehā.\textsuperscript{280}

The following discussion focuses on some of the provisions most relevant to Māori land boards and looks at how they affected the degree of control Te Rohe Pōtae Māori could exercise over their land.

\textbf{12.5.1.1 The land boards}

Land boards were continued along with those holding office as members.\textsuperscript{281} Members, other than the president, carried on until the end of their term of appointment, and thereafter until their successors were appointed.\textsuperscript{282} Every board, at this stage, continued to have three members, and the legislation made explicit that the president had to be Pākehā.\textsuperscript{283} The presidents held office ‘during the pleasure of the Governor’.\textsuperscript{284} All questions before the board were decided by a majority of the votes of the members. The president had an original as well as casting vote – essentially meaning that his vote carried the day, thus giving him the dominant position on the board.\textsuperscript{285}

\begin{itemize}
  \item \textsuperscript{276} AJHR, 1909, B-6, p xxii (Loveridge, \textit{Māori Land Councils}, p 86; doc A73, p 167).
  \item \textsuperscript{277} Document A73, p 168.
  \item \textsuperscript{278} Native Land Act 1909, s 431, sch.
  \item \textsuperscript{279} Document A73, p 168.
  \item \textsuperscript{280} Document A73, p 171.
  \item \textsuperscript{281} Native Land Act 1909, s 62(2).
  \item \textsuperscript{282} Native Land Act 1909, s 62(3).
  \item \textsuperscript{283} Native Land Act 1909, s 64.
  \item \textsuperscript{284} Native Land Act 1909, s 65.
  \item \textsuperscript{285} Native Land Act 1909, s 71.
\end{itemize}
12.5.1.2 Removal of restrictions on alienation

First, the definition of native (Māori) land provided for in section 2 covered customary land and freehold land. The ‘alienation’ of such land encompassed ‘the making or grant of any transfer, sale, gift, lease, license, easement, profit, mortgage, charge, incumbrance, trust, or other disposition, whether absolute or limited, and whether legal or equitable, (other than a disposition by will) of or affecting customary land or the legal or equitable fee-simple of the free-hold land, or any share therein’.\(^{286}\) It also included the sale of standing timber, flax, minerals, ‘or other valuable thing attached to or forming part of Native land (other than industrial crops)’ and alienation of a life interest or any other beneficial freehold interest less than a fee simple.\(^{287}\)

As foreshadowed in the Prime Minister’s November budget speech, the Act removed all existing restrictions on the alienation of Māori land, including whether by sale or lease.\(^{288}\) Subject to the provisions of the legislation, owners could then alienate or dispose of their land in the same manner as if it were Pākehā land.\(^{289}\) However, that was not the case where there were more than 10 owners. In such cases, the alienation had to be approved at a meeting of assembled owners under part XVIII of the legislation or it had to be approved by the land boards.\(^{290}\) In the latter case, any party to the transaction could apply for consent and, if it was determined ‘in the public interest’ to grant consent, the boards passed resolutions authorising the alienations. The grant or refusal of consent was solely at the discretion of the relevant land board.\(^{291}\)

All alienations of land had to be in writing signed by the owners and, where he or she did not speak English, signatures of such owners had to be witnessed by a number of people in public office. This included the Pākehā member of a Māori land board and an interpreter present who was required to certify that the effect of the instrument of alienation had been explained and that the owner or owners understood such effect.\(^{292}\)

No alienation of land had any force or effect until confirmed by either the Māori land boards or the Native Land Court.\(^{293}\)

The Act did, however, introduce a new series of conditions that had to be met before an alienation could be confirmed by the local Māori land board. These included the need to ensure that no Māori was made landless by the alienation. But ‘landless’ was now defined as having insufficient Māori freehold land interests for his or her ‘adequate maintenance’: there was no definition of ‘adequate

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288. Native Land Act 1909, s 207.
289. Native Land Act 1909, s 207(2).
290. Native Land Act 1909, s 209.
293. Native Land Act 1909, s 217.
maintenance’ in the Act, nor of the amount of land necessary to ensure it.\textsuperscript{294} Land boards were responsible for confirming all alienations by private parties, as well as any purchases the Crown made through assembled owner meetings. This meant that the board’s work was considerably expanded and the expectations of Te Rohe Pōtae Māori to administer their own land was closed.\textsuperscript{295}

Māori reservations, however, could be set aside by order in council of the governor (on the recommendation of the Native Land Court or the land boards) for the common use of the owners as burial grounds, fishing grounds, villages, landing places, places of historic and scenic interest, meeting places, timber reserves, church sites, building sites, recreation grounds, bathing places, or for the common use of the owners.\textsuperscript{296} Such reservations were inalienable.\textsuperscript{297}

12.5.1.3 Vested lands
Part XIV of the Act entitled ‘Native Land for European Settlement’ included the lands that Stout and Ngata had recommended for vesting, which were subject to part I of the Native Land Settlement Act 1907.\textsuperscript{298} These lands were revested in the land boards in fee simple, which held the lands in trust for the owners.\textsuperscript{299} ‘The requirement for an equal division of vested land between sale and leasing was maintained, subject to the approval of the Native Minister who could also vary this ratio.\textsuperscript{300} However, now the land boards could circumvent the Native Minister by recommending to the governor a division based upon a different ratio and where, in his opinion, it was impracticable or inexpedient in the public interest or the interests of the owners to use the 50:50 ratio, the governor could, by order in council, issue an alternative split.\textsuperscript{301} Even then, an equal split had to be maintained in the board’s vested lands overall.\textsuperscript{302}

Also, as in the 1907 Act, the land board was responsible for subdividing the land and laying off roadlines and had to organise construction of roads and bridges before the land could be offered for sale or lease. The 1909 Act, however, stipulated that this construction had to take place within five years of the roadlines being proclaimed.\textsuperscript{303}

The land boards could then sell or lease the lands in accordance with part XIV of the 1909 Act. The method adopted for sales remained similar to that under the previous legislation, with added provision made to deal with defaults as the payment or conditions of contracts or lease. Lessees maintained the right to

\textsuperscript{294} Native Land Act 1909, s 220; Loveridge, Māori Land Councils, p 83; doc A73, p 323.
\textsuperscript{295} Native Land Act 1909, ss 217, 348, 370; doc A93, p 118; Loveridge, Māori Land Councils, p 83; Wai 1200 ROI, doc A59, p 31. For all other Crown purchases, the Native Land Purchase Board had to ensure that the transaction would not leave any owner landless: Native Land Act 1909, s 373.
\textsuperscript{296} Native Land Act 1909, s 232.
\textsuperscript{297} Native Land Act 1909, s 232(6).
\textsuperscript{298} Native Land Act 1909, s 233.
\textsuperscript{299} Native Land Act 1909, ss 236–237.
\textsuperscript{300} Native Land Act 1909, s 239(1).
\textsuperscript{301} Native Land Act 1909, s 239(3).
\textsuperscript{302} Native Land Act 1909, s 239(4).
\textsuperscript{303} Native Land Act 1909, ss 240–241(2).
compensation for improvements where leases had terms not less than 10 years, but now the debt was a charge on the land.\textsuperscript{304}

The board continued to be empowered, as before, to use any income from the land to defray a whole range of expenses (including general administration costs, rates, and taxes). What was new, however, was a clause giving it the option of using some or all of the residue for land improvement or settlement or both, or for ‘any other purposes of general utility to the Native owners’, rather than paying it out to the beneficial owners. The only proviso was that the consent of the Native Minister had to be sought.\textsuperscript{305}

Part \textsuperscript{XV} then dealt with the other land vested in the land boards under the Māori Lands Administration Act 1900, or its 1901 and 1903 amendments, and certain other vestings following 1904. These provisions were transfers for leasing purposes, and vestings upon the maturity of mortgages. The legislation also covered compulsory vestings under section 8 of the 1905 Act and vestings under the 1906 legislation where the land was infected with weeds or where the Native Minister thought the land suitable for Māori settlement, and finally vestings for non-payment of rates under the Rating Act 1908.\textsuperscript{306} These vestings became subject to the 1909 Act and the jurisdiction of the newly constituted boards. This land, along with new land vested under this part of the legislation, could be sold, leased or managed and occupied by the land boards as a farm.\textsuperscript{307}

Lands for native settlement recommended for setting aside under part \textsuperscript{II} of the Native Land Settlement Act 1907, on the recommendation of the Native Land Commission, were also made subject to the 1909 legislation as provided for in part \textsuperscript{XVI} of the 1909 Act – entitled ‘Native Land for Native Settlement’. Although not formally vested, these lands were to be administered by the land boards for leasing. There was more opportunity for the land boards to ascertain boundaries of the lands to be leased and to report the same to the governor for orders in council to be made accordingly.\textsuperscript{308} Land subject to this part of the 1909 Act was inalienable except by way of lease through the agency of the land boards acting under this part of the legislation or with the consent of the Native Minister acting upon recommendation of the land boards. The land boards were deemed to be acting as agents for the owners in facilitating leases.\textsuperscript{309} The leases had to be to owners unless, in the board’s opinion, there were no owners willing to accept the lease, in which case the land could be leased to other Māori.\textsuperscript{310} The leases could contain provision for compensation to be paid to lessees for any improvements made by them during the term of the lease and was a charge upon the land.\textsuperscript{311}

\begin{itemize}
\item \textsuperscript{304} Native Land Act 1909, s 263.
\item \textsuperscript{305} Native Land Act 1909, s 277.
\item \textsuperscript{306} Native Land Act 1909, ss 287–288.
\item \textsuperscript{307} Native Land Act 1909, ss 291–292.
\item \textsuperscript{308} Native Land Act 1909, s 295.
\item \textsuperscript{309} Native Land Act 1909, s 295.
\item \textsuperscript{310} Native Land Act 1909, s 300.
\item \textsuperscript{311} Native Land Act 1909, s 305.
\end{itemize}
12.5.1.4 Meetings of assembled owners and the boards’ roles

The 1909 Act also included the new ‘assembled owners’ provisions under part XVIII, which the prime minister had alluded to in his budget speech. In Parliament, Carroll had claimed that these meetings would enable ‘practically a resuscitation of the old runanga system under which from time immemorial the Maori communities transacted their business.’ This was misleading. The meetings were not community-managed; rather, the Māori land board was responsible for calling them, either at the Native Minister’s direction or at the request of any owner or ‘person interested’ (who was often a would-be purchaser). Owners could attend in person or by proxy. A meeting could vest land in a Māori land board, sell land to the Crown, sell land privately, or vote to incorporate. It could also decide to lease to one of the beneficial owners of the land. (Not till 1913 could it accept a lease offer from the Crown.)

The quorum for a meeting was just five (regardless of how many owners were there) and a resolution would pass if those voting in favour (either by proxy or in person) held a greater majority of land interests than those voting against. The resolution then had to be confirmed by the Māori land board (first ensuring that the transaction would not leave any of the owners ‘landless’). This was not decision-making in the style of the old rūnanga.

Once a resolution was confirmed, the board effectively became the beneficial owners’ agent for the transaction and they had no right to revoke its agency. If there were dissenters to an alienation, they could apply to the Native Land Court to have their shares partitioned out, but the alienation could be confirmed while the partition hearing was still pending. Where the alienation was to a private purchaser, the board could dispense with a meeting of owners altogether if it deemed that calling such a meeting would be too difficult. It could also simply give its ‘precedent consent’ to a transaction. Under this provision, the board was empowered to allow a would-be purchaser to collect the individual signatures of owners without any meeting being held – although confirmation by the board was still needed when the transaction was completed.

12.5.1.5 Crown purchasing

There were a number of mechanisms in the Native Land Act 1909 that promoted the Crown purchase of Māori land. Under section 203, for example, the governor
could, by order in council, in any case where he deemed ‘it was expedient in the public interest’, authorise the acquisition of any native customary or Māori freehold land despite any other provision in the legislation.

Part xix of the legislation authorised Crown purchasing on a new scale for the new decade from 1910. It ensured that no restrictions on alienation applied to Crown purchasing. It authorised the establishment of the Native Land Purchase Board consisting of the Native Minister, the Under-Secretary for Crown Lands, the Under-Secretary of the Native Department, and the valuer-general. Its duty was to undertake and carry out all negotiations for the Crown’s purchase of any Māori land and the performance and completion of all contracts of purchase for the Crown. Prohibitions made by the governor by order in council could be placed on the land to prevent private transactions and to ensure a Crown monopoly.

Under section 366, the Crown could purchase any Māori land which was vested in a land board and which the board had power to sell under the Act (noting here that the Act did not apply to land in native townships). The contract was to be on terms agreed between the Native Land Purchase Board and the Māori land board, and no public tender or auction process was required.

Where land was owned by more than 10 owners but not vested, the Crown had to approach the land board to summon a meeting of assembled owners. The land board was not required to ascertain whether the sale was in the best interests of the owners (as it was in the case of a private sale), but if the meeting agreed to sell, the resolution had to be confirmed by the board and then passed to the Native Land Purchase Board. Once the purchase board accepted the resolution, it became a contract of purchase between the owners and the Crown. The Crown then issued a proclamation saying that the land had been purchased and had become Crown land.

For all other Māori land (unless board-administered or vested in an incorporation of owners), the Crown could purchase in the same manner as for Pākehā land, and confirmation by the land board was not required.

12.5.1.6 Options for land owned by 10 or fewer owners
Under the 1909 Act, land owned by a single owner could be converted to Pākehā title if the owner requested it, and then dealt with on that basis. That is, the native land regime then no longer applied to the land in question.

322. Native Land Act 1909, s 360.
323. Native Land Act 1909, s 361
324. Native Land Act 1909, s 362.
331. Native Land Act 1909, s 208.
There were no clauses specifically mentioning land with more than one owner but fewer than 10. Such land would, however, still have been subject to the general provisions of the Act. Thus, for example, under section 217, any sale or lease (unless to the Crown) would need to be confirmed by the land board – which should in turn have involved some consideration of the sufficiency of land remaining to the owners.

### 12.5.2 The 1909 Act and the Waikato–Maniapoto board in Te Rohe Pōtatae

#### 12.5.2.1 Changes to the Māori land boards in the inquiry district

In June 1910, less than three months after the 1909 Act came into effect, the Māori land boards were reconfigured. Maniapoto would henceforth be joined with Waikato as the Waikato–Maniapoto board, and Ngāti Tūwharetoa would come into Waiairiki. The new Waikato–Maniapoto board continued to be based in Auckland, but, like its predecessor, travelled around the district to hold meetings and conduct business.

The Waikato–Maniapoto board’s new president was Walter Bowler, an experienced land purchase officer. Commenting on the possible make-up of the reconfigured board, Bowler observed that since the Māori member on the old board (Mere Teretiu) was from Thames, she was ‘not perhaps altogether representative of the Waikato district’. Accordingly, he suggested that ‘if the proposals in regard to the “Kingite” lands materialize, it might be politic to appoint someone else in her place. He thought it would “be calculated to retain the confidence of the Maniapoto Natives”, seeing that “[m]ost of the lands vested in the Board are Ngatimaniapoto lands”. His preference was for Eketone. When the new board was announced, however, Teretiu was retained, as was the other member from the old Waikato board, Walter Steedman (a Crown ranger). Before the end of the year, though, Steedman was replaced by James Seymour, who had served on the former Maniapoto–Tuwharetoa Māori Land Board.

#### 12.5.2.2 The boards’ workload

At the time of the handover between the two boards, business was considerably in arrears, with around 200 lease agreements waiting to be finalised. The boards’ workload was unlikely to diminish. Given the large area of Te Rohe Pōtatae land that had been compulsorily vested (as will be discussed in chapter 14), the work of organising subdivision and roading would represent a significant ongoing burden. Until that was done, as Tame Kawe later pointed out, settlement and development of the land were impeded ‘and the interests of the Native owners thereof seriously prejudiced.”

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332. Document A73, p 64; doc A93, p 118.
333. Boast, Buying the Land, Selling the Land, p 306.
334. Bowler to Under-Secretary, Native Department, 23 June 1910 (doc A71(a), vol 2, p 335); doc A71, pp 164–165.
336. Tame Kawe and others, petition, 1912 (doc A59(a) (King Country petitions image bank), p 57).
Not surprisingly, in the years after the passing of the 1909 Act, Te Rohe Pōtae Māori continued to prefer privately negotiated leases, which gave them greater control over leasing conditions. Again, quoting Kawe, it was ‘speedier in procedure and generally more simple and satisfactory to the Native owners.’ That included being able to provide for shorter terms and more regular rent adjustments. By contrast, leases of vested lands organised by the boards could be anything up to the maximum allowable term (50 years) with only one rent adjustment.

As to sales, Crown purchases continued and the number of privately negotiated sales increased. Speaking generally, Ngata later observed that where land had 10 or fewer owners, ‘Justices of the Peace, lawyers, and other official witnesses’ were wont to ‘go around with the deeds and obtain the individual signatures of the owners’. It is not clear, though, to what extent this practice may have played a role in sales in Te Rohe Pōtae.

The boards were faced with a significant workload. The Waikato–Maniapoto board remained responsible for vested lands; it also had to confirm virtually all transactions (including, as noted earlier, the sale of standing timber or flax). In April 1912, Bowler reported that he was receiving 50 letters a day and had sent out 1,200 since the beginning of January. That represents an average of around 80 outward letters each week – and Bowler complained that he had to do ‘a good deal of the typing’ himself. The situation had scarcely improved a year later: writing to the Native Under-Secretary about a problem in relation to Rangitoto A278 (where the Crown was interested in acquiring interests), he commented that in addition to a suggested course of action being ‘inconsistent with [his] duties’, he simply had ‘not time to do it’. He received the brusque response that it was part of a Māori land board’s duty, under the 1909 Act, to assist the work of the Government’s Native Land Purchase Board. This is illustrative of the pressures the board was under: not only was it hugely under-resourced, but it was also effectively being instructed to give priority to the Crown’s interests.

12.5.2.3 The boards’ management of income

Another significant part of the boards’ work was managing the money raised through the sale and leasing of the land for which it was responsible. Land boards had the power to hold such money and to dispense it as and when they saw fit. In the interim between receipt and disbursement, they often seem to have used it as a kind of general fund, moving it around as needed. In 1913, for example, the records show the Waikato–Maniapoto board as crediting income from some blocks against other blocks, although the reason for this is not clear from the evidence.

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337. Tame Kawe and others, petition, 1912 (doc A59(a), pp 57–58).
340. Bowler to Under-Secretary, 19 April 1912 (doc A71(a), vol 2, p 339).
341. Bowler to Under-Secretary, 27 May 1913 (doc A73(a), vol 25, pp 175–176).
342. Document A73(a), vol 25, p 173; see also doc A71(a), vol 2, pp 335–339; doc A73, pp 255, 364–365; doc A93, p 119; doc A71, p 167.
presented. However, it must be remembered that the boards’ work was expected to be largely funded out of revenue. This included paying charges on vested land held in trust (taxes, rates, and other assessments), preparing land for leasing (involving roading, survey, and court costs, for example), and administrative costs. In short, there was no guarantee that income from the land would be used on the blocks of the owners from whom it was acquired, nor was there any guarantee that any surplus income after costs were deducted would be distributed to those owners – or at least, not immediately.

Moreover, there were logistical problems associated with disbursing moneys. These included tracing owners and needing to travel about so that the distributions could be carried out. In 1912, Bowler wrote to Fisher, the Native Under-Secretary, about the issue, commenting that there were probably many cases in which Māori were even unaware that the board held money owing to them. He thought this especially applied to alienations made through meetings of assembled owners. He wondered whether it might be an idea to advertise a list of names in the Kahtii. Fisher advised against this course of action, citing the possibility of ‘fictitious claims’.

In 1914, Āpirana Ngata accepted that delays of up to 18 months were being experienced, and pointed to centralisation as the culprit, along with a lack of proper machinery for distribution. Nevertheless, it was not helpful for Māori needing access to their money. By mid-1915, Māori owners in the Waikato–Maniapoto district were lodging around 24 inquiries a week with the land board, seeking information on moneys alleged to be due to them. The situation was not helped by the fact that some lessees were starting to fall behind with their rental payments, and it was a situation that would only get worse, especially with the collapse of commodity prices in 1918.

12.5.2.4 The boards’ increasing responsibility for native townships

Another significant matter affecting Te Rohe Pōtae Māori, at this time, was the situation of land in the native townships. As will be discussed in chapter 15, there had been two different regimes for native townships: one for those established under the Native Townships Act 1895 (which were controlled by the Department of Lands and Survey) and one for those established under the Native and Māori Land Laws Amendment Act 1902 (which came under the relevant Māori land board). Section 2 of the Māori Land Laws Amendment Act 1908, however, had decreed that they were all to be brought under the land boards. In Te Rohe Pōtae, the affected townships were Parawai, Te Puru, and Karewa (Te Kūiti and Ōtorohanga already being under the board). The three were duly transferred in 1909, further adding to the board’s workload.

343. Bennion, Māori Land Court and Land Boards, pp 38–40, 41; doc A73(b) (Hearn summary), paras 4.4, 7.1–7.5; doc A73(a), vol 4, pp 324, 325.

344. Bennion, Māori Land Court and Land Boards, pp 38–40, 41; transcript 4.1.15, p 1160 (Terry Hearn, hearing week 10, Maniaroa Marae, 6 March 2014).

345. Document A73, p 622.

In terms of the impact on the Māori owners of the transferred townships, though, the provisions of the Native Townships Act 1910 were to have great significance. These allowed boards to issue leases with a perpetual right of renewal written into them from the outset (as had already been the case in townships established under the 1902 Act). The change was made without consulting the affected beneficial owners. The 1910 Act also gave the Crown greater powers to purchase township land from the boards, and for the first time allowed private purchasing of township sections.347

12.5.3 Treaty analysis and findings
In early August 1909, Acting Prime Minister Carroll travelled to the King Country, meeting separately with both Māori and Pākehā. Ngāti Maniapoto took advantage of the visit to present him with a petition seeking better protection for their vested lands, and again requesting access to land development assistance on par with that provided to Pākehā.

They were confronted instead with the passage of the 1909 Act with its 111 pages, 24 parts, and 441 sections (many with multiple clauses). Even with consolidations of existing legislation, the Act introduced significant new changes with little or no consultation with Māori. The complexity of the legislation demonstrates how wide the gulf had become between Crown policy and an increasingly unobtainable, but nevertheless undiminished expectation by Te Rohe Potae Māori to exercise mana whakahaere over their own lands. The 1909 Act continued the transformation of the land boards into an integral part of the Crown’s imposed 1909 land alienation regime.

The way in which the legislation was enacted was an example of the widening abyss between continuing Māori expectations for autonomy and the agenda of land acquisition for Pākehā settlement underlying the Crown’s policies. As Judge Thomas Fisher, Under-Secretary for Native Affairs, explained in an article in the New Zealand Official Yearbook 1910, the Act’s ‘main feature’ was to widen the avenues available for facilitating the alienation and settlement of native lands.348

The 1909 Act implemented the Crown’s policies of: (a) transferring as much Māori land as possible into the hands of Māori land boards to then be made available for settlement under board control, (b) minimising the participation of Māori in decision-making over their lands; (c) enabling a Crown monopoly to develop in the purchasing of some lands; and (d) enabling the boards to facilitate the alienation of that land from Māori ownership.

The nature of the Native Land Act 1909 meant that the land boards continued to face a potential conflict of interest. On the one hand, they were required to act as trustee for land which Māori wanted to retain and use themselves; on the other, they had pivotal roles in activities related to transferring land out of Māori control and even ownership for settlement. Examples of the latter included calling

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meetings of owners to consider alienations (often requested by would-be purchasers or lessees), and in administering alienations in general.\textsuperscript{349}

The 1909 Act was yet another in the line of legislative instruments through which, as the Crown conceded in this inquiry, the exercise of traditional leadership and community decision-making was gradually, but inexorably eroded. Control over much Māori land was now with the Pākehā-dominated land boards in Te Rohe Pōtae rather than with the Māori communities themselves.

The Central North Island Tribunal found that the 1909 legislation failed to provide adequate safeguards both for individual owners and for communities to ensure the retention of a land base for present and future generations. We agree. Article 2 in the English text of the Treaty of Waitangi declared that Māori should retain the ‘full exclusive and undisturbed possession of their lands’ for as long as they wished to do so. In the Māori text their tino rangatiratanga over their kāinga and whenua was guaranteed in exchange for the kāwanatanga of the Crown. Both parties were to mutually benefit from settlement, yet that was clearly not the driver for the policy that underpinned the Native Land Act 1909. The Crown’s purpose in having land vested in the land boards was to make Māori land available to Pākehā – either through sale or lease – so that it could be developed.

Having contributed significantly, through its Māori land legislation, to sideling Te Rohe Pōtae Māori from exercising any mana whakahaere over their lands and resources, the Crown then failed – in the case of the Waikato–Maniapoto district – to ensure sufficient resources for the land board to carry out its work in a timely and thorough fashion. Furthermore, the Crown knew or should have known that the land board was increasingly using the income from Māori land alienations (whether through lease or sale) for whatever purposes the land board in Te Rohe Pōtae saw fit. In other words, not only did the owners have very little control over what happened to their land, but they also did not receive, or have any say over what happened to, most of the income from it. The Crown provided no remedy for this.

We find the Crown’s actions and policies leading to the enactment of the 1909 legislation, alongside the Crown’s conduct and omissions after the statute came into effect, including its failure to rectify the problems with the legislation, inconsistent with the principles of partnership and mutual benefit derived from articles 1 and 2 of the Treaty of Waitangi. The Crown also failed to honour its guarantee of tino rangatiratanga over Māori lands. It failed to have due regard to the positive suggestions Te Rohe Pōtae Māori made to Carroll to improve the land administration system. Rather, the Crown pursued a policy that elevated the demands of Pākehā settlers for more land over its Treaty of Waitangi obligations. In doing so, the Crown adopted policies inconsistent with the principle of equity derived from article 3 of the Treaty of Waitangi. The Crown also failed to fulfil its duties to act honourably and in good faith, and to actively protect Māori land.

\textsuperscript{349} Bennion, \textit{The Māori Land Court and Land Boards}, pp 7, 18.
12.6 Legislative Changes to the Māori Land Board Regime, 1913–53

12.6.1 The Native Land Amendment Act 1913

The 1909 Act was soon achieving the Crown’s aims. Donald Loveridge calculated that in the 20 years from 1910, a total of over four million acres of Māori land, vested and freehold, was leased or sold nationwide through the Māori land boards, under what he has called the ‘efficient machinery refurbished by or initiated under the 1909 Act’.\(^{350}\) It was machinery that was to be further honed by amending legislation.

Despite any negative effects from under-resourcing in the Waikato–Maniapoto district, those seeking to secure the use of Māori land were well provided with legislative backing. By the 1911–12 financial year, total North Island sales and leases through the land boards were substantial, with Native Under-Secretary Fisher particularly drawing attention to the high sales figures. Overall, he thought, there had been great strides forward in Māori land alienation.\(^{351}\)

In July 1912, the Liberal Government lost the election to the Reform Government led by William Massey. The following month, Massey announced that he was contemplating some changes to Māori land law.\(^{352}\) Reform party supporters had criticised leasehold tenure and wanted leaseholders to be able to purchase the properties they were occupying.\(^{353}\)

The Reform Government did not go as far as offering Māori assistance for land development, but its first move in November 1912 was to introduce legislation whereby (among other things) if land vested in boards had not been sold or let, and had no charges on it, it could be re-vested in the equitable owners. The same piece of legislation also abolished the land boards’ ability to grant precedent consent to transactions.\(^{354}\) These small steps towards enabling Māori to regain control of their land were not, however, to be followed by any other provisions. Under the Reform Government, Herries was now Native Affairs Minister. He had expressed his view that the land court and land board should be combined in the House as early as 1908.\(^{355}\) This view was enacted when the Native Land Amendment Act passed into law on 15 December 1913, despite vigorous opposition from Māori members of Parliament. The main provisions of the Act are discussed below.

12.6.1.1 Effective amalgamation of board and court

Under the terms of the Native Land Amendment Act 1913, land board districts and Native Land Court districts became one and the same, with land boards now comprising only the land court judge (as president) and the registrar. Minister Herries made no secret of the fact that he would have liked to abolish the land boards

\(^{350}\) Loveridge, Māori Land Councils, p118.

\(^{351}\) Loveridge, Māori Land Councils, pp124, 129.

\(^{352}\) Document A73, p340.

\(^{353}\) Document A62, p153.

\(^{354}\) Loveridge, Māori Land Councils, pp125–126; Native Land Amendment Act 1912.

\(^{355}\) Loveridge, Māori Land Councils, p125.
altogether. Instead, he had arrived at a compromise which effectively meant that land court personnel would decide what happened to Māori land.

The Māori land board was now ‘practically’ the judge himself, as Herries himself noted. During the 1913 debate on the legislation, he stated: ‘we still maintain the term “Boards”, under which the Judge can sit either as a Court or as a Board’.\footnote{356} He seemed to be referring to section 27 of the Act, which specified that the president of a land board, while sitting in that capacity, could ‘exercise any branch of his jurisdiction as Judge of the Native Land Court’, and vice versa. In addition, section 25 allowed the president of the board, sitting alone, to exercise all the powers of the board. The registrar could likewise sit alone, though he could only exercise the powers delegated to him by the president. These did not include confirmation of alienations under part xiii of the 1909 Act, which could only be executed by the president. Alternatively, the Native Minister could appoint someone to deputise for an absent board member.\footnote{357} In effect, the 1913 Act completely shut Māori out of the land board decision-making process. Since all judges and registrars of the time were Pākehā, the change meant Māori no longer had any representation on the body making decisions about their land.\footnote{358}

In the Waikato–Maniapoto district, the land court judge – and thus the board president – was Albert Holland. The other place on the board was filled by Ludwig Teutenberg, appointed as registrar of the Waikato–Maniapoto district in March 1914.\footnote{359} Walter Bowler also stood in as president on occasions, as permitted under the Act. From 1917, the board’s president was Judge Charles E MacCormick.\footnote{360} The board continued to be based in Auckland where, at some point, it purchased office premises out of board funds, as permitted under amending legislation passed in 1916.\footnote{361} As before, it sometimes travelled to the district for hearings, but Hutton noted that in 1915 only three of 16 board meetings were held within Te Rohe Pōtae.\footnote{362} The evidence does not reveal whether this pattern was representative of other years.


\footnote{357} Native Land Amendment Act 1913, s 29.


\footnote{359} Document A73, pp 224, 406, 620; doc A60(a), vol 27, pp [10], [11], [427]; JL Hutton, ‘The Operation of the Waikato–Maniapoto District Māori Land Board’, in \textit{Twentieth Century Māori Land Administration Research Programme}, ed DM Loveridge, revised ed (Wellington: Crown Forestry Rental Trust, 1998), p 37. Holland had formerly been registrar of the Native Land Court in Auckland, but under the 1913 legislation he needed to become a judge before he could act as president of a land board.

\footnote{360} Hutton, ‘Operation of the Waikato–Maniapoto Māori District Land Board’, p 37; doc A115, p 38.


\footnote{362} Hutton, ‘Operation of the Waikato–Maniapoto Māori District Land Board’, p 51; doc A60(a), vol 27, p [441].
12.6.1.2 Strengthened provisions for acquiring Māori land and using the income from it

Under the 1913 amendments, the Crown was exempt from any prohibitions against alienation and could now seek to purchase, lease, or otherwise acquire virtually any land.\(^\text{363}\) In cases where the land was vested in the land board supposedly without power of sale, the Crown could nevertheless purchase by resolution of a meeting of owners or ‘with the consent and concurrence of the beneficial owner of the share or interest sold.’\(^\text{364}\) That is to say, even if a meeting of assembled owners declined to sell, the Crown could afterwards negotiate with individual owners and accumulate interests piecemeal. For blocks owned by more than 10 owners, but where there was no restriction on alienation, the Act allowed the Crown to entirely dispense with a meeting of owners: it could simply approach owners direct and buy their interests, without any public notification of the desire to purchase.\(^\text{365}\)

The Act also relaxed the provisions around landlessness. If the land being sold could be deemed unlikely to be ‘a material means of support’, the sale could go ahead even if it rendered the seller landless. A similar situation prevailed if the seller could show that he or she had some other means of livelihood, such as a trade or profession.\(^\text{366}\)

Land court judges were obliged to identify and report to the Native Minister any Māori freehold land ‘fit for settlement or capable of being conveniently partitioned’ but not currently being used by the owners. The Crown could then trigger compulsory partitioning to divide areas ‘according to quality and utility’, thus promoting individualisation and facilitating alienation. The interests of the Māori owners only had to be regarded ‘as far as practicable’.\(^\text{367}\) Given that the judge tasked with setting this process of alienation in train was also, as president of the land board, supposedly acting in a trustee capacity for Māori whose lands were vested in the board, the provision was one that presented him with a potential conflict of interest.

A further change was that when hearing an application for confirmation of an alienation, the land board could decide – without consultation – that it was not in an owner’s interest to receive his or her share of the resultant income. Instead, the money could be held by the board or paid to the Public Trustee.\(^\text{368}\) Moreover, under section 35, the board was entitled to invest any moneys it held, as long as the investment was ‘in such manner as may be authorized by regulations’. There was no requirement that the beneficial owners be consulted.

Under the 1909 Act, a land board had been able to confirm a sale almost as soon as the meeting of owners ended, giving dissenters very little time to lodge their

\(^{363}\) Native Land Amendment Act 1913, s 109(2), (3); Wai 1200 ROI, doc A59, p 46.

\(^{364}\) Native Land Amendment Act 1913, s 109(12).

\(^{365}\) Native Land Amendment Act 1913, s 112; Bennion, The Māori Land Court and Land Boards, p 11.

\(^{366}\) Native Land Amendment Act 1913, s 91.

\(^{367}\) Native Land Amendment Act 1913, s 46; doc A73, p 178; Loveridge, Māori Land Councils, p 127.

\(^{368}\) Native Land Amendment Act 1913, s 92; doc A73, pp 632–633.
memorial of dissent against a sale. One improvement in the 1913 legislation was an extension of the time allowed for filing a memorial of dissent, although it still only provided for a three-day window of opportunity after a meeting of owners.\(^ {369}\)

The provisions for proxy voting were also tightened so that only a beneficial owner could register a vote on behalf of another owner.\(^ {370}\)

At section 95, the Act declared that no further land was to be vested in land boards, while section 96 clarified the procedures for re-vesting existing land board holdings back with the beneficial owners.

### 12.6.2 Legislative amendments to the Māori land board regime, 1914–31

From 1914 onwards, the Native Land Act 1909 was amended every single year until a new Native Land Act was passed in 1931. In 1914, for example, proxy voting was further tightened: the intentions of the person granting the proxy now had to be stated on the proxy form itself.\(^ {371}\) The next year, the period allowed for lodging memorials of dissent was increased to seven days.\(^ {372}\) Then, from the 1920s, the boards began to have a role in Māori land development under Ngata’s land development schemes (although that role was then reduced during the 1930s).\(^ {373}\) These schemes will be explored in detail in chapter 17.

The evidence before the Tribunal suggests that the land board’s oversight during this time did little to stem the flow of land alienated out of Te Rohe Pōtae Māori hands. This was largely done by way of private purchasing, where the board not only continued to have monitoring responsibilities, but also continued undertaking Crown purchases. For example, Hearn indicated that around 40 per cent of Rangitoto A (which had been vested in the land board) passed into Crown or private ownership during the period from 1910 to 1935. Of that, around three-quarters went to private purchasers.\(^ {374}\) After a significant purchasing burst in 1912, all involving alienation to private buyers, the district surveyor commented that large areas of the block were being held by Te Kūiti land dealers. Another purchasing burst occurred in 1913, and then two more in 1916 and 1917. Only in 1916 was Crown purchasing greater than private purchasing.\(^ {375}\)

In terms of what happened to the money from sales, evidence suggests the boards increasingly regarded their responsibility was to use the funds to support the Government’s purchase policy. In 1913, for instance, President Bowler acknowledged that large sums were lent to assist Crown land purchases.\(^ {376}\) The Native Under-Secretary saw no problem with any conflict such a practice might cause...
for Māori owners, commenting that it was merely a question of the land board temporarily assisting the Native Land Purchase Office by using funds that were not immediately needed.\(^{377}\)

As will be explored in chapter 14, the money was also used to assist private purchasing through mortgages. These arrangements could be risky for beneficial owners: if those who received the mortgages failed to make their payments, as money could not be distributed to those who should have received it. The Tribunal received evidence of the Waikato–Maniapoto board’s president’s concerns relating to this issue. He is reported to have said that the board was ‘besieged with demands from the Natives for payment of their money[,] both capital and interest’ and that ‘it has no answer to give to the charges by the Natives of neglect of their interests’. He feared, moreover, that ‘these large sums of money which were borrowed from the board for the ostensible purpose of improvements . . . were not wholly, if at all, devoted to those purposes but to speculations in land’.\(^{378}\)

In addition, during the 1920s, some of the money owing to Māori beneficial owners of Te Rohe Pōtae was diverted to Wellington. There was no consultation with those affected: under amending legislation of 1924, land boards were required to hand over some of their ‘unallotted interest (sometimes called surplus funds)’ to the newly established Māori Purposes Fund Control Board. The Waikato–Maniapoto board contributed more than £30,000 of the £90,000 transferred to set the fund up.\(^{379}\) The money was used for a variety of projects. In 1930, for instance, the control board authorised a contribution to the incidental costs of a visit by four Māori chiefs to Rarotonga, ‘to extend the hand of friendship to their Rarotonga cousins and to invite their chiefs to visit New Zealand’. The group included no leaders from Te Rohe Pōtae per se, although Hoani Te Heuheu (son of Te Heuheu Tūkino) went, and Tonga Mahuta, brother of the Māori King, was to have participated had ill health not intervened. The fund also contributed over £1,000 for a rugby match in Wellington between a New Zealand Māori team and the British national team.\(^{380}\)

In 1928 came another legislative change, involving three elements: a compromise on outstanding rates and survey charges, consolidation schemes, and some board funding for the development of Māori land. After much lobbying by Ngata, the Native Land Amendment and Land Claims Adjustment Act passed in October 1928 provided for a limited development scheme whereby funds held by the Māori land boards could be used, under board control and direction, to develop and

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378. President to Under-Secretary, 4 April 1928 (doc A73, pp 647–648).
379. Native Land Amendment and Native Land Claims Adjustment Act 1924, s3; AJHR, 1932, B-4A, p36 (Loveridge, *Māori Land Councils*, p151). ‘Surplus funds’ could now also be used not only for buying and furnishing office premises but for constructing, maintaining, repairing, and equipping them.
settle small holdings for Māori in and around Māori communities. The following year, the Native Land Amendment and Native Land Claims Adjustment Act 1929 amplified and extended the scheme. The scheme provided that any Māori land or Māori-owned land in general title (even if vested in a land board or incorporation) could be vested in the Crown for the purposes of a Māori land development scheme. Chapter 17 will discuss this land development regime and its implications for Te Rohe Pōtae Māori.

12.6.3 The MacCormick inquiry

By the late 1920s, settler farmers began to exert further political pressure over leased Māori land in the Waikato–Maniapoto board district as a result of growing economic difficulties. A collapse in commodity prices had left many farmers struggling and, by June 1928, the Waitomo County Council was drawing attention to an increasing number of lease holdings apparently being abandoned. Many lessees of Māori land were finding that, with falling land values, they could not recoup the cost of their improvements when their leases came to an end, and there were some complaints that the fruits of their labours should be left ‘for the benefit of the natives’.

As will be considered in further detail in chapter 14, the Government’s response in 1929 was to establish a Royal Commission of Inquiry into Native Land Leases to investigate the leasing of Māori land in the Waikato–Maniapoto district. It chose Charles MacCormick, judge of the Native Land Court and president of the Waikato–Maniapoto land board, as chairperson, with two farmers, W F Metcalfe from Auckland and G W Richards from Ōtorohanga, as his fellow-commissioners. There was no Māori representation on the commission – and MacCormick resisted the idea when it was put to him. The commission began its hearings in May 1929 and held sittings in Te Kūiti, Taumarunui, and Ōtorohanga.

An editorial in the King Country Chronicle, reporting on the commission’s hearings, acknowledged that there were certainly difficulties for the lessees. It however thought that ‘it would be scarcely fair to ask the Maori owners to pay for the mistakes of other people’. MacCormick, on the other hand, seems to have implied that this was inevitable. That said, the commission ‘[did] not propose to make the natives suffer anything more than we think will ultimately be for their good’.

The tenor of the commission’s ensuing report to Parliament, furthermore, reflected the point of view of the lessees rather than the lessors. Apart from acknowledging that ‘the position [with respect to compensation for improvements] is not without its disadvantages to the Natives themselves’, there were only

382. King Country Chronicle, 19 May 1928 (doc A73, p 728); doc A73, pp 724, 728, 730.
385. King Country Chronicle, 11 May 1929 (doc A73, p 737).
two other references to Māori concerns: one was to record that they ‘objected in the most emphatic manner to any alterations of leases’, and the other was in relation to two cases of complaint about timber being cut on leased land.\(^{387}\) The report certainly did not reflect the views of those such as Tame Kawe who, according to the *King Country Chronicle*, felt that the return of their land, in whatever state, would be a better solution than having to pay compensation for improvements.\(^{388}\) The commission's general conclusion was, rather, that ‘the only practical solution’ to problems relating to finance, compensation, and rent, was for the lessees to acquire the freehold.\(^{389}\)

After the commission sat, Raureti Te Huia and 90 others sent a petition to Parliament on behalf of Māori living in the Waikato–Maniapoto land board district, asking that leases not be varied or altered in any way. They reasoned that just as the lessees were unlikely to hold themselves responsible for any hardship inflicted on the landowners by the leases, so, by the same token, the landowners should not be held responsible for any hardship that those self-same leases inflicted on the lessees.\(^{390}\) Their pleas went unheeded.

Section 30 of the amending Act of 1929 allowed the Waikato–Maniapoto land board (specifically) to vary the terms and conditions of ‘any lease heretofore granted of Native land’ in the district, subject to the approval of the Native Minister.\(^{391}\) This meant that the board, with the Minister’s approval, could now reduce rents, ease mortgage repayment terms, and modify the conditions around compensation for improvements. There was no stipulation that the owners be consulted. These provisions were continued by section 78 of the Native Purposes Act 1931. In addition, section 115 of that Act allowed all Māori land boards to adjust the rents on any vested land (specifically) that had been leased out by them. They could now reduce the rents; remit them in part or in full; or extend the deadline for payment.

In the period up to 1931, the options for land alienation available to Māori landowners under the 1909 Act remained, for the most part, in place. There were, however, two changes following the passing of the Native Land Amendment Act 1913. First, under this Act, an individual could sell his or her interests to the Crown without going through a meeting of owners.\(^{392}\) Secondly, from 31 March 1914, the option of vesting land with a Māori land board under part XIV of the 1909 Act was no longer available.\(^{393}\) From late 1922, an owner could apply for a mortgage from the land board. In the case of the Waikato–Maniapoto District Māori Land Board, however, most of these mortgages were granted to Pākehā purchasers.

\(^{387}\) AJHR, 1929, G-7, p.4 (doc A115, p.38); doc A73, pp.734–737, 740; doc A73(a), vol 10, pp.297–300.
\(^{388}\) *King Country Chronicle*, 14 May 1929 (doc A73, p.739).
\(^{389}\) AJHR, 1929, G-7, p.6.
\(^{390}\) Document A75, p.99; doc A73, p.747; doc A73(a), vol 6, pp.66–70.
\(^{391}\) Document A75, p.99.
\(^{392}\) Native Land Amendment Act 1913, s 109
\(^{393}\) Native Land Amendment Act 1913, s 95.
Tena koe

‘He Pitihana’

Ko Pitihana tenei na matou nganga maori oroto ite takiwa poari whenua Maori o ‘Waikato-Maniapoto’ Mo runga inga take e whai ake nei:—

1 Notemea tera te tono a nga kai-tango rihi whenua Maori kite paramata kia whaka whiwhia ratau ki tetahi mana waahi i te kawenata Riihi.

2 Notemea kua mohio matau ki ene hiahia o aua kai-tango rihi
   (a) Kia whiwhi ratau ki te mana hoko i taua whenua rihi,
   (b) Kia whiwhi ratau ki te mana whakahou whakanuku atu ranei i nga tau o taua whenua rihi,
   (c) Kia whiwhi ratau ki te mana whakaiti ihoi nga moni utu rati o taua whenua rihi.

3 I te tau 1928 ka whakaturia a te kawanatanga tetahi komihana hei uiui i te tika, i te hea ranei, o nga tonoanga kai-tango rihi.

4 A notemea kua tau taua komihana ki matau takiwa a ko tiati makomeke Te Tiamana o taua komihana.

5 No reira ka hoatu to matau kupu kia koe a to matau minita maori me koe hoki e te tiamana o taua komihana, kia awhinatia mai hoki ta matau e inoi atu nei:—
   (1) Kaua rawa a whaka-rareketia, e whaka-tikatika ina, e patua, ranei Tetahi, etahi, tekatoa ranei, o nga rarangi, o roto i te Kawenata rihi o taua whenua.
   (2) Ta matau kupu tenei ara me waiho tonu a matau rihi i runga i nga tikanga i oti nei i a matau ko nga kai-tango rihi.
   (3) Mehe mea ranei kei to pangia aua pakeha tango rihi ata mate,
       Mehe mea ranei ko matau e pangia ana ata mate,
       I raro i nga tikanga i oti nei i a matau te whakanae,
       A kua paahitia nei hoki e te poari taua kawenata, whakaaetanga,
       E mea ana matau e hara i a matau to ratau mate,
       A ehara hoki i a ratau to matau mate, i raro i nga tikanga o, taua kawenata rihi.

6 Mehe mea ene mate i pa no waho atu i nga tikanga o te rihi i e mau nei i roto i te kawenata o taua rihi, e kore rawa e ahe te utaatu anei mate ki runga i te whenua me ona tikanga.

Ka inoi tonu o kai-pitihana i raro i te maru o te ariki.

The Hon Sir Apirana Turupa Ngata
Minister of Maori Affairs
Wellington

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Petition No 111/29
Hon Sir Maui Pomare

‘A Petition’

To The Honourable Sir Apirana Turupa Ngata: Minister of Native Affairs, Wellington.

Greetings:

This is a petition from us, from Maoris living in the Maori Land Board District of Waikato–Maniapoto in regard to the following matters:

(1) We are aware that lessees of land in this District have petitioned Parliament to enact legislation empowering the lessees to disregard the covenants of their leases.

(2) We are aware that the lessees are desirous of obtaining the following powers:
   (a) To sell their leases.
   (b) To have their leases renewed and the term extended.
   (c) To have the power to reduce the rate.

(3) In the year 1928 the Government set up a Commission to enquire into this matter.

(4) The Commission sat in our District, the Chairman being Judge MacCormick.

(5) Therefore we ask you, our Native Minister, to favourably consider our requests which are as follows:
   (a) That leases of land held by these lessees be not varied or altered.
   (b) That leases to remain as hitherto.
   (c) We maintain that we are not responsible for any hardship that the lessees are suffering through these leases as we are of the opinion that the lessees would not take any responsibility for any hardship inflicted upon us under these leases.

(6) If the hardship which the lessees are suffering from at the present time are not directly caused by these leases it is not right that we should be made to suffer for such hardships.

Your petitioners will ever pray.

(Sgn) Raureti te Huia & Others
12.6.4 Legislative changes to the Māori land board regime, 1932–53

Throughout the 1930s and 1940s, the Māori land boards faced increasing criticism from both officials and Māori, particularly with regard to their oversight of the administration of Māori land even as their role steadily diminished.

The Native Land Act 1931, largely a consolidation of earlier legislation, did, however, maintain significant power for the boards, including a wide discretion to deal with any money received. Boards could still hand money over to the Native Trustee, invest it, or use it to buy or lease land. The Act was also intended to reorganise the system of lending to Māori farmers since, by this time, the sizeable funds held by Māori land boards in 1920 had been almost exhausted (although not often, as in the case of the Waikato–Maniapoto board, on lending to Māori).

12.6.4.1 National Expenditure Commission, 1932

In July 1932, with the Depression biting hard, the Crown appointed a five-member commission to carry out a wide-ranging review of national expenditure. The commissioners were asked to investigate government spending on various functions and services and to identify areas for reductions, improvements, or introducing further efficiencies. The commissioners had several concerns about the Māori land boards:

- The role of Native Land Court judges: The commissioners concluded that the ‘line of demarcation between Boards and Courts’ had ‘in some respects’ disappeared. They commented about the boards effectively being ‘one man’ boards, and drew attention to the risks inherent in leaving one person to make decisions alone.

  Richard Boast summed this up by saying that Native Land Court judges, in their dual capacity also as land board presidents, had by the 1930s become ‘extraordinarily powerful figures in their regions.’

  For Te Rohe Pōtae Māori, this meant that there was a clear and dangerous monopoly over decision-making.

- The boards’ workload and resourcing: Expressing the view that the boards’ main duty had originally been ‘to protect Natives from exploitation’, the commissioners commented that board functions had since undergone ‘considerable change’. Now boards were also tasked with undertaking field operations, which they were not properly resourced to do. There was no time and money available, for instance, to organise periodic inspections of lands leased to Pākehā to ascertain whether the covenants of their leases were being observed. The boards’ financial operations, too, had grown to the point where they were now ‘of some magnitude’.

  The commissioners, furthermore, queried whether a legally trained judicial officer was the best equipped...
person for carrying out all the financial, administrative and managerial work expected of the boards.\textsuperscript{398}

\textit{The Native Minister’s powers:} The commissioners considered that the Minister’s powers in respect of the land boards were unparalleled in any other department and that constitutionally the situation was not healthy.\textsuperscript{399} The boards’ power to lend money to Māori and to develop and farm Māori lands, for instance, was ‘substantially dependent upon the approval and direction of the Native Minister.’\textsuperscript{400}

\textbf{12.6.4.2 The declining role of the boards}

In the years following the National Expenditure Commission’s report, several amendments diminished the Māori land boards’ responsibilities. In December 1932, a Native Land Amendment Act established a Native Land Settlement Board. As well as taking over the functions of the former Native Land Purchase Board and the Native Trust Office Board, it also became responsible for overseeing the management of the development schemes. Under the same Act, the power to confirm alienations of Māori land shifted from the land boards to the Native Land Court.\textsuperscript{401}

The Native Land Settlement Board was then replaced in 1935 by the Board of Native Affairs. The following year, an amending Act endorsed the new board’s control over the development of Māori land, further dwindling the role of the Māori land boards. The Board of Native Affairs could, for example, gazette any land vested in a Māori land board and bring it under its own control instead. Māori land boards could still be the agents of the owners in matters of leasing, but a lease could only be granted on the direction of the Board of Native Affairs.\textsuperscript{402} In cases where the land was not formally vested, the situation apparently led to confusion even on the part of those administering the legislation. In 1949, the Crown solicitor advised the Under-Secretary of Māori Affairs that the Board of Māori Affairs (as it had now become) had been directing Māori land boards to issue leases ‘for the best part of 20 years’ without the land board executing any formal confirmation of the lease. He advised that the legislation be amended to clarify the situation. Section 20 of the Māori Purposes Act 1949 accordingly stipulated that alienations dealt with by the Board of Māori Affairs did not require confirmation. It backdated the measure to December 1932.\textsuperscript{403}

\textsuperscript{398} AJHR, 1932, B-4A, pp 33, 34, 39 (Loveridge, Māori Land Councils, p 151); Bennion, The Māori Land Court and Land Boards, p 55.

\textsuperscript{399} Bennion, The Māori Land Court and Land Boards, p 55.

\textsuperscript{400} AJHR, 1932, B-4A, p 31; Loveridge, Māori Land Councils, p 151; Bennion, The Māori Land Court and Land Boards, p 54.

\textsuperscript{401} Document A73(b), para 6.11; transcript 4.1.15, p 1292 (Terry Hearn, hearing week 10, Maniaroa Marae, 6 March 2014); doc A115, pp 117–118; Bennion, The Māori Land Court and Land Boards, pp 54–55.

\textsuperscript{402} Native Land Amendment Act 1936, ss16(3), 24(3); doc A115, pp 119–120; Bennion, The Māori Land Court and Land Boards, pp 56–57.

\textsuperscript{403} Bennion, The Māori Land Court and Land Boards, pp 66–67.
Over time, it seems that actual board meetings – that is, with both members present – became rare events anywhere in the country. One president, speaking of the Taitokerau board, wrote in September 1949 that arrangements were ‘flexible’, with the registrar generally being in the office and the president often out around the district. He continued: ‘Some matters come to the Office and are dealt with by the Registrar, some are dealt with by me in the district and some are dealt with by us after conference in Auckland.’

In many cases, he said, they conferred over the phone. ‘Fixed meetings (say monthly),’ he went on, ‘would restrict the movements of the President who (as Judge) already has difficulty in fitting in all the sittings necessary.’ At least one other judge agreed that formally convened meetings would be unduly restrictive. This, coupled with the 1932 commission’s comments about ‘one man boards’, suggests that the failure to hold formal meetings was widespread and likely affected Te Rohe Pōtæ as well.

While the boards’ role in Ngata’s land development schemes lessened from the 1930s onwards, the boards continued to have a role in the leasing and development of vested Māori land outside the development schemes. A Native Department report from 1932 claimed that in the King Country these were ‘the best of the lands’, and said they were mostly leased to Pākehā. The report went on to comment that this left ‘a comparatively small area of good land available for the settlement of the large Maori population after deducting the leased lands and the more or less useless lands’.

As noted above, the land board was still theoretically required to confirm leases of non-vested land, but this did not always happen because of the confusion arising from the complex legislation. As will be shown in chapters 13 and 14, even with the vested lands, land board administration left much to be desired.

In the Waikato–Maniapoto district, the greatest cause of complaint from Māori seems to have been the board’s management of income, and especially income distribution. One complainant said that owners’ rent money was being held by the board and spent haphazardly, not on development. Many others simply wanted payment of the rents they considered owing to them. One such was a letter written in July 1932 by an elderly man who said he was entirely dependent on rents and timber royalties. Until February that year, he said, these had been paid regularly, but he had received nothing since then, despite several letters to the land board. He claimed it was ‘the general condition among Maoris throughout the King Country’.

404. Prichard to Under-Secretary, 8 September 1949 (Bennion, *The Māori Land Court and Land Boards*, p 68).
405. Prichard to Under-Secretary, 8 September 1949 (Bennion, *The Māori Land Court and Land Boards*, pp 68–69).
By this time, the impact of the Depression meant that increasing numbers of lessees were having difficulties paying their rents, so the boards had less income from which to make payments to owners.\textsuperscript{411} Hearn, for instance, found that as at 30 November 1932, 138 lessees of vested land in the Waikato–Maniapoto district were in arrears with their rent, as were 111 lessees of non-vested land. Overall, that represented £12,996 of missing income.\textsuperscript{412} In the district as a whole, payments to beneficiaries dropped by two-thirds in the period from 1930–31 to 1933–34.\textsuperscript{413} Such payments made were also sometimes erratic.\textsuperscript{414} All this must have created difficulties for those recipients who needed to be able to count on a regular income. Between 1926 and 1936, according to Hearn, the economic position of Māori relative to Pākehā, nationwide, deteriorated sharply.\textsuperscript{415}

Thus, by mid-century, the land board system had failed to provide what was expected. The Waikato–Maniapoto District Māori Land Board had been reduced to largely overseeing a continuing significant loss of land and resources at a time when Māori needed them most if they were to prosper and develop. By the 1950s, the land board system was a shell of its formal self and, as demonstrated, had created many more problems for Māori landowners on top of those it was originally designed to address.

12.6.4.3 Māori views on Māori land law and the boards in this period
Throughout the 1930s and 1940s, Māori continued to express their concern with the state of the legislative regime governing Māori land, and the role of the Māori land boards. For instance:

- In 1936, attendees at a Māori Labour conference raised a number of land-related issues. They wanted several Acts to be repealed, including the 1931 Act, and replaced with an ‘all embracing Statute’ that would, among other things, provide for the ‘amalgamation of all the multifarious rights and duties of the Native Department, the Native Trustee and the Maori Land Boards.’ A particular – and by then familiar – concern was that ‘the Rights and Privileges of the native owner be respected, and they be treated as partners with the Crown in the development of their own lands.’\textsuperscript{416}

- In 1945, at another Māori conference, a subcommittee set up especially to look at Native Land Acts was particularly scathing of section 281 of the Native Land Act 1931. The committee said that this provision, which allowed boards to deal with money from the alienation of Māori land, ‘tends to create an inferiority complex in Maori people.’ The committee denounced, in no

\textsuperscript{411} Document A\textsuperscript{75}, pp 114–115.
\textsuperscript{412} Document A\textsuperscript{73}, pp 625–626.
\textsuperscript{413} Document A\textsuperscript{73}, p 627.
\textsuperscript{414} Document A\textsuperscript{75}, p 110.
\textsuperscript{415} Document A\textsuperscript{73}, p 625.
uncertain terms, both the moral injustice of the provision and its failure to comply with the Treaty:

Legislation of this sort is so repugnant to the English idea and principles as appertaining to the liberty of the subject that its parallel does not exist in the law now expressed in the Statutes and applying to the English as a Race. . . . [it] does not connote equality between the two Races as British subjects. . . . [it is] diametrically opposed to . . . Article the Third of [the] Treaty of Waitangi.417

In 1948, Māori again lobbied for representation on the land boards, but when the proposal was circulated to judges for comment, it failed to gain traction.418

12.6.4.4 Royal Commission on Vested Lands and abolition of Māori land boards

In November 1949, a three-man royal commission was appointed to inquire into matters relating to lands vested in Māori land boards. The commission, which included Richard Ormsby of Te Kūiti, began its investigations in 1950 and finally reported in June 1951.419 The commission sat for two days in Te Kūiti in September 1950 to hear evidence in relation to the Waikato–Maniapoto district. It discovered that 199,148 acres of Waikato–Maniapoto land had been vested under the provisions of the 1909 and 1931 Acts. It then listed the approximate areas sold to the Crown (103,085 acres, or nearly 52 per cent); sold to private buyers (34,679 acres, or some 17 per cent); and revested in the owners (10,843 acres, or only a little over 5 per cent) (refer to figure 12.1). Around 25 per cent was still held by the land board (50,418 acres), with less than one-third of that under current lease.420

Given that the original wish of Te Rohe Pōtāe Māori had been to lease their land for income, pending its eventual return to the beneficial owners, the commission’s statistics demonstrate the extent to which the Crown’s policies had failed to protect their lands. While it is likely that the Great Depression contributed in no small part to the deteriorated position since 1932 (when it appears much of the vested land was still leased out), the board had clearly been instrumental in the permanent loss of land that had occurred since then.

The commission’s investigations also highlighted dissatisfaction with the Waikato–Maniapoto board’s attitude to deciding the boundaries of areas to be leased, commenting that there had been more complaint about the issue here than in any other district. The problem was, they said, that there was, ‘generally speaking, no close relationship between the Māori Land Court subdivisions and the Board subdivisions’. Thus, several blocks might end up being subject to the

419. AJHR, 1951, G-5; doc A115, p 42. The evidence does not disclose Richard’s relationship to Robert, Jeremiah, and Arthur, mentioned earlier, but he would certainly have been of the same family.
420. AJHR, 1951, G-5, pp 42–43; doc A115, p 42. This leaves 123 acres unaccounted for, if the commission’s total of 199,148 acres is correct.
same lease. They pointed to the difficulties this posed if owners in one affected block were willing and able to pay compensation for improvements when the lease expired, with a view to resuming possession of their land, while owners in other affected blocks were not.\footnote{421}

It is possible that this question of lease boundaries, along with the telling sales and lease statistics outlined above, are what Hearn had in mind when he stated, under questioning by the Tribunal at hearing, that the Waikato–Maniapoto board had been 'singled out by [the] commission as having failed'.\footnote{422} In other respects, however, the commissioners’ report does not suggest that the Waikato–Maniapoto board was any better or worse than other land boards.

By the end of the 1930s, not only were the boards meeting infrequently, but legislation had left them with much reduced powers. In October 1939, Ngata expressed concern about the situation of the Māori land boards, telling Parliament that: ‘Members of those Boards are feeling that they are being relegated to a very inferior place in the economy of the Native Department.’\footnote{423} Tom Bennion concluded that, during the 1940s, the boards became ‘largely redundant’, and Loveridge said that, had it not been for the Second World War, they would not have lasted the

\footnote{421. AJHR, 1951, G-5, pp 42–46 (doc A115, p 42).}
\footnote{422. Transcript 4.1.15, p 1394 (Terry Hearn, hearing week 10, Maniaroa Marae, 6 March 2014).}
With the advent of war, however, the Government’s attention turned elsewhere, allowing the land boards to limp on.

In 1949, the Under-Secretary of Māori Affairs suggested that the boards should be disbanded altogether, as except for managing the vested lands, their functions had now disappeared. He also again criticised a regime where one person held the dual roles of judge of the land court and president of the land board, and highlighted the different skill sets involved in each role: ‘it is altogether wrong’, he said, ‘that those concerned to see to the application of the law should be involved in matters which are purely administrative’. On top of that the registrar was, in his view, a ‘mere cipher’: it was the judge who effectively had the final say in all matters. In February 1951, he again called for the boards’ abolition, arguing that ‘[t]hough the Boards are instruments of Government, they are not answerable to any authority save in the last resort through the sanction that members may be removed from office.’

The following year, the Minister of Māori Affairs asked his department to prepare plans for abolishing the land boards. In August of 1952, legislation was passed to dissolve the Māori land boards and abolish Māori land districts. The rights and duties of the boards were transferred to the Māori Trustee. At the time of their demise, the land boards held, between them, a total of £1,305,500 belonging to their beneficiaries.

12.6.5 Treaty analysis and findings

The Native Land Amendment Act 1913 marked the end of the already-minimal provision for Māori representation on the land boards tasked with administering Māori-owned land. The Act merged the Māori land boards with the Native Land Court so that they comprised only the local Native Land Court judge and registrar. There continued to be no statutory requirement for consultation with the beneficiary owners of the land being dealt with by the board. Other than the very limited and problematic provisions for meetings of assembled owners, Māori landowners were largely sidelined from decision-making about the fate of their lands. These changes, moreover, occurred without any meaningful consultation – and certainly no official consultation of note – with those affected.

The 1913 Act was problematic in other respects, too. The effective merger of the board and court created a potential conflict of interest for judges between

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their judicial role and their role as presidents of the boards. Effectively, they were required to identify Māori freehold land suitable for alienation, while at the same time they were meant to be acting as trustees for Māori land vested in the board. Other contentious changes in the 1913 Act included the provisions allowing the Crown to purchase ‘or otherwise acquire’ virtually any Māori land – even, in some cases, land that had hitherto been protected. The legislation also relaxed the requirements to ensure owners retained sufficient land for their needs before the land boards approved alienation.

Post-1913, the Crown passed legislation almost on a regular basis. This legislation refined Māori land administration legislation, followed a pattern of enhancing the powers and functions of the boards to facilitate alienation of land from the owners, and allowed the boards to use income derived from Te Rohe Pōtae Māori lands for important land settlement aims to benefit the Crown and Pākehā, rather than Māori.

Under the Native Land Act 1931, the land boards retained considerable power and could deal with Māori land – either vested or brought under their oversight through other mechanisms – with little or no input from Māori themselves. In the period from then till 1952, matters continued to deteriorate. The Depression and the Second World War did not help, certainly, but the principal problem for Māori was the Crown’s land legislation. Māori rarely knew what changes were coming next and the body of legislation was becoming ever more complex. We note that Hearn’s estimate of ‘several thousand’ provisions was not contested by Crown counsel at hearing.431 It was unreasonable of the Crown to expect Māori to deal with such a complex land regime when even those charged with administering it did not always understand what was required.

By the end of the period, Māori had become deprived of virtually any influence over what the land boards did with their land, how they did it or how they used funds from their lands. In Te Rohe Pōtae, the board had, for example, facilitated the sale of large area of Māori land, either to the Crown or to Pākehā. To make matters worse, beneficial owners also lost control of what happened to the income from any alienated land and resources (whether sold or leased). In short, they had lost mana whakahaere not only over what happened to their land, but also to the income received from it.

There were serious shortcomings with the land board process. Day-to-day decision-making was focused largely in the hands of one person who, as judge of the Māori Land Court and president of the land board, had to juggle sometimes-conflicting expectations. On the one hand, the Crown required judges to oversee alienation, and even, on occasion, signal the availability of land for that purpose; on the other, acting as boards, judges had a fiduciary duty as trustee to look after land (and particularly vested land) for its Māori owners. The mix of judicial,

431. Transcript 4.1.15, pp 1147–1147 (Terry Hearn, hearing week 10, Maniaroa Marae, 6 March 2014).
administrative, managerial, and business skills required were unrealistic; the workload was huge; and the funding and support was woefully insufficient. As designer of the scheme, and responsible for monitoring and amending it, the fault for such serious problems lay with the Crown.

Additionally, the Crown determined that much of the income from Māori land should either be used to fund the land board’s work, or else diverted to Wellington, where it would be allocated to various projects intended to benefit Māori more generally. Where money was retained by the boards, some of it was invested rather than being paid over to the beneficial owners. Indeed, some was even lent out to Pākehā to help them settle and develop the Māori land they had acquired. Māori themselves received nowhere near the level of assistance provided to Pākehā. The land development schemes in Te Rohe Pōtae will be discussed in chapter 17 of this report.

We find that the Crown thus acted in a manner inconsistent with the Treaty of Waitangi during the period 1913–53 in a number of ways. First and foremost, it continued to act in a manner contrary to article 2, which guaranteed to Māori the full, exclusive, and undisturbed possession of their lands, estates, and resources for as long as they wished to retain them. In other words, its actions, policies, legislation and land administration scheme under the land boards during this period were not consistent with the guarantee of tino rangatiratanga, Te Ōhākī Tapu agreements, and the various compromises over the years that Te Rohe Pōtae Māori were prepared to settle for.

The Crown created a regime that failed to observe the basic requirements of good governance. Therefore, we find that the Crown acted in a manner inconsistent with good governance and the principles of partnership and mutual benefit, and it failed in its duty to act honourably and in good faith.

We find, further, that the Crown’s actions were discriminatory and went against the plain meaning of article 3, in which the Crown promised Māori all the rights and privileges of British subjects. As Seddon had acknowledged in 1900, there was no way that Pākehā landowners would be expected to accept a system that was going to deprive them of the right to administer the leasehold or freehold of their land without them having a say in the matter. Yet, that was the regime which the Crown imposed on Māori: they could do nothing with their land (other than use it for their own basic subsistence) without their property rights being significantly limited by the system. Not only that, but when their land was alienated, the beneficial owners sometimes did not receive any of the proceeds from that alienation. Some of the money from the alienations may well have gone to projects that benefited Māori in general, but it had not been taken with the consent of those to whom it was rightfully due, nor did they have any say in how it was spent. Again, no such land administration regime was imposed on the Crown’s Pākehā subjects. Thus, we find that the Crown also acted in a manner inconsistent with the principle of equity by failing to address this inconsistent and unfair treatment experienced by Māori landowners of Te Rohe Pōtae unfortunate enough to have land vested in their local land board.
12.7 Prejudice
The evidence examined in this chapter has shown that under the Crown's Māori land legislation of the first half of the twentieth century, Te Rohe Pōtae Māori became progressively disempowered in relation to their control, management and protection of their land and resources. By mid-century, their mana whakahaere in managing their lands was substituted by the weight of the Crown's legislative scheme, rules, and regulations. They were effectively shut out of being able to manage their lands and resources as they wished. Their tribal structures had not been recognised by the State and their rights to land were gradually undermined by the land boards. These boards proved inadequate vehicles for delivering mana whakahaere and, instead, served to hasten land loss.

The evidence has shown that the main thrust of the Crown's legislation, especially in the first quarter of the century, was to transfer Māori land into the hands of settlers, whether through lease or purchase. The following chapters will explore the impacts of this legislation in Te Rohe Pōtae, and the specific prejudice Māori suffered as a result. We can say here, however, that the collective prejudice suffered by Te Rohe Pōtae Māori as a result of the Crown's twentieth-century land regime and its policies was compounded by the fact that, in many cases, little financial gain accrued to beneficial owners. The bulk of the money resulting from land alienations was retained by the board and used for a range of purposes, including being paid into a central government fund for projects deemed to be of assistance to Māori generally. We have noted, for example, the use of money for a 1930 trip to Rarotonga by four Māori chiefs and for a 1933 international rugby game in Wellington (see section 12.6). Nor did Māori owners receive much in the way of financial assistance from the Crown and the land boards to help them develop land they had retained themselves prior to 1930.

The cumulative prejudice of all these various factors was that Te Rohe Pōtae Māori no longer controlled their land, and few had been able to become well equipped through management experience or the opportunity to build capital for a successful future on land they owned as individuals. We will consider whether they suffered any further prejudice in the chapters to follow.

12.8 Summary of Findings
We make the following overall findings with respect to the Crown's Māori land council and board regime:

- Te Rohe Pōtae was targeted for particular attention by the Crown because of what was perceived as its disproportionately large area of ‘idle’ Māori land. The Crown wanted to bring this land into productivity to boost the economy. Pākehā settlers, who were clamouring for land to purchase or lease, were viewed as a much better vehicle for achieving land development.
- Te Rohe Pōtae Māori were not necessarily averse to leasing some land to settlers, and accepted that sales may be inevitable, but generally they wanted more direct control of any alienations through tribal entities.
The Māori Lands Administration Act 1900 was the Crown’s attempt to find a model that would address settler demands whilst still being acceptable to Māori. It provided for alienation by leasing and voluntary vesting in Māori land councils. Even though the councils were not the local, representative bodies that Te Rohe Pōtae Māori had been seeking, and very little land was handed over to the councils, they were prepared to work with the Crown to improve them.

The 1900 legislation was not given a fair trial by the Crown and was not adequately supported or resourced. In failing to give full support to the lands councils, the Crown acted in a manner inconsistent with the principles of the Treaty of Waitangi.

Te Rohe Pōtae Māori offered several solutions to the Crown on how to improve the 1900 legislation, but the Crown unilaterally moved to enact alternative legislation in 1905, 1907, and 1909, all of which laid the basis for the overrepresentation of Pākehā on Māori land boards, compulsory vesting of Māori land and the facilitation of alienation of land from Māori to the Crown for Pākehā settlement.

In response to continuing settler pressure for land, the Crown first reduced and then, in 1913, entirely eliminated Māori representation from the Māori land councils and boards. The result was a system whereby control, decision-making, and influence shifted away from Māori as a collective into the hands of land boards comprised entirely of Pākehā.

When Te Rohe Pōtae Māori land was alienated by lease or sale through the land boards, there was no guarantee that the owners would receive the income. The boards were poorly resourced and struggled to distribute income. They also became empowered to use income to fund projects for the benefit of Māori generally, or to assist Crown and private purchasing.

The Crown had set up the vesting regime on the understanding that Māori would benefit as well as Pākehā settlers. When it failed to provide the councils and boards with adequate support and funding, it was Māori who bore the brunt of the impact. In doing so, the Crown acted in a manner inconsistent with the principles of the Treaty of Waitangi, the undertakings it gave in terms of the Te Ōhākī Tapu agreements, and the various compromises over the years that Te Rohe Pōtae Māori were prepared to settle for.

The cumulative effect of the Crown’s twentieth-century legislation was that Te Rohe Pōtae Māori suffered prejudice both in the loss of control and the actual loss of their lands, from which they have not been able to recover.
CHAPTER 13
WHENUA I MAUHERETIA:
THE VESTED LANDS IN TE ROHE PŌTAE

... large areas of land now remain vested ... without the consent and against the wishes and desires of the great majority of the Native owners thereof many of whom have been divested of their legal title not only without their consent but also without their knowledge.

—Tame Kawe and others

The Crown has simply confiscated the land ... [it has been] practically filched ... was there worse confiscation than under the Act of 1907, where thousands of acres, without the consent of the Natives, were put under the Maori Land Boards, and in some instances have gone absolutely and for ever from the control of the Natives?

—William Herries

13.1 Introduction

As the previous chapter examined, the Crown’s expectation that Māori would vest their land in the Māori councils established by the Māori Lands Administration Act 1900 proved unfounded. Having already lost about a third of their land by 1900, Māori landowners in Te Rohe Pōtae were cautious about vesting their lands in the councils, if doing so meant that they could lose control of it. By 1905, the Government and settlers had already lost patience with what they saw as the slow progress of vesting, intended to open Māori lands for leasing. From 1905, under increasing pressure to make Māori land available, the Government began to reduce protections for Māori owners, and began extensive purchasing in 1906. This pressure culminated in the passing of the Native Land Settlement Act 1907, which provided for the compulsory vesting of Māori land that had been or would be identified as available for settlement by the Native Land Commission. This chapter considers the Crown’s compulsory vesting of 200,738 acres under the 1907 Act, and its impact on Te Rohe Pōtae Māori.

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1. Tame Kawe and others to Native Minister, petition, received 4 June 1912 (doc A59(a), pp 55–56).
13.1.1 The purpose of this chapter

The compulsory vesting of land in Māori land boards, the large-scale development of that land for Pākehā settlement, and the eventual failure of the scheme had far-reaching consequences for Te Rohe Pōtae Māori. Vesting land, combined with a renewed Crown effort to purchase land from 1906 (as discussed in chapter 14), meant that permanent land alienation in the district was all but inevitable.

In other districts, large areas had been vested, but on a voluntary basis. What occurred in this district, alongside the Crown’s many other policies for acquiring Māori land, was compulsory nationalisation on a large scale. It was, furthermore, compulsory nationalisation that specifically targeted this district, as the Native Minister (James Carroll) made clear in parliamentary debates.³

The scheme was far from a success. Hopes that the leased portions of the vested lands would eventually be returned to Te Rohe Pōtae Māori ownership in an improved state were not realised. By 1950, more than two-thirds of land vested in the Waikato–Maniapoto District Māori Land Board had been sold, most of that to the Crown. Another 5 per cent had been returned to the owners. Just over 50,000 acres remained in the board’s hands, of which a little more than half was returning an income.⁴ Much of that was sold within the next decade or two. This chapter examines how the compulsory vesting scheme resulted in a vast transfer of land and wealth from Te Rohe Pōtae Māori to a new class of State-supported Pākehā landholders. The economic inequalities created by this transfer are still evident today.

13.1.2 How this chapter is structured

This chapter begins by considering other Tribunal reports to establish Treaty standards relevant to this inquiry on the alienation of Māori land. It then summarises the claimants’ and Crown’s positions, identifying key points of difference between the parties and issues for discussion in this inquiry.

The main portion of this chapter examines how Te Rohe Pōtae Māori land came to be compulsorily vested in the Māori land boards between 1909 and 1910 under the provisions of the Native Land Settlement Act 1907, focusing on the degree of consent Te Rohe Pōtae Māori landowners were able to give for vesting their lands.

The remainder of the chapter examines the Waikato–Maniapoto District Māori Land Board’s administration of the vested lands, and whether decisions on administration and alienation were sufficiently protective of owners’ interests, made in accordance with their wishes, and what the outcomes were for the vested lands. We also consider whether the Crown was responsible for ensuring that the board’s actions were Treaty-compliant. The Treaty analysis and findings sections compare both the system by which the land was vested and the management of the vested lands against the established Treaty standards.

³ Document A73, p 144.
13.2 Issues

13.2.1 What other Tribunals have said

A number of Waitangi Tribunal reports have commented on vested lands under the 1900–09 legislation. The Whanganui Land Tribunal for example, reported on vested lands beginning with a review from 1900 to 1909. It identified how ‘highly invested’ the Government was in the scheme succeeding. The Tribunal found that while initially well-intentioned in the context of that district, where it seems the lands were voluntarily vested, the Crown’s scheme ‘could have been better thought out and executed’ in a number of ways. In terms of leasing the land, the Tribunal noted that the ‘Achilles heel’ of the scheme was how it compensated lessees for improvements and, as a result, how the land being returned to Māori was jeopardised. It also identified that where it proved difficult to lease the land, the Government promoted perpetual leases so that the leases would be more attractive to prospective lessees.

The Wairarapa ki Tararua Tribunal referred to the compulsory vesting provisions of the Crown’s legislation during this period, as did the Central North Island Tribunal, the Hauraki Tribunal, and the Tauranga Moana Tribunal, however they made limited comment on the application of these provisions in those districts.

13.2.2 Crown concessions

In respect of vested land, the Crown made the following concessions: “The Crown accepts that it would have breached the Treaty of Waitangi and its principles if any Maori land in Te Rohe Pōtai was vested in the Tūwharetoa Maniapoto District Maori Land Board and its successors without the consent of its owners.”

The Crown further conceded that:

(a) Between 1907 and 1910 the Crown brought approximately 200,000 acres of Te Rohe Pōtai land under Part 1 of the Native Land Settlement Act 1907, which required the Tūwharetoa–Maniapoto District Māori Land Board to set apart for sale approximately half of these lands vested in it regardless of whether or not the owners had consented to the sale of all that land.

(b) The Board sold more than 70,000 acres despite the owners having previously consented to the sale of only approximately 57,000 acres.

(c) In bringing Rohe Pōtai land under Part 1 of the Native Land Settlement Act 1907 to be administered by the Board on the basis that it could be sold without the owner’s consent, the Crown breached the Treaty of Waitangi and its principles in those cases where the owners had not in fact consented to their land being sold.  

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8. Submission 3.4.304, pp 2–3.
As discussed in chapter 12, in June 1910 the Tuwharetoa–Maniapoto District Māori Land Board became the Waikato–Maniapoto District Māori Land Board. For clarity, throughout this chapter we use the latter name to refer to this entity.

13.2.3 Claimant and Crown arguments

More than 65 claims in this inquiry contain grievances related to vested lands.\(^9\) Te Rohe Pōtāe claimants submitted that the Crown vested some 200,000 acres of Te Rohe Pōtāe Māori land without informing the owners or obtaining their consent.\(^10\) They claimed that the Crown pressured owners to identify land for vesting,\(^11\) vested land in spite of owners’ explicit opposition,\(^12\) and vested land for sale when owners had asked that it be leased or reserved for their use.\(^13\) According to the claimants, vesting was ‘best characterised as the forced nationalisation of a substantial part, and the best remaining parts, of the Rohe Potae land resource.’\(^14\)

The Crown acknowledged that some land was vested between 1907 and 1910 without the consent of its owners. It submitted, however, that ‘in most cases’ owners consented to the vesting of their land and its subsequent sale.\(^15\)

The claimants also submitted that, once land was vested, owners lost control over it. Māori owners were denied their property rights, including rights to possess, use, manage, and develop land, and rights to receive all of the income from its use.\(^16\) They stated that vested land was managed by the Waikato–Maniapoto District Māori Land Board in a manner that favoured settlers and that Māori landowners were forced to bear the costs of developing vested lands for alienation\(^17\) and received little income when land was sold or leased.\(^18\) The board leased lands

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9. Wai 472, Wai 993, Wai 1015, Wai 1058, Wai 1115, Wai 1186, Wai 1608, Wai 1965, Wai 2335 (submission 3.4.140); Wai 551, Wai 948 (submission 3.4.250); Wai 784 (submission 3.4.147); Wai 1469, Wai 2291 (submission 3.4.228); Wai 1482 (submission 3.4.154(a)); Wai 729 (submission 3.4.240); Wai 1376 (submission 3.4.223); Wai 1500 (submission 3.4.160); Wai 1805 (submission 3.4.132); Wai 1993 (submission 3.4.325); Wai 478 (submission 3.4.155(a)); Wai 836 (submission 3.4.131); Wai 928 (submission 3.4.175(a)); Wai 1255 (submission 3.4.199); Wai 1309 (submission 3.4.220); Wai 1455 (submission 3.4.156); Wai 1824 (submission 3.4.181); Wai 1640 (submission 3.4.191); Wai 2102 (submission 3.4.229); Wai 987 (submission 3.4.167); Wai 1147, Wai 1203 (submission 3.4.151); Wai 1230 (submission 3.4.168); Wai 1447 (submission 3.4.187); Wai 1803 (submission 3.4.149); Wai 399 (submission 3.4.159); Wai 556, Wai 616, Wai 1357, Wai 1820 (submission 3.4.279); Wai 691, Wai 788, Wai 2349 (submission 3.4.246); Wai 1962 (submission 3.4.172); Wai 1112, Wai 1113, Wai 1439, Wai 2351, Wai 2353 (submission 3.4.226); Wai 1448, Wai 1495, Wai 1501, Wai 1502, Wai 1804, Wai 1899, Wai 1900, Wai 2125, Wai 2126, Wai 2135, Wai 2137, Wai 2183, Wai 2208 (submission 3.4.237); Wai 1995 (submission 3.4.144); Wai 2352 (submission 3.4.219); Wai 125 (submission 3.4.210); Wai 1327 (submission 3.4.249); Wai 1967 (submission 3.4.162); Wai 2273 (submission 3.4.141); Wai 2345 (submission 3.4.139).

10. Submission 3.4.120, pp 2–4.
12. Submission 3.4.120, pp 2–4, 27.
14. Submission 3.4.120, p 4; see also pp 57–58, 62–63.
16. Submission 3.4.120, pp 4, 59.
17. Submission 3.4.120, pp 60, 62.
18. Submission 3.4.120, pp 4, 33, 45.
on terms that were unfavourable to the owners, and failed to gather rents owing or enforce lease terms.\(^{19}\) The board used income from leases and sales to make illegal loans to Pākehā settlers, allowing them to purchase Māori lands.\(^{20}\)

On these matters, the Crown submitted that the vesting process was intended to make unused Māori land productive for the benefit of Māori owners and the colony. The Crown’s intention here was that Māori would retain sufficient land for their future needs and would receive incomes from vested lands. The Crown submitted that it was not responsible for outcomes it could not have reasonably foreseen or controlled, such as the board’s failure to earn income from some vested lands.\(^{21}\)

Finally, claimants submitted that the board was either part of the Crown\(^{22}\) or an agent of the Crown.\(^{23}\) It was appointed by the Crown and was subject to ‘very close direction’ by Ministers.\(^{24}\) The Crown furthermore failed to properly fund the boards to manage vested lands.\(^{25}\) They argued that, according to the standard legal tests, the boards were part of the Crown, and the Crown was therefore responsible for the boards’ administration of Māori lands.\(^{26}\)

The Crown disagreed. It submitted that the Māori land boards were not Crown agents, but rather held similar roles to the Māori Trustee. That is, they administered land held in trust on behalf of the owners. They did not, at law, act on behalf of the Crown in their performance of that trustee role. The Crown therefore submitted that, although it was responsible for the statutory framework under which vested lands were managed, it was not responsible for the boards’ administration of those lands.\(^{27}\) The Crown acknowledged that the board lacked financial expertise and at times faced staffing shortages. It submitted that delays in paying Māori landowners could be attributed to these staffing shortages.\(^{28}\) It submitted that, in general, it provided reasonable protection for Māori interests in respect of vested lands that were leased.\(^{29}\)

**13.2.4 Issues for discussion**

Based on the arguments advanced by claimants and the Crown, previous Tribunal findings, and the statement of issues prepared for this inquiry, this chapter will focus on the following issues for discussion in regard to vested lands:

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19. Submission 3.4.120, pp 53–56, 63; see also submission 3.4.112, p 19.
22. Submission 3.4.120, p 10.
23. Submission 3.4.120(a), p 10.
24. Submission 3.4.120, p 10.
25. Submission 3.4.120, p 63.
26. Submission 3.4.120, p 10.
27. Submission 3.4.304, p 38; see also submission 3.4.309, pp 6–10; submission 3.4.291, pp 6–9.
13.3 The Basis for Vesting Te Rohe Pōtae Māori Land under the Native Settlement Act 1907

During 1909 and 1910, the Crown compulsorily vested 200,738 acres of Te Rohe Pōtae Māori land in the Waikato–Maniapoto District Māori Land Board, under the provisions of the Native Land Settlement Act 1907, which are discussed in this section.30 This was more than 10 per cent of the inquiry district,31 and more than 20 per cent of the land remaining in Te Rohe Pōtae Māori possession at the time.32

The land was vested in accordance with part 1 of the Act, which was explicitly intended to provide land for Pākehā settlement. It allowed the governor to make orders in council vesting land that the 1907–08 Native Land Commission had identified as being ‘not required for occupation by the Māori owners, and . . . available for sale or leasing.’33 The Act therefore suggested that the compulsory vesting was on the basis of the commission’s inquiry and recommendations, with the implied agreement of Te Rohe Pōtae Māori landowners. The following section examines the Native Land Commission process that led to large-scale compulsory vesting of Te Rohe Pōtae lands under the 1907 Act. It considers whether the resulting vesting was secured with free, informed consent or, as claimants alleged, was pressed on Māori landowners without their knowledge and contrary to their wishes.

13.3.1 The Native Land Commission and its recommendations as the basis for the compulsory vesting of Te Rohe Pōtae Māori land

The Native Lands and Native-Land Tenure Commission was established in January 1907, with two commissioners: Chief Justice Sir Robert Stout and Āpirana

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32. Land remaining in Māori ownership at this time amounted to 967,248 acres: doc A21, p 129.
33. Native Land Settlement Act 1907, ss 4–6; see also Native Land Act 1909, ss 233–237.
Ngata, the newly elected member for Eastern Māori.\textsuperscript{34} The commission’s terms of reference required it to inquire and report on

- What areas of Māori land remained ‘unoccupied or not profitably occupied’, who owned them, and the nature of their titles and interests;
- How such lands could ‘best be utilised and settled in the interests of the Native owners and the public good’;
- What areas could or should be set aside for occupation by Māori (as communal lands, or farms, or for future use);
- What areas could or should be set apart for settlement by Europeans, by what means, on what terms and conditions, and with what safeguards to ensure that no-one could buy or lease too much; and
- How existing Māori institutions and systems for dealing with Māori lands could be used, adapted, or modified to meet these purposes.\textsuperscript{35}

Furthermore, the commission was invited to submit proposals for legislation, to bring its recommendations into prompt effect.\textsuperscript{36}

The Tribunal did not see any evidence that Te Rohe Pōtae Māori communities were consulted about the commission at any time before Stout and Ngata were appointed and given their instructions on 21 January 1907.\textsuperscript{37} Nor did the Tribunal receive any evidence that the Government consulted Te Rohe Pōtae Māori between January and May, the latter being the date when the commission’s hearings in the district began at Te Kūiti. The hearings concluded on June 6 at Ōtorohanga.\textsuperscript{38} They were publicly notified in advance in the Kahiti. On the commission’s recommendation, a Wellington lawyer, Charles Skerrett, was appointed to represent Māori interests, with another lawyer, Alfred Fraser, as his assistant.\textsuperscript{39}

While not consulted about the commission, Te Rohe Pōtae leaders were certainly aware of the settler demand for more Māori land to be made available, and equally aware of the Crown’s tendency to give in to settlers as a pressure group.\textsuperscript{40}

In late 1906 and early 1907, Te Rohe Pōtae Māori held major hui at Ōtorohanga and Te Kūiti to discuss responses to these developments.

Te Rohe Pōtae Māori failed, however, to come to an agreed position before the hearings began. According to contemporary reports, Ngāti Maniapoto were divided between those who opposed all Crown involvement in Māori land administration and wanted to be left entirely alone to deal with their own lands, and

\textsuperscript{35} Document A73, pp 114–115; AJHR, 1907, G-1, pp i-ii.
\textsuperscript{36} Document A73, pp 115; AJHR, 1907, G-1, pp i-ii.
\textsuperscript{37} Document A73, pp 144–145; AJHR, 1907, G-1, pp i-ii.
\textsuperscript{38} AJHR, 1907, G-18, p 6.
\textsuperscript{39} Document A73, p 132; doc A93, pp 90–91.
\textsuperscript{40} Document A93, pp 46, 58–64, 76–77, 85–87; doc A73, pp 71–73, 129–131; see also AJHR, 1907, G-1C, pp 6–7.
those who were willing to work with the commission and Māori land boards. The commission, in their July 1907 interim report on Te Rohe Pōtae, referred to this latter group as the ‘progressives’. In the commission’s view, the progressives were more willing to place land before the Māori land boards because they believed that the returns would be greater than if Māori negotiated on their own behalf.

The ‘progressives’ were scarcely whole-hearted supporters of the Crown’s Māori policies. Having, for many years, been unable to develop their lands in the way they wished, they recognised that in a challenging political climate, the land boards appeared to be the best among a series of poor options. The ‘progressives’, in other words, engaged with the commission not to endorse the Crown’s policies, but to influence them, and so mitigate any likely damage, both in respect of general policy direction and specific decisions. Their participation should be seen in this context.

In all, the commission was charged with examining some 851,930 acres of Māori land in the former Aotea-Rohe Potae block, this being the amount not already sold, leased, or under negotiation from an original total of 1,844,780 acres. However, the commission’s hearings did not cover all of these lands. In their July 1907 interim report, the commissioners explained that this was ‘owing to the absence of many of the owners and the fact that we were unable to visit Kawhia, round which there is a great area of unoccupied land.’

The ‘absence of owners’ may have been a reference to owners refusing to appear – the ‘Waikatos, Arawas, Ngāti-Raukawas, and . . . Maniapotos’, including those of Ngāti Rereahu, Ngāti Whakatere, Ngāti Matakorere, Ngāti Tutakamoana, Ngāti Te Ihingārangi, and Ngāti Rōrā. If there were other reasons for owners not appearing, the commission’s subsequent reports did not say so.

The inquiry district’s Māori population at the time would appear to have numbered at least 4,500, and presumably most of these people still had interests in land. None of the evidence for this inquiry suggested that thousands, or even hundreds, of people attended the hearings. Rather, it appears that a relatively small number of Māori landowners attended, including some who claimed to be the agents or representatives of the remaining owners. According to Hearn, ‘the Commission appears to have accepted such assertions without challenge.’ More specifically:

41. AJHR, 1907, G-1B, pp 6–7.
42. AJHR, 1907, G-1B, p 6; doc A93, p 94; ‘Māori Land Question: Some of Its Features’, King Country Chronicle, 3 May 1907, p 3; ‘Government Dealings with Māori Lands’ (by Arthur Ormsby), King Country Chronicle, 31 May 1907 and 7 June 1907; James Cowan, Settlers and Pioneers, p 43 (NZETC).
43. AJHR, 1907, G-1B, pp 10–11, 12.
44. AJHR, 1907, G-1B, p 12.
45. AJHR, 1907, G-1B, pp 6–7.
46. Document A73, pp 33, 47. Arthur Ormsby, at the time of the commission’s hearings, wrote that the district’s population was 5,000. However, Ormsby may have been including areas within the 1883 petition area but outside the inquiry district: Arthur S Ormsby, ‘Government Dealings with Māori Lands: From a Māori Point of View’, King Country Chronicle, 31 May 1907, p 3.
An inspection of the Commission’s minutes and records failed to disclose whether it endeavoured in any systematic fashion to identify all the owners of blocks under consideration. It appears to have relied, for an expression of preference with respect to disposal, on those owners who appeared before it and who claimed to speak on behalf of all owners, on those claiming to be owners, or on those claiming to be the owners’ agents. There is no evidence that the *bona fides* of such persons were checked.\(^47\)

Hearn also gave a description of how the hearings were conducted. The first day’s hearing was postponed at 2pm, he wrote, to allow Skerrett to consult with those Māori who were present. The following day, Skerrett ‘addressed the Commission . . . presenting the wishes of the owners’: ‘He dealt with the district block by block, listing how much land Māori wished to reserve for their own use, how they wished to utilise the land, and how much they were prepared to offer for sale and leasing. Skerrett’s presentation was then affirmed by those Maori present.’\(^48\)

Loveridge gave a slightly different description, also based on a reading of notes from the commission’s hearings. According to Loveridge, the ‘principal work of the Commission was carried out in the form of face-to-face discussions with the owners of lands submitted for consideration’. These discussions, he said, were generally led by Ngata, with Skerrett ‘in attendance’. The main sessions involved opening statements ‘by the principal Ngāti Maniapoto leaders involved’, and the proceedings then ‘took the form of presentations by individuals or groups of owners or their agents concerning the status of their lands and their wishes for its disposition.’\(^49\)

Neither Hearn nor Loveridge recorded whether the proceedings were conducted in English, te reo Māori, or both. However, one source has recorded that English was spoken when Stout was present, but Ngata spoke te reo Māori when he was chairing the hearings on his own. Māori witnesses also spoke te reo Māori, while the lawyers spoke English. The Native Land Court clerk William Pitt translated. All of the proceedings were recorded in English.\(^50\)

At the opening of the hearing on June 3, Ngata ‘briefly explained the [commission’s] business,’\(^51\) then Hari Hemara Wahanui gave a brief speech in reply, of which a summary remains: ‘Welcomed Commission. No lands left to this branch of the Maniapoto – mostly sold. Maniapoto wanted leasing as far back as 1886. Many prominent owners and hapus absent, which will prevent some business coming on.’\(^52\)

\(^{47}\) Document A73, p 217.
\(^{48}\) Document A73, p 132.
\(^{49}\) Document A93, pp 97–98.
\(^{51}\) Document A93, pp 97–98.
\(^{52}\) ‘Otorohanga Notes’, 3 June 1907, p 33 (doc A93, p 98); doc A73(a), vol 5, p 28.
Hemara was an Ōtorohanga rangatira related to Wahanui. He had been prominent in Ngāti Maniapoto land debates since the 1890s and was, at the time of the commission’s hearings, a member of both the Maniapoto Māori Council and the Maniapoto–Tuwharetoa Māori Land Board.\footnote{53}

The minutes recorded the statements of nine witnesses, expressing their views in respect of more than 50 properties with a combined area exceeding 58,000 acres. Typically, each witness gave his or her name and place of abode, the names of any properties he or she had interests in, the conditions of those properties (in particular, their suitability for farming or timber milling), and their wishes in respect of retention (either as papakāinga or as farms) or disposal to Pākehā by lease or sale.\footnote{54}

Several also referred to difficulties which had hampered use of the land, such as inaccurate surveys, incomplete partitions, landlocking by Crown purchases, and lack of access to development funds from the Advances to Settlers scheme. In the case of Rangitoto–Tuhua 75, for example, the notes record Hari Hemara explaining that the block had originally exceeded 12,000 acres, but a survey error had placed half of that in the neighbouring Rangitoto–Tuhua 68. In such cases, the witnesses appeared to expect the commission to make inquiries and put the situation right.\footnote{55} In all, four of the blocks were awaiting the completion of surveys or partitions, and another two were the subject of boundary disputes allegedly arising from survey errors.\footnote{56}

In most instances, nothing was said about the terms under which lands might be sold or leased. However, there were exceptions. Both Hemara and another witness, Tawhi Erueti of Ōtorohanga, referred to leasing on ‘the usual terms’, and to 21-year leases with a further 21-year right of renewal. The ‘usual terms’ is likely a reference to existing leases carried out by the Waikato–Maniapoto District Māori Land Board under section 9 of the Māori Land Settlement Act 1905.\footnote{57}

The notes reveal that, at this Ōtorohanga hearing, most of the properties dealt with were small, ranging from 1.4 acres up to some hundreds. Several were occupied by families who wanted the land retained for their use. Many were already farming or intended to farm, though some were willing to lease. Typically, for these smaller blocks, witnesses indicated that they were speaking on behalf of themselves and also their immediate families, including wives, children, and sisters.\footnote{58}

\footnote{53. Document A73, p125; doc A73(a), vol 5, p234; ‘Māoris and Their Lands’, King Country Chronicle, 11 January 1907, p3; ‘A Tribal Loss’, King Country Chronicle, 10 April 1919, p5.}
\footnote{54. Document A73(a), vol 5, pp28–51. Land area was recorded for only 43 of the 53 properties considered. The combined land area of these 43 properties was approximately 58,098 acres. The witnesses were Hari Hemara, Patupatu, Waikura Te Whiti, Te Whinuara Rikirangi, Rawiri Te Hauparoa, Wiri Warehi, Hone Te Anga, Tawhi Erueti, and Te Tata Wahanui or Henare.}
\footnote{55. Document A73(a), vol 5, pp34–35.}
\footnote{56. Document A73(a), vol 5, pp30–31, 33–35, 45. Specifically, Rangitoto–Tuhua 9 and 75 were subject to boundary disputes; Kakepuku 984 had been partitioned but the partitions were awaiting confirmation; Rangitoto–Tuhua 66 had been partitioned but the partitions had not been surveyed; and Maraetaua 9 and Rangitoto A21 had not been surveyed.}
\footnote{57. Document A73(a), vol 5, pp33–34, 45–46; Māori Land Settlement Act, s9.}
\footnote{58. Document A73(a), vol 5, pp28–51.}
The bulk of the land area covered during the day was in six Rangitoto–Tuhua properties (9, 21, 66, 73, 75, and 76) with a combined area well exceeding 45,000 acres, for which Hari Hemara claimed to be acting as agent for all of the owners. For five of these, Hemara endorsed leasing; for the sixth, his view was unclear from the notes. Hemara also spoke on other days as agent for the owners of other Rangitoto–Tuhua blocks. Erueti also claimed to be acting as agent for other owners in offering two blocks for lease and another for sale, all exceeding 1,000 acres. For each, he claimed to be the main owner, but his relationship with the other owners was not clear.

Later, other owners of some of these blocks challenged the right of Hemara and other witnesses to speak on their behalf. Some owners later claimed that their lands had been vested without their knowledge, let alone their consent. The details of these claims will be discussed in section 13.3.8.

Altogether, of the 53 properties dealt with at the Ōtorohanga hearing on 4 June 1907, the witnesses wanted 21 retained in Māori occupation, either as papakāinga or farms. Eight had already been leased to Pākehā, and another 13 were offered for lease. Four were identified for sale, with the owners in two cases intending to use the proceeds to develop other lands. For the remaining properties, witnesses suggested a combination of uses, or did not know, or their intentions were unclear from the notes.

A similar pattern appears to have applied in other hearings, with witnesses offering small parcels of land for sale and larger amounts for lease, while seeking to retain much of their land either for farming or as papakāinga.

The governor would later claim that the commission had ‘with great patience given the Native owners the fullest opportunity of being heard and of expressing their objections or consent’ to the commission’s proposals for dealing with their land. The ‘happy result’ was that, with ‘the harmonious co-operation of the Native owners themselves’, the commission had recommended a very large area of land for Pākehā settlement, while also retaining areas for Māori use and occupation.

As seen below, this view appears to have been shared by no one outside the Government.

To this inquiry, Loveridge said that ‘[i]t seems very unlikely that every single owner gave their explicit approval for all the requests made to the commission, or for all of the commission’s recommendations for their Rohe Potae lands.’ He noted that agents often spoke on behalf of owners at the hearings, and that ‘Hewhere owners were directly involved only one or two individuals are named as having made the presentation.’ On the other hand, however, he noted that ‘the hearings were held in public and with the active involvement of tribal leaders.’

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60. Document A93, p 98.
63. ‘Governor’s Speech,’ 29 June 1908, NZPD, vol 143, p 3 (doc A73, p 210).
64. Document A93, p 103.
Hearn concluded, on the basis of his reading of the commission’s minutes and other evidence, that ‘a large section of Ngati Maniapoto was prepared to accept the administration of its lands by a reformed board . . . under terms similar to those contained in the Maori Land Settlement Act 1905’ (emphasis added). But he considered that the contemporary Government claims about the fairness and robustness of the vesting process were ‘manifestly without substance or support’, and that ‘some blocks at least were taken from their owners without their knowledge or consent’.

Loveridge also believed that the evidence of subsequent dissent was unconvincing. It is also unclear exactly what Māori were being asked to consent to during the hearings. As explained above, the commission was not bound to recommend vesting. The law at the time provided both for voluntary vesting under section 28 of the Māori Lands Administration Act 1900 and for the transfer of land to boards for administration under section 17 of the 1905 Act. These provisions required written consent from the owners or their representatives and allowed the owners to set the conditions of any vesting or leasing respectively.

The Ōtorohanga minutes provide no evidence that the commission attempted to apply either of these statutory provisions during its hearings. In our view, witnesses cannot, therefore, have been consenting to the vesting of lands in accordance with the law in force at that time. As Hearn suggested, they may nonetheless have been signalling their willingness to transfer land to the board for administration under terms and conditions comparable to those set out in the 1905 legislation. Indeed, the ‘progressives’ had signalled that in their submission to the commission.

Even then, Hearn said, ‘[i]t is not clear that owners understood that the lands they were prepared to make available for sale or for leasing would be vested or that they understood the full implications of vesting.’ Indeed, as explained below, they could not have: the Crown had not yet enacted the law under which their lands would be vested.

13.3.2 The Native Land Commission’s 1907 reports and recommendations for Te Rohe Pōtæ lands

In the months after these hearings, the commission produced three reports concerning Te Rohe Pōtæ lands. The first was specifically concerned with ‘The Rohe Potae (King Country) District’. Differing in parts from this inquiry district, the area broadly coincided with the Aotea-Rohe Potae block and included Ohura South. The second was a general report examining policy options for promoting

70. Document A73(c) (Hearn), pp 10–11.
settlement, and the third report concerned three specific Te Rohe Pōtae land blocks.\textsuperscript{71}

In these reports, the commission expressed considerable sympathy for Māori in Te Rohe Pōtae and elsewhere. It concluded that the Crown had systematically frustrated Māori landowners’ attempts to profitably develop their own lands, leaving Māori communities generally in ‘a most difficult and critical position’.\textsuperscript{72} The commissioners recommended that the Crown’s highest priority should be assisting Māori landowners to retain and develop their own properties, for the benefit of both present and future generations.\textsuperscript{73} It recommended that Crown purchasing of Māori lands cease immediately, and that direct private purchasing or leasing also be prohibited.

Nonetheless, the commission found that significant areas of land were available for settlement in Te Rohe Pōtae and elsewhere and should be developed in a manner that brought benefit to the owners. It considered that Māori land boards should be empowered to facilitate that development, and that compulsory vesting would be necessary to do so.\textsuperscript{74} The commissioners thought that ‘these Boards must be used much more freely and on a greater scale in future if large areas of unoccupied Maori lands are to be opened to settlement’.\textsuperscript{75}

In respect of Te Rohe Pōtae land, the commission said it had ‘consulted the owners or their representatives and ascertained at first hand not only what areas they required for papakaingas and for their use or occupation as farms, but what they themselves desired should be done with the area they offered for general settlement’. The ‘general opinion’ among Te Rohe Pōtae Māori was ‘hostile to selling, and strongly in favour of leasing through the agency of the Board to the highest bidder’.\textsuperscript{76}

Across its entire district, the commission reported that 992,850 acres remained in Māori possession. Of that, its July 1907 interim report on Te Rohe Pōtae dealt with a total of 292,440 acres, recommending that 163,770 acres (56 per cent) be leased, 34,522 acres (12 per cent) be sold, and 92,148 acres (32 per cent) be retained for Māori occupation. Almost all of this land was in the inquiry district.\textsuperscript{77}

Leases and sales, the commission recommended, should be conducted through the Maniapoto–Tuwharetoa District Māori Land Board. The land recommended for sale amounted to just 1.8 per cent of the Aotea-Rohe Potae block’s 1,844,780 acres – the commission acknowledging that Māori had already sold more than 770,000 acres and were leasing another 217,000 privately.\textsuperscript{78}

\textsuperscript{71} \textit{Document A73}, pp 136–142; AJHR, 1907, G-1B; AJHR, 1907, G-1C; AJHR, 1907, G-1D.

\textsuperscript{72} AJHR, 1907, G-1C, p 14.

\textsuperscript{73} AJHR, 1907, G-1C, pp 14–16; doc A73, pp 139–140.

\textsuperscript{74} AJHR, 1907, G-1C, pp 13–18; doc A73, pp 139–140.

\textsuperscript{75} AJHR, 1907, G-1C, p 14; doc A73, pp 139–140.

\textsuperscript{76} AJHR, 1907, G-1B, p 12.

\textsuperscript{77} AJHR, 1907, G-1B, pp 11, 12, 18, 23, 35. Of the area recommended for lease, 1,740.5 acres was outside the inquiry district (in Ohura South). Of the area recommended for sale, 3,226.5 acres was outside the inquiry district (in Ohura South and Tuitui).

\textsuperscript{78} AJHR, 1907, G-1B, p 10; doc A73, p 137.
A considerable portion of the district’s ‘unsettled lands’ were not dealt with, due either to the absence of the owners or because the commission did not visit Kāwhia. These lands, the commission said, would be addressed in future reports.\(^79\)

In August 1907, the commission issued a supplementary report, covering an additional 134,277 acres of Rangitoto–Tuhua and Wharepuhunga land. In that report, it recommended 6,837 acres for leasing, 27,000 acres for sale, and 6,178 acres for Māori occupation. For an additional area totalling 37,159 acres, it recommended that large areas be leased but some land be set aside for the owners. The commission noted that, by this time, the Crown had already purchased 54,311 acres of Wharepuhunga.\(^80\)

In all, the commission’s recommendations were clear: most land should be leased or retained, with only a small proportion offered for sale.

**13.3.3 The wishes of owners and the Wharepuhunga block**

We now consider if the commission’s recommendations reflected the wishes of the owners who appeared before it, looking in particular at the Wharepuhunga block.

As noted in chapter 11, the Raukawa Claims Settlement Act 2014 settled claims for a number of groups with interests in the Wharepuhunga block, whose claims we do not inquire into here. We also received several claims over Wharepuhunga from claimants who did not identify with those settled groups or who claimed dual affiliation with other iwi. As before, we now consider vesting in the Wharepuhunga block as relevant to these claims.

In its general report, the commission assured its audience that: ‘Where we have recommended areas for sale we have done so at the request of the owners. We have stated their wishes as to leasing.’\(^81\)

In Te Rohe Pōtae, there was one glaring exception: Wharepuhunga in the northeast of the inquiry district (see chapter 11). The Ngāti Raukawa landowners had objected to the commission making any inquiry into their lands and, according to Stout and Ngata, ‘desired to be left alone and to live in the old style’, but, according to the commissioners, this was not acceptable: ‘It was made clear to them that the settlement of the country cannot be delayed by either Maori or European, and if the Ngati-Raukawas will not utilise their land other people must be found who will utilise it.’\(^82\)

The commission noted that the Crown already owned 54,311 acres of the 131,266-acre Wharepuhunga block. The remaining 76,955 acres was divided into 22

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79. AJHR, 1907, G-1B, p 12.
80. The commission’s August 1907 supplementary report recommended that 27,000 acres be sold (comprising Wharepuhunga 6, 8, 10, 13, 17, 19, and 20), 6,837 acres be leased (comprising Rangitoto–Tuhua 55 (1,548 acres), Rangitoto–Tuhua 71 (1,513 acres), and Wharepuhunga Reserve (3,776 acres)), and 6,177.5 acres be reserved for Māori occupation (comprising Wharepuhunga 5 (2,182 acres), 7A (339.5 acres), 7B (776 acres), 7C (1,018 acres), and 9 (1,862 acres). For a further 37,159 acres, it recommended that large areas be leased but some areas, to be determined by the Māori land board, should be reserved: AJHR, 1907, G-1D, pp 1–2, 5.
81. AJHR, 1907, G-1C, p 16.
82. AJHR, 1907, G-1B, p 6; doc A73, pp 135–136.
subdivisions, of which Ngāti Raukawa owned 20. The remaining two were owned by members of Ngāti Tūwharetoa, who also had lands of comparable quality at Taupō. The commission recommended that the Ngāti Tūwharetoa blocks, which together totalled 12,056 acres, be vested in the Maniapoto–Tuwharetoa District Māori Land Board and then on-sold to the Crown. It is not clear from the commission’s report whether the Ngāti Tūwharetoa owners were consulted.83

Of the 20 Ngāti Raukawa subdivisions, the commission recommended five for sale – one to repay a survey lien and four more because the owners had other lands in the block which ‘should provide all their needs in the way of papakaingas and farms’. The commission did not say how it had determined what the owners might need. In all, these lands totalled 14,934 acres.84

The commission furthermore recommended that the 3,776-acre Wharepuhunga 1 Reserve be leased. For another four blocks with an aggregate area of 37,159 acres, the commission recommended that the board be empowered to determine how much land the owners needed to retain and lease the rest.85

Of 64,899 acres remaining in Ngāti Raukawa possession, the commission was recommending that as much as 55,869 acres be placed before the board for possible leasing or sale, without the consent of the owners. This was in spite of the fact that the owners possessed ‘very little land outside Wharepuhunga, and some of that they share with relatives residing in Otaki and other places in the Wellington District’.86

The commission does appear to have recommended that the owners keep their largest kāinga and retain much of the better-quality land in the north of the block, despite this being the only Wharepuhunga land considered suitable for close settlement. The land the commission recommended for sale was all poor quality but did contain milling timber.87

Stout later commented that the ‘owners [of Wharepuhunga] chose not to give us information and assistance, and if our recommendations for the land are not quite as the Maoris wished they have themselves to blame.’88 In other words, from Stout’s point of view, appearance before the commission was not discretionary.

Other than Wharepuhunga, the Tribunal is not aware of any instances of the commission recommending land for sale or lease when none of the owners had appeared before it. However, as noted above, in most instances the commission appears to have based its recommendations on evidence from only one or a handful of owners, without taking steps to determine their right to speak on behalf of others.

It is unclear, based on the evidence before the Tribunal, whether the commission’s recommendations reflected the wishes of Māori landowners who did appear. The Ōtorohanga notes suggest that the commission’s recommendations usually

83. AJHR, 1907, G-1D, pp 1–2, 5.
84. AJHR, 1907, G-1D, pp 2, 5.
85. AJHR, 1907, G-1D, pp 2, 5.
86. AJHR, 1907, G-1D, pp 1–2, 5.
87. AJHR, 1907, G-1D, pp 1–2, 5; doc A73, pp 141–142.
88. Stout to E Te Tana Stewart, 24 June 1908 (doc A73(a), vol 5, p 133).
reflected the wishes of those who had appeared before it. That is, in most cases where the owner asked for land to be made a papakāinga, that is what the commission recommended. Likewise, in most cases where the owner asked for land to be leased, the commission recommended that. If the owners wanted land split between occupation and lease, that too was honoured in most cases.

But there were exceptions, one of which was the 21,176-acre Rangitoto–Tuhua 58 block.\(^{89}\) One of the owners, Waikura Tewhitu Taina, said she had sold her interests in the block, but her three children also owned interests, amounting to 600 acres in total, which she wanted reserved.\(^{90}\) The commission subsequently reported that the Crown had recently purchased more than 9,600 acres, and another 1,605 acres was under negotiation for a private lease. The commission recommended that the rest be either sold or leased, with the bulk earmarked for sale.\(^{91}\) (In the end, Rangitoto–Tuhua 58 was not vested, because the Crown had purchased the entire block by the end of 1907.)\(^{92}\)

Similarly, Hari Hemara asked for the 6,443-acre Rangitoto–Tuhua 75 to be leased, except for urupā, which were to be reserved and fenced. The commission recommended that the entire 6,443 acres be leased, making no mention of Hemara’s condition.\(^{93}\) Hemara also claimed that the original title was for an area exceeding 12,000 acres, but survey errors led to half of that being placed in neighbouring blocks (68 and 77), leaving only 6,443 acres. The matter, he said, was before the Appellate Court.\(^{94}\) The Tribunal is unable to determine how the commission responded to the claim of a survey error.

In the case of the 12,340-acre Rangitoto–Tuhua 9, Hemara informed the commission that the boundary was disputed, with neighbours claiming that some of the land was theirs. He asked the Crown to urge the Native Land Court to resolve the dispute so that the land could be leased.\(^{95}\) The commission nonetheless recommended that the entire area be leased, making no mention of the dispute.\(^{96}\)

For significant areas of Rangitoto–Tuhua 68 and 77, it did not make recommendations, but its reports provided no explanation as to why.\(^{97}\)

### 13.3.4 Compulsory vesting provisions of the Native Land Settlement Act 1907

As discussed in chapter 12, before Stout and Ngata had completed their investigation of the areas still outstanding, the Crown passed the Native Land Settlement Act 1907. We repeat here an analysis of the relevant provisions in the legislation. The preamble to the Act described it as one to ‘give effect’ to the commission’s

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89. Document A21, annex 7, individual block summaries, Rangitoto–Tuhua 58, p [3]. The commission recorded the land area as 22,000 acres: AJHR, 1907, G-1B, sch 4, p 21.
90. Document A73(a), vol 5, p 29.
91. AJHR, 1907, G-1B, sch 4, p 21.
93. AJHR, 1907, G-1B, sch 4, p 21; doc A73(a), vol 5, pp 34–36.
94. Document A73(a), vol 5, p 35.
95. Document A73(a), vol 5, p 33.
96. AJHR, 1907, G-1B, sch 4, p 20.
97. AJHR, 1907, G-1B, sch 4, pp 9–10, 21–22.
recommendations and ‘make further provision for the settlement of the lands belonging to the Native race’. The Bill, as introduced, originally made no provision to increase support for Māori farming or to set aside land for Māori use, but such a provision was introduced on Ngata’s initiative before it was enacted.\(^98\) Nor did the Bill halt Crown purchasing; in fact, as discussed in chapter 14, the Crown had only recently increased the funding available for Crown purchasing of Māori lands.\(^99\)

Part I of the Act empowered the governor, by order in council, to vest in Māori land boards any Māori land that the commission had identified, or would identify in the future, as being ‘not required for occupation by the Maori owners’ and therefore ‘available for sale or leasing’. In other words, the Act gave retrospective statutory effect to the commission’s July and August 1907 recommendations, and prospective effect to any future recommendations. No checks were put in place to ensure that the commission’s recommendations in fact reflected the views of all owners.\(^100\) Nor did the Act provide for any right of appeal.\(^101\) It was these provisions that led the claimants in our inquiry to describe the Act as ‘[c]onstitutionally ... outrageous’.\(^102\)

The Act marked a fundamental departure from previous statutes with respect to the management of vested land. Even if Te Rohe Pōtae landowners appearing before the commission in May 1907 had consented to vesting under existing statutory provisions, they cannot have been consenting to vesting under these new and very different provisions.

There was debate at the time of the Bill’s passage over whether Māori appearing before the commission had consented to their lands being vested in the manner contemplated by the Act. Sir John Findlay, the Attorney-General, claimed that with the exception of the Wharepuhunga block:

> Every report save one has been made upon the full concurrence and consent of the Natives themselves. That is to say, we are not doing something in defiance of the Natives, we are not doing something against the wishes of the Natives, but are giving expression to those wishes by carrying out the report made to us by the Royal Commission.\(^103\)

In the House of Representatives, Ngata defended the commission’s recommendations, saying that ‘with the exception of a block in the King Country, the proposed disposal of the land was in accordance with the owners’ views’. Nonetheless, he acknowledged that he had initially opposed the Act, until the Government accepted amendments inserting part II, which provided for land to be reserved for Māori use.\(^104\) His position reveals much about the gulf between the commission’s

\(^{98}\) Document A73, pp 146–147; Native Land Settlement Act 1907, pt II.

\(^{99}\) Māori Land Settlement Act Amendment Act 1907, s 2; doc A73, p 203.

\(^{100}\) Native Land Settlement Act 1907, s 4.

\(^{101}\) Document A73, pp 217–218.

\(^{102}\) Submission 3.4.120, p 24.


\(^{104}\) ‘Native Land Bill’, Taranaki Herald, 20 November 1907, p 5; doc A73, p 210.
recommendations, focused as they were on retention and development of Māori land, and the Government's objectives, which were focused on making Māori land available for Pākehā settlement.

Other members considered the Act to be confiscatory. Henare Kaihau, the member for Western Māori (which included this inquiry district) described the vesting provisions as 'confiscation' and as contrary to the Treaty, and ‘asked if Europeans would like to have their business administered by boards’ instead of managing those lands as they wished. Leading opposition members expressed similar views. The future Native Minister, William Herries, said vesting gave all power over Māori land to the boards, effectively treating Māori landowners as if they were mentally incapable of making decisions. A.L.D Fraser said the Government was 'proposing to filch from the natives'.

Of all of the Act’s provisions, the most controversial was section 11, which provided that approximately half of the property vested in the boards must be sold, and the other half leased, regardless of what owners had sought or the commission had recommended. Members of the House acknowledged that the Government could not implement this provision and also follow the Native Land Commission’s recommendations: up to that point, the commission had recommended 280,737 acres for leasing, and just 66,023 acres for sale.

Section 11 resulted from a political compromise. The Government’s initial plan was to vest land on the basis that one-third would be sold and two-thirds leased. Such a split, while arbitrary, would have more closely matched the wishes of owners who appeared before the commission. But, in the House, the premier explained that an equal split was necessary because ‘on the scale of operations we contemplate, the proportion of leasehold as against freehold which has already been reported upon would not be sufficient to meet the requirements of European settlers after the necessary reservations for the use of Maoris were made.

In other words, settlers wanted to buy more land than Māori who appeared before the commission were willing to sell, and, to the Crown, the settlers’ wishes were more important than the wishes of Māori who had legal title to the land, and whose families had belonged to it for many generations.

In the view of the Hauraki Tribunal, the Government’s acceptance of a 50:50 split meant that ‘the Maori owners’ wishes, as revealed to Stout and Ngata, were being over-ridden by a measure that was tantamount to confiscation in the commissioners’ view and would not have been tolerated by Pakeha if it were applied to their land.’ We agree.

107. Document A73, p 204; Native Land Settlement Act 1907, s 11(1).
109. AJHR, 1907, G-1B, p 12; AJHR, 1907, G-1D, pp 1–2.
110. AJHR, 1907, G-1B, p 12; AJHR, 1907, G-1D, pp 1–2.
Section 11 aroused considerable concern among Ngāti Maniapoto and neighbouring tribes, who argued – with justification – that they should be able to determine for themselves whether any land for settlement would be sold or leased, rather than being forced to sell half. The commission issued a new report condemning the provision as unjust and as undermining its own work.\footnote{AJHR, 1908, G-1F, pp 1–2; doc A93, pp 106–115; doc A73, pp 147–150.}

The commission gave two major reasons for opposing the measure. First, its effect was to force Māori landowners to sell land that future generations might need. If, for example, a Māori community wanted to make 2,000 acres available for lease, the board would be required to sell 1,000, even if that land belonged to children or to owners who had children who might want to farm the land when they grew up. This was of particular concern, it said, in Te Rohe Pōtē blocks such as Kinohaku West, Hauturu East and West, Kakepuku, and parts of Rangitoto and Rangitoto–Tuhua, where the Crown had already purchased much of the land.\footnote{AJHR, 1908, G-1F, pp 1–3.} Secondly, the commission reported, the provision was a fundamental breach of Māori property rights.\footnote{AJHR, 1908, G-1F, p 2.}

The commission also noted that the practical effect of section 11 would be to discourage Māori landowners from coming to hearings and identifying land for settlement, with the result that the land would remain in Māori ownership with less prospect of it being developed. This, the commissioners reported, ‘has hampered us in obtaining the consent of Maoris to the opening-up of lands for settlement.’\footnote{AJHR, 1908, G-1F, p 4.}

The Tribunal notes that the commission was now referring to itself as seeking consent, whereas its 1907 reports had described it as consulting Māori landowners to determine their wishes.\footnote{AJHR, 1907, G-1B, p 12.} This was a significant change, especially in light of owners’ subsequent reluctance to attend further hearings.

Finally, the commission noted that the Crown had continued to purchase land in Te Rohe Pōtē in areas it had recommended for sale, lease, and for Māori occupation.\footnote{AJHR, 1908, G-1F, pp 3–4.} This was in spite of the commission’s March and July 1907 recommendations that Crown purchasing cease. In light of this continued Crown purchasing, the commission noted several practical difficulties:

> How is section 11 to be carried out in the Rohepotae country? Is the area that was set aside for Maori occupation, or for sale or for lease, and that has become the Crown’s property, to be deemed a sale under section 11? If not, are the Maoris bound to sell still more of their land so that its provisions may prove effective?\footnote{AJHR, 1908, G-1F, p 4.}

The commission suggested that the legislature must not have understood the effects of section 11 and would not have proceeded if it had. Now that the difficulties...
had been explained, the commissioners hoped that new legislation would soon be introduced to put matters right.\textsuperscript{120} In fact, the House of Representatives had been entirely aware of what it was doing.\textsuperscript{121}

Following the commission’s report, section 11 remained in force, but was amended in 1908 to provide some flexibility for the governor to vary the sale and lease proportions of any specific property where an equal division would be ‘impracticable or inexpedient in the public interest or in the interests of the Maori owners.’\textsuperscript{122} If this occurred, the board was required to adjust the sale and lease proportions of other blocks to compensate, so that in any single year the equal split between lands for sale and lease would be maintained. In other words, the Crown insisted on retaining the principle that half of vested lands would be sold and half leased, though it was prepared to grant itself some discretion on how that measure would be implemented.\textsuperscript{123}

The commission, in its report on section 11, was careful to distinguish between its defence of Maori property rights in this particular case and its general willingness to see those same rights suspended in the interests of settlement. The State was pre-eminent, the commissioners wrote, and if it wished to take land from Maori or Pakeha for closer settlement it could do so, provided they were compensated and allowed to retain ‘a considerable area’ for their own use.\textsuperscript{124}

New Zealand, however, was founded on the basis of a solemn promise by the Crown that it would fully and actively protect Maori possession of and authority over land for so long as they wished to retain it. The Crown could not simply turn its back on that commitment because the legislators of the day, in response to pressures from its settler constituency, decided it wanted to use Maori lands for closer settlement. Its Treaty obligations remained in force regardless of its policy towards large South Island estates. In order to alienate land, the Crown always needed the full, free, and informed consent of all affected Maori landowners.

Furthermore, as the commission itself acknowledged in a later report, Maori landowners did not possess nearly as much land per capita as large South Island owners, and in fact had little that could genuinely be considered surplus to their needs. Specifically, the commission reported, if the Land for Settlements Act 1894 had been applied in Te Rohe Pota, and each Maori landowner had been allowed to retain several thousand acres for his or her own use, almost no Maori land would have been available for vesting in Te Rohe Pota or elsewhere in the North Island. The commission, for this reason alone, did not believe the Land for Settlements Act should be applied to Maori lands.\textsuperscript{125}

\textsuperscript{120} AJHR, 1908, G-1F, p 1.
\textsuperscript{121} Document A93, pp 108–109; doc A73, p147.
\textsuperscript{122} Māori Land Laws Amendment Act 1908, s17.
\textsuperscript{123} Māori Land Laws Amendment Act 1908, s17; doc A93, pp 112–114.
\textsuperscript{124} AJHR, 1908, G-1F, p 2.
\textsuperscript{125} AJHR, 1907, G-1C, p 9.
13.3.5 The commission’s 1908 hearings and reports

An upsurge occurred in private leasing during the first decade of the twentieth century, likely due to recognition by Māori landowners that this was the easiest way to be perceived as making land available for ‘settlement’ while retaining control. The commission responded to section 11, and to the effects of continued Crown purchasing, by resuming its hearings in Te Rohe Pōtē. The King Country Chronicle, based on an interview with the presiding commissioner Sir Robert Stout, reported that ‘the arbitrary clause’ had made it ‘necessary to revise all previous work, as many of those wishing to lease do not wish to sell; others wishing to sell do not wish to lease.’ The provision had therefore complicated the commission’s proceedings considerably, as well as inspiring ‘a feeling of mistrust’ among Māori.

These new hearings occurred over two weeks in late February and early March of 1908, at Ōtorohanga and Te Kūiti. The Tribunal received very little evidence about who appeared at these hearings, or which lands were discussed. The King Country Chronicle suggested that Te Rohe Pōtē Māori were placing considerable amounts of additional land before the commission. The Auckland Star, however, reported that Te Rohe Pōtē Māori ‘are not so ready in dealing with their lands at these sittings as they were at the previous sittings’, precisely because of the Native Land Settlement Act, and in particular section 11. Māori desired ‘to control the sale, or leasing, of their land’, and objected to the sale of half of the land they set aside for leasing, and vice versa:

The result will be that the Natives will not bring many of their blocks before the Commission, but will lease privately . . . Many of the natives will not come before the commission at all, because of this clause; they all resent it very much, and say that as Europeans are allowed to lease their lands without being compelled to sell half . . . the Maoris should not be placed in a different position.

In June 1908, the commission issued a revised report on Te Rohe Pōtē, amending its previous recommendations to try to take account of continued Crown purchasing and private leasing of lands that had been covered by its previous reports. The commission reported that, of the land it had recommended in June 1907 for vesting, 40,000 acres had been made available by its owners for private lease to Pākehā. This upsurge in private leasing suggests that Māori landowners, knowing that they would be forced to make land available for settlement somehow, chose the option that involved the least amount of power surrendered to the Crown and board. The commission also reported that the Crown had purchased

126. ‘Native Land Commission’, 6 March 1908, King Country Chronicle, p 2.
127. ‘Native Land Commission’, 6 March 1908, King Country Chronicle, p 2; doc A93, pp 111–112.
128. AJHR, 1908, G-10, p 1.
131. AJHR, 1908, G-10, pp 1–2.
large amounts but did not have exact figures.\textsuperscript{132} Data provided to this inquiry by Douglas, Innes, and Mitchell showed that, in all, the Crown purchased 43,130 acres of Māori land in the inquiry district in 1907, 111,545 acres in 1908, and a further 5,382 acres in 1909.\textsuperscript{133} Separately, Parker provided evidence that the Crown completed more than 180 separate land transactions in the district during 1907 and 1908.\textsuperscript{134}

The commission also repeated its earlier criticisms of section 11, adding that, ‘in view of the large area acquired by the Crown’, the ‘strict enforcement of section 11’ in Te Rohe Pōtae would be ‘harsh and unjust’ to the Māori owners.\textsuperscript{135}

This revised report dealt with a total area of 517,613 acres (updated from the 426,667 acres dealt with in the 1907 Te Rohe Pōtae reports). Of the 517,613 acres, more than half was either already leased or under negotiation for lease. The commission recommended that 144,344 acres be retained for Māori occupation, leaving 165,595 acres for leasing, and just 9,086 acres for sale.\textsuperscript{136}

In a further report, in August, the commission repeated its recommendation that the Crown stop purchasing. It also reiterated its concerns about section 11, noting that the provision had caused many Māori landowners to stay away from the 1908 hearings, meaning their lands would not be considered or recommended for vesting.\textsuperscript{137}

In a final report, the commission returned to the question of consent:

We considered it our duty wherever possible to meet the Maori owners of the lands, and to ascertain from them their wishes with regard to the disposition and settlement thereof. While making ample provision to meet the views of the minority or of individual owners wherever possible, we were guided by the expressed wishes of the majority so far as they were ascertainable in the open sittings of the Commission, and we can say that with very few exceptions the recommendations we have from time to time made in our reports were in accordance with the wishes of the Maori owners of the respective blocks.\textsuperscript{138}

Hearn observed that this statement was carefully worded.\textsuperscript{139} While the commission said it had attempted to accommodate minority views or the wishes of individual owners, it clearly did not feel bound to in all cases. It was guided by majority views ‘so far as they were ascertainable’ in hearings that many Te Rohe Pōtae Māori chose not to attend. Furthermore, by expressing confidence that its

\textsuperscript{132} AJHR, 1908, G-10, pp1–2.
\textsuperscript{133} Document A21, p131.
\textsuperscript{134} Document A95(i).
\textsuperscript{135} AJHR, 1908, G-10, p2.
\textsuperscript{136} AJHR, 1908, G-10, p2; doc A73, pp153–156. In its July 1907 report, the commission had dealt with 292,440 acres, and in its August 1907 report it had dealt with a further 134,327 acres: AJHR, 1907, G-1B, p12; AJHR, 1907, G-1D, pp1–2.
\textsuperscript{137} AJHR, 1908, G-1, pp1–2; doc A73, pp153–156.
\textsuperscript{138} AJHR, 1909, G-1G, p3; doc A73, p211.
\textsuperscript{139} Document A73, p211.
recommendations ‘with very few exceptions’ accorded with owners’ wishes (or at least majority wishes), the commission was, of course, acknowledging that some of its recommendations did not. It offered no reasons for making recommendations that were not in accord with owners’ wishes.  

According to Hearn, in total across the commission’s four Te Rohe Pōtae reports it recommended 73,102 acres of land in this inquiry district for sale, 213,212 acres for lease, and a further 41,087 for mana, meaning it was to be sold to repurchase land for the Kīngitanga. Only some of this land was ultimately vested.

The commission recommended a further 174,000 acres of land in the inquiry district be retained for Māori occupation and use, but none of this land was ultimately vested under the provisions of part 11 of the 1907 Act.

13.3.6 The Crown’s negotiations with the Kīngitanga

The Crown did not generally engage with Te Rohe Pōtae leaders during the period in which the commission was sitting. However, it made an exception for the Kīngitanga. Shortly after the commission’s hearings ended in 1908, Ministers began a series of land negotiations with Kīngitanga leaders that would go on for almost three years. The lands concerned were mostly in the Waikato, but some were in Te Rohe Pōtae and were owned by the Waikato, Ngāti Raukawa, and Ngāti Maniapoto ‘objectors’ to the Native Land Commission.

The first hui in these negotiations took place at Waharoa on 18 March 1908. This was followed two days later by another hui at Ngāruawāhia, reportedly attended by more than 1,500 Māori. At these hui, Ward and Carroll were clear: settlement and cultivation of land was non-negotiable, and no impediment, including Māori property rights, would be tolerated. In subsequent negotiations, King Mahuta accepted most of the Government’s demands, apparently in return for assurances that Māori alone would determine what lands were retained, leased, and sold.

Negotiations over specific land blocks continued, on and off, for well over a year before final recommendations were made about the lands under Mahuta’s influence. These negotiations included some lands within the inquiry district, as well as considerable areas of the Waikato. They also included some areas on which the Native Land Commission had already reported (such as Wharepuhunga blocks 16 and 17), and others on which the commission had not reported, and Māori negotiated directly with the Crown.

It took until August of 1909 for a final agreement to be reached. According

140. AJHR, 1909, G-1G, p 3.
141. Document A73, pp 152, 234–235. Loveridge gave different figures, but these were for the Aotea-Rohe Pōtae block and do not appear to have included lands for mana. Hearn provided a block-by-block breakdown for the inquiry district: doc A73, pp 158, 234–235; doc A93, pp 99–100.
144. Document A73, pp 150–152.
to Hearn, that agreement included 66 properties within the inquiry district. Of those, the commission had previously dealt with exactly 33, of which 18 were in Rangitoto–Tuhua:

Whereas in respect of those 33 blocks the Native Land Commission had recommended the sale of 18,295 acres, the revised proposals envisaged the sale of 6,400 acres; where it had recommended the leasing of 41,136 acres the owners proposed a reduction to 32,909 acres; and where it had recommended a total of 10,564 acres for Maori occupation, the owners proposed that that area should be increased to 30,646 acres. In short, the owners clearly desired to reduce the area for lease and for sale and to increase the area set aside for their use and occupation.

For the other 33 blocks which the commission had not dealt with, ‘the owners proposed 7,181 acres for sale, 15,822 acres for lease, and 9,214 acres for their own use and occupation.’

### 13.3.7 Vesting land for settlement

Between 9 March 1909 and 22 January 1910, the Crown issued orders vesting 200,738 acres of Te Rohe Pōtae Māori land. This represented all but a few thousand acres of the land vested in the Waikato–Maniapoto District Māori Land Board. It also represented more than 60 per cent of the land vested nationwide under part I of the Native Land Settlement Act 1907.

Most of the vested lands were in the east of the inquiry district, where the Crown had made least inroads through purchasing during the 1890s (partly because court and survey processes remained incomplete). Specifically, according to Hearn, the bulk of the vested lands were in Rangitoto–Tuhua (63,048 acres) and Wharepuhunga (59,472 acres). Substantial areas were also vested in Rangitoto A (19,523 acres), Maraeroa (13,900 acres), and Mohakatino–Parininihi (10,741 acres) (see table 13.3).

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147. Document A73, p 228.

See also doc A73, pp 208–209, 267, 325; doc A93(b), p 4.
149. Hearn reported that 203,530 acres was vested in the Waikato–Maniapoto board: doc A73, pp 196, 202, 206–208, 250, 253. The Crown and the claimants appear to have accepted these figures: submission 3.4.120, pp 35–36, 39; submission 3.4.304, pp 45, 50, 52; submission 3.4.130(a), p 13; submission 3.4.130(h), p 4.
The Native Land Commission had recommended a total 327,401 acres of land in this inquiry district for Pākehā settlement, comprising 73,102 acres for sale, 41,087 for mana, and 213,212 acres for lease. The Crown therefore vested only about 60 per cent of the total area recommended for Pākehā settlement.

Table 13.3 sets out the commission’s recommendations for each of the district’s land blocks, and the area ultimately vested. It shows that the Crown vested all of the recommended land in some blocks, and most of the recommended land in others. Four blocks were completely ignored. Within individual blocks, the pattern was similar. The commission recommended 17 Rangitoto A properties for Pākehā settlement; of those, the Crown vested 10.

The commission had also recommended 174,007 acres be set aside for Māori occupation and use. But the Crown made no use of part 11 of the Native Land Settlement Act 1907 (and part XV of the Native Land Act 1909), which provided for land to be vested for Māori occupation, in Te Rohe Pōtē. In contrast, more than 200,000 acres of land was vested for Māori occupation in other Māori land board districts.

Four questions arise. First, why did the Crown vest less land for Pākehā settlement than had been recommended? Secondly, why did the Crown vest no land for Māori occupation and use? Thirdly, and most importantly, to what extent did the vesting decisions reflect owners’ wishes as expressed either to the commission or elsewhere? Finally, did the Crown vest land that was already available for settlement?

13.3.7.1 Why did the Crown vest less land for Pākehā settlement than had been recommended?

Dealing first with land the commission had identified for Pākehā settlement, witnesses to this inquiry offered two explanations for the Crown vesting less than was recommended.

First, according to Hearn, the Crown deferred some vesting decisions while it conducted further negotiations with the owners. This occurred in cases where the commission had recommended that only part of a property be sold or leased, or in cases where the commission recommended that a property be sold or leased but a portion be set aside for the owners’ use.

It also occurred in respect of at least some of the lands covered by the Waahi negotiations. These negotiations, which took place from 1908 to 1911, were

155. Document A73, p 206; doc A93, p 114 n
primarily concerned with how the Government was going to implement the Native Land Commission’s recommendations. At Waahi, instead of vesting, the Crown tended to call meetings of assembled owners, generally asking them to either vest the land or sell it to the Crown. Kīngitanga leaders were averse to vesting land in the board and wanted to make their own arrangements, often leasing privately and sometimes selling to the Crown.160

Secondly, both Hearn and Loveridge suggested that Crown purchasing played a role, either because in some cases the Crown had purchased the land while the commission was making its recommendations, or because the Crown intended to purchase and therefore did not want the land vested in the board.161

In respect of land purchased while the commission was carrying out its work, the commission appears to have done its best to account for this and adjust its recommendations accordingly. For example, the commission initially recommended the 12,360-acre Rangitoto–Tuhua 9 for sale, but in response to continued Crown purchasing in nearby blocks, it revised that to a recommendation for lease.162 However, the commission does not appear to have been aware of all Crown purchases,163 which is hardly surprising given their scale.164 This may therefore account for a considerable portion of the non-vested land.

The commission could certainly not have accounted for the Crown’s intended purchases. In late 1907, shortly after the Native Land Settlement Act had passed, the Department of Lands expressed concern that land it wanted for settlement purposes might instead be vested and asked the Native Department to make sure that did not occur.165

The Tribunal does not have aggregate figures for the district, but it is clear that the Crown subsequently purchased significant areas that had been the subject of commission recommendations but were not vested. For example, in Rangitoto A the commission made recommendations for sale, lease, or retention in respect of 34 blocks. By 1918, the Crown had made purchases in 16 of them, totalling more than 17,000 acres.166

161. Document A73, pp 236–237; doc A93, p 78 n
162. AJHR, 1907, G-18, p 20; AJHR, 1907, G-10, p 16. As another example, in Rangitoto–Tuhua 58, a block of 22,000 acres, the Crown purchased 9,640 acres while the commission was completing its work. The commission recommended the remaining area for sale and lease: AJHR, 1907, G-18, p 21.
163. For example, the Crown appears to have purchased 738 acres of the 2,177-acre Rangitoto–Tuhua 26A in 1908 without the commission knowing. The commission recommended the entire block for leasing. Likewise, the Crown made purchases in Rangitoto–Tuhua 26D, 26F, 54, and 60C in 1908, without these being recorded in the commission’s reports. This is a small sample. We do not have aggregate figures for the inquiry district: AJHR, 1907, G-18; AJHR, 1908, G-10; doc A21, annex 7, Rangitoto–Tuhua 26, 54, and 60.
Why did the Crown vest no land for Māori occupation and use?

As mentioned in chapter 12, part II of the Native Land Settlement Act 1907 provided for the governor, by order in council, to reserve land for use and occupation by Māori. Such land was to be inalienable, with the exception that a Māori land board, on the commission’s recommendation, and acting as agent for the owners, could lease the land to Māori. Any Māori lessee could apply for rent remissions if the land was difficult to bring into production and could also borrow money from the board. The board could subdivide the land as it saw fit.

As noted above, the Crown vested no land in the Waikato–Maniapoto District Māori Land Board under these provisions. In this respect, the Waikato–Maniapoto organisation was unique among Māori land boards.167

No witness provided a detailed explanation for the Crown’s decision not to follow the commission's recommendations in this respect. Hearn suggested that the official view may have been that Te Rohe Pōtae Māori had enough land left without any being reserved under this provision and would not be likely to lease land from the board. Loveridge said the Crown’s inaction had never been properly researched.168

The Tribunal is not greatly concerned with the Crown’s failure to reserve land under this particular provision, which did not make land permanently inalienable, and did not provide for owners to retain control over the land. It appears to have been designed to make land available to Māori farmers while bypassing any difficulties associated with multiple ownership, and it placed Māori in the position of having the board as their landlord even if they owned the land.169

It was, for all of these reasons, hardly suitable for the broader purpose of ensuring ‘the preservation of a tribal estate for future generations’, as the Native Land Commission had recommended.170 What is concerning is that the Crown, so far as it can be determined, took no action to protect the lands recommended for Māori occupation and use.

On the contrary, those lands became subject to the general alienation and Crown purchasing provisions, part XIII and part XIX, of the Native Land Act 1909. These provisions were explicitly intended to accelerate alienation of Māori land, both to the Crown and privately. All previous restrictions on alienation were removed, and new methods of alienating were introduced.

The Native Land Commission had warned the Crown that the entire future of the Māori people was at stake and had recommended that retention and development of Māori land should be the Crown’s highest priority. Having conducted its inquiries (which, in the Crown’s view, were sufficient to justify large-scale vesting) the commission had recommended that 174,000 acres be reserved for Māori use.171

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169. Native Land Settlement Act 1907, pt II.
171. AJHR, 1907, G-1C, pp 13–18; doc A73, pp 139–140.
This was not a particularly large area. It amounted to just 9 per cent of the inquiry district, and compares with 209,110 acres of remaining Māori lands that were already under private lease by September 1909, and the 168,699 acres that the Crown purchased between 1905 and 1909.172 Hearn has estimated that it amounted to a little over 91 acres per person; at the time, the average farm holding in the Kawhia, Otorohanga, and Waitomo counties was 528 acres.173

Given the urgency of the commission’s recommendations, the Crown, in our view, was obliged to act to ensure that this relatively small (per capita) area of land was retained as a tribal estate for future generations. The Crown did not act on this recommendation and further land was alienated out of Te Rohe Pōtae Māori control.

13.3.7.3 To what extent did the vesting decisions reflect owners’ wishes as expressed either to the commission or elsewhere?

The commission, as established, was given two years to inquire into several million acres of Māori land and to determine, firstly, what land was available for settlement, and, secondly, the best method of settling it. This timeframe reflected the urgency with which the Crown regarded its settlement objectives. Nothing in the commission’s terms of reference required it to consult with owners at all, let alone ensure that all appeared or were represented at its hearings.

The commission set aside just two weeks for its initial visit to Te Rohe Pōtae. During that time, it conducted a review of the Crown’s Māori land policies in the district and made inquiries into specific blocks. It interviewed individual Māori landowners who expressed their wishes regarding the land blocks they had interests in. Its business was conducted quickly – in a single day at Otorohanga, it considered more than 50 land blocks.174

It certainly did not hear from all of the district’s landowners, either directly or through representatives. A large proportion of both Ngāti Maniapoto and the district’s Māori population refused absolutely to recognise the commission and wanted nothing to do with Government interference in Māori land. Among those who did appear, some claimed to be representing only themselves and their families; others claimed a right to speak for wider groups and areas of land. The latter included members of the so-called ‘progressive’ group – men such as Hari Hemara and Pepene Eketone who had engaged with the settler world for years, seeking a better and fairer deal for their people.

Some of the blocks identified for settlement covered large areas, and had well over 100 owners, of whom only one or two spoke. It cannot be assumed that all owners were in agreement with what was said before the commission. In many cases, it is clear from subsequent dissent that they were not.

As Hearn noted, the commission appears to have made no attempts to obtain a full list of owners or determine conclusively who had rights to speak on their

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172. Document A73, p 84; doc A21, tbl B5, p 131.
behalf, let alone establish any robust process for determining that those who spoke had rights to alienate the land.

This is not particularly surprising when it is considered that the commission was established to conduct a stock-take of Māori land and make recommendations for its use; nothing in the terms of references explicitly required it to obtain consent from each ownership group for any transfer of title.

The commission’s processes may have been sufficient for consultation purposes; indeed, other Tribunal reports praised the commission for its fulfilment of that role. But if their participation in the work of the commission was to be used as a basis for transfer of ownership, and thereby for alienation, a more thorough process was needed.

As the Ōrākei Tribunal concluded, ‘only the group with the consent of its chiefs could alienate land’. This Tribunal heard no evidence that such a process occurred in respect of any of the properties that were subsequently vested, let alone all of them. The onus was on the Crown to provide such evidence if it wanted to show conclusively that all owners had consented, and it did not do so.

Indeed, the evidence is quite clear that, for several of the vested properties, there were owners who either opposed the commission altogether, or who had no knowledge of vesting until after it had occurred.

When the commission returned to Te Rohe Pōtae in 1908, after the full implications of vesting were understood, the district’s Māori landowners were even less willing to appear than they had been the previous year. How many did appear, or on what basis, is unclear, but from the limited evidence available, it seems that the majority of Te Rohe Pōtae Māori opposed the terms of the Native Land Settlement Act 1907, and therefore opposed any further engagement.

In terms of consent direct from the owners, the Crown made a general concession that it would have breached the Treaty if it vested land without the owners’ consent. It also made a specific concession in respect of the statutory requirement that half of vested lands be sold, saying that it had breached the Treaty by vesting land on this basis when owners had not in fact consented to sale. As part of this concession, it noted that the area vested was approximately 200,000 acres, and said that owners had ‘previously consented to the sale of only approximately 57,000 acres’. It furthermore noted that the board then sold ‘more than 70,000 acres’.

The Crown’s concession might be read to infer that any Treaty breach is to be found in the difference between the aggregate area that owners appearing before the commission identified for sale across the inquiry district, and the aggregate

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area that, by law, was to be offered for sale (or, alternatively, the aggregate area actually sold).

Owners’ wishes cannot be aggregated in this way, since the obvious implication would be that consent from the owners of one property is sufficient to justify the sale of another. On the contrary, owners’ wishes can only be understood at the level of individual properties they owned.

Even if an owner had expressed a clear wish for land to be leased, and it was subsequently vested, the law did not provide that it must be leased. The same was true of land identified by owners for sale. Section 239 of the Native Land Act 1909 provided that ‘any area of land’ that was vested should then be divided into equal areas for lease and sale, while also providing for the split to be varied in respect of individual properties under some circumstances, so long as the land board maintained a 50:50 split across all land offered for sale and lease in any year. Section 240 then provided for each area to be ‘subdivided into allotments . . . suitable for the purposes of settlement’.

In whatever way the land boards interpreted these provisions, it was certainly not required to ensure that land the commission had recommended for leasing actually be leased, nor that land recommended for sale actually be sold. For example, the commission recommended the 12,340-acre Rangitoto–Tuhua 9 block for leasing, but section 239 implied that half should be sold. Likewise, the commission recommended the 6,443-acre Rangitoto–Tuhua 75B for sale, specifically for ‘mana’ (to fund land purchases between Taupiri and Ngāruawāhia for the Kingitanga), but section 239 implied that half should be leased. Even if the board and the Crown made use of provisions allowing them to vary the split, nothing in the Act required that the board act in accordance with the owners’ wishes. In short, then, none of the land was vested in a manner that guaranteed the owners’ wishes – as expressed to the Native Land Commission – would be followed.

Some blocks deserve specific consideration. One is Wharepuhunga. Just under 30 per cent of the total area vested in Te Rohe Pōtae was in this block, where the owners had refused to recognise or appear before the commission and had made clear that they had no wish for any of their lands to be vested in a Māori land board.

Later, during the Waahi negotiations, they softened their stance and identified some land for sale and lease, but they did this in the face of government threats that the land would otherwise be vested without their consent. Of the 57,653 acres the commission had recommended for sale, 27,797 acres was in Rangitoto–Tuhua. We do not think that, under these circumstances, vesting can be regarded as genuinely reflecting the owners’ wishes.

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180. AJHR, 1908, G-10, p 16.
182. In all, 59,472 acres of Wharepuhunga land was vested: doc A73, pp 208–209.
183. AJHR, 1907, G-1B, pp 5–7.
In the Maraeroa block, the Crown vested a much larger area than the commission had recommended. The commission had recommended that 2,140 acres be vested for leasing. The block was later found to have a total area of 13,900 acres, with Crown officials attributing the difference to a serious survey error. Although officials were aware of that error from late 1907, no one informed the commission. The Crown went ahead and vested the block in its entirety. Some of the owners later petitioned the House saying they had not agreed to the vesting.

Hearn also referred to some blocks that were vested despite recommendations that parts be set aside as reserves. One of those was Hauturu West G2 section B2. The commission recommended that this block be leased, with a 350-acre area reserved for the owners. The block was vested without the reserve being set aside. The land board prepared a subdivision plan offering the reserve for sale but halted the sale after hearing from the owners.

13.3.7.4 Did the Crown vest land that was already available for settlement?
One of the Native Land Commission’s reasons for recommending vesting was to circumvent the difficulties that could arise with blocks that had large numbers of owners. Settlers could not buy or lease the land without considerable expense and difficulty gathering signatures. The commission also argued that the owners could not easily manage the land themselves. The evidence before the Tribunal is at odds with what Te Rohe Pōtae Māori were saying. There is, however, no doubt that the Comission saw Māori land boards as a potential means to bring land under coordinated control, thereby making it productive both for the owners and Pākehā settlers.

In practice almost one-third of the 138 vested blocks in this inquiry district had 10 or fewer owners (see table 13.1). Hearn suggested that, in these circumstances, it should have been possible for the owners, with proper training and assistance, to work together to develop farms. By vesting, therefore, the Crown was merely replacing Māori ‘settlers’ with Pākehā ones, without necessarily increasing the land’s farming potential.

Notably, almost one-third of the vested blocks were small – only a few hundred acres or less – and only 39 of the 138 exceeded 1,000 acres. In most cases, therefore, the Crown was not transferring large areas of land for settlement. Rather, it appears to have been vesting these lands around Pākehā settlement. Some of the
vested blocks, for example, were surrounded by or adjacent to Crown or Pākehā-owned land.\footnote{192} Despite these figures, the majority of the remaining blocks vested were significant in size (see table 13.2).

Hearn also provided evidence of properties being vested when the owners were already leasing or preparing to lease, and of vesting therefore delaying settlement. For instance, in May 1909, the owners of Maraeroa had entered into agreements for the milling and removal of timber on the block. The block was vested nonetheless, and the licence was not granted until 1912.\footnote{193} A further example concerns Rangitoto A18B2, where the Maniapoto–Tuwharetoa Māori Land Board had approved a private lease prior to the block being vested. Following vesting,
however, the board then declined to endorse its consent. The lessee was eventually advised to partition out his interests through the Native Land Court and arrange a lease with the board.\footnote{194}

**13.3.8 Owners claim they were not informed or consulted**

Almost as soon as the Crown began to vest land, Te Rohe Pōtæ Māori owners began to object, arguing in many cases that they had neither known nor consented. In August 1909, Ngāti Maniapoto leaders expressed their clear displeasure with the vesting regime. John Ormsby, Pepene Eketone, and other Ngāti Maniapoto leaders met the Native Minister (Carroll) at Ōtorohanga. They presented him with a petition which, among other things, asked that section 11 of the Native Land Settlement Act 1907 ‘be repealed and the land administered under section 17 of the [Māori Lands Settlement] Act of 1905’\footnote{195} The details of the 1905 Act have already been discussed in chapter 12 of this report. They also asked for the Advances to Settlers regime to be extended to Māori landowners with appropriate safeguards to ensure that they could not lose further lands if they could not repay the loans.\footnote{196}

In press interviews, John Ormsby explained that in 1907, Te Rohe Pōtæ Māori had offered to hand over lands for settlement ‘on certain conditions’. The conditions that they had presented to the Native Land Commission included an end to Crown purchasing, increased financial and technical assistance for Māori farmers,}

<table>
<thead>
<tr>
<th>Acres</th>
<th>Number of blocks</th>
<th>Proportion of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–100</td>
<td>22</td>
<td>15.8</td>
</tr>
<tr>
<td>100–200</td>
<td>17</td>
<td>12.2</td>
</tr>
<tr>
<td>200–320</td>
<td>13</td>
<td>9.4</td>
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<tr>
<td>320–640</td>
<td>31</td>
<td>22.3</td>
</tr>
<tr>
<td>640–1,000</td>
<td>17</td>
<td>12.2</td>
</tr>
<tr>
<td>1,000–2,000</td>
<td>14</td>
<td>10.1</td>
</tr>
<tr>
<td>2,000–5,000</td>
<td>15</td>
<td>10.8</td>
</tr>
<tr>
<td>5,000–10,000</td>
<td>6</td>
<td>4.3</td>
</tr>
<tr>
<td>10,000+</td>
<td>4</td>
<td>2.9</td>
</tr>
</tbody>
</table>

Table 13.2: Vested blocks in Te Rohe Pōtæ – block size

Source: Document A73 (Hearn), p240.
and the removal of restrictions on land owned by Māori who were capable of managing their own affairs.\footnote{197} Instead of trying to meet these conditions, Ormsby said, the Government had passed the Native Land Settlement Act 1907, which required that half of the lands would be sold.\footnote{198} This, he said, would ‘press unduly’ on hapū that did not want to sell half of their property. The owners instead wanted land managed under the 1905 Act, ‘which makes it permissible for the owners to direct the board how the land shall be administered’. If that was done, the desired goal – settlement of lands, and their productive use – ‘would be achieved more rapidly and in a more amicable manner’.\footnote{199}

Ngāti Maniapoto were ‘particularly anxious’ about the Government’s failure to provide Māori with instruction in modern farming techniques and to make financial assistance reasonably available, even though doing so would, in Ormsby’s view, prove profitable for Māori and the State alike.\footnote{200} In respect of section 11, Ormsby argued that the ‘spirit’ of the provision would be complied with if Māori were left to decide for themselves how their lands should be managed. While some hapū wanted only to lease, others were willing to sell, and ‘in aggregate’ the results would probably be the same. Carroll, in response, acknowledged that section 11 of the Native Land Act 1907 was ‘not only unfair, but unworkable’. He said he would attempt to amend the legislation.\footnote{201} In spite of that assurance, the Native Land Act 1909 (which was passed on 24 December and came into effect in March of 1910) continued to require that all vested properties be split into equal portions for sale and lease.\footnote{202}

In addition to this general protest over the Crown’s policies, many Te Rohe Pōtae Māori responded to specific vesting decisions by arguing that they had never consented to the vesting of their properties. In 1912, for example, Tame Kawe and others argued:

For the most part the said Native Land Commission made reports and recommendations . . . without the knowledge or consent of the great majority of the owners of the lands affected thereby. Your petitioners are aware of and can cite a number of instances in which only one owner or only a very few owners of a block out of a large number appeared before the Native Commission at its investigations into the positions of such blocks and can bring forward the great majority of owners both in

\footnote{197. AJHR, 1907, G-18, pp 6–7.}
\footnote{198. Native Land Settlement Act 1907, s.11.}
\footnote{199. ‘The Land Question,’ \textit{Waikato Argus}, 6 August 1909, p.2; doc A93, pp.113–114; doc A73, pp.165–166.}
\footnote{200. ‘The Land Question,’ \textit{Waikato Argus}, 6 August 1909, p.2; doc A93, pp.113–114; doc A73, pp.165–166.}
\footnote{201. ‘Native Lands Question: Conference at Otorohanga,’ \textit{King Country Chronicle}, 5 August 1909, p.2; doc A93, pp.113–114; doc A73, pp.165–166.}
\footnote{202. Native Land Act 1909, s.239.}
number and in interest to prove that they had no knowledge . . . that their lands were before it until long after the Commission had concluded its investigation and made its report and recommendation and an Order in Council had issued . . .

The effect was that ‘large areas of land now remain vested . . . without the consent and against the wishes and desires of the great majority of the Native owners.’203 The petitioners claimed interests in several blocks including Rangitoto–Tuhua 9 and 68 (both of which had been vested based on Hari Hemara’s evidence to the commission) and other blocks in Rangitoto–Tuhua, Kinohaku East, Wharepuhunga, and Maraeroa. They said that some owners had no other lands. While they opposed vesting, they were willing to see voluntary sales or leases.204

Many other owners of individual blocks petitioned the Crown claiming that land had been vested without their knowledge or consent:

- In August 1909, Wiri Herangi and others petitioned the Native Minister asking for the return of the 43-acre Kakepuku 2A. Mr Herangi said he had learned of the vesting only when reading a notice in the Kahiti, and wanted the land returned as it ‘is a home of mine’.205
- In June 1910, Taonui Hīkaka asked for the return of Maraetaua 10: ‘Ko taua whenua e hara i matou i tuku i te Komihana, a Ngata raua ko Tetaute’ (translated at the time as: ‘We did not set-over that land to the Stout–Ngata Commission’).206
- Early in 1910, Tawhaki Takiaho protested against the board’s plans for the sale of the 71-acre Kaingapipi 2. Takiaho was the property’s main owner, with interests equivalent to 51 acres, and had been occupying and farming the land at the time it was vested. The Under-Secretary for Native Affairs commented that it was ‘difficult to understand’ how the commission could have recommended the land for vesting. Takiaho was advised that the only remedy available was for him to buy his own land from the board.207
- In September 1910, Waretini Ringitanga and others petitioned the Native Minister asking for Maraeroa C to be returned. This was the block that the commission recommended for leasing, believing it to be 2,140 acres, but was found before vesting to be 13,900 acres. The petitioners informed the

203. Tame Kawe and others to Native Minister, petition, received 4 June 1912 (doc A59(a) (Mitchell document bank), p56).
204. Tame Kawe and others to Native Minister, petition, received 4 June 1912 (doc A59(a), pp 54–62; doc A73, pp 211–212). Hearn wrongly attributed this to Taingakawa and wrongly dated it 1909: submission 3.4.304, pp 46–47. According to Hearn, the petitioners claimed interests in Rangitoto–Tuhua 9, 25 2B, 26C, 37B, 50, 68, 73B, 74, and 77A, Hurakia B, Kinohaku East, Wharepuhunga 6, and Maraeroa C.
205. Wiri Herangi and others to Native Minister, 10 August 1909 (doc A73(a), vol 5, p 233); doc A73, p 213.
206. Taonui Hīkaka and others to Native Minister, 1 June 1910 (doc A73(a), vol 6, pp 406–407); doc A73, p 213.
207. Under-Secretary to president, 28 February 1910 (doc A73(a), vol 5, p 223); doc A73, p 214; doc A73(a), vol 5, p 225.
Minister that the land had been ‘arbitrarily taken by the Commission’ They did not have ‘the least knowledge as to what person handed this land over to the Commission’ and did not consent to the vesting.208

› In December 1910, Ngaru Te Paehua and seven others petitioned the Native Minister asking for the return of Rangitoto A18, ‘which the Commissioners took from us without our consent’.209

› There were more petitions in 1912–13 and beyond, from the owners of several Wharepuhunga blocks, Rangitoto–Tuhua 26A2 and 26A3, Rangitoto A42B, and Kinohaku East 2 25B2B, all saying that land had been vested without their consent.210

It was not only Māori making this claim. In 1912, a Te Kūiti land agent was reported in the King Country Chronicle, telling the visiting Native Minister (William MacDonald) that ‘it was well known that land had been placed in the hands of the commission without the owners’ knowledge, and cases of hardship had arisen in consequence.’211 In 1913, William Herries, who had by then become Native Minister, acknowledged that this was the case. Referring to the Native Land Settlement Act 1907 as ‘one of most unjust Acts ever passed,’ he said it had ‘tied up the Native land by compulsorily vesting large tracts of land in the Maori Land Boards’.212 Land had been ‘vested in a great many cases without the consent of the Natives’:

The Crown has simply confiscated the land . . . [it has been] practically filched . . . was there worse confiscation than under the Act of 1907, where thousands of acres, without the consent of the Natives, were put under the Maori Land Boards, and in some instances have gone absolutely and for ever from the control of the Natives?213

The Crown’s largest acquisition was in the 12,340-acre Rangitoto–Tuhua 9 (Potakataka) block, located in the south-eastern corner of the inquiry district. It is recorded as having 226 owners,214 of whom just two (Waeroa and Hari Hemara) appeared before the Native Land Commission.215

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208. Waretini Rangitanga and others to Native Minister, 2 September 1910 (doc A73(a), vol 2, p 308); doc A73, p 214.
209. Ngaru Te Paehua and others to Native Minister, 2 December 1910 (doc A73(a), vol 7, pp 3–5; doc A73, p 213).
211. ‘Vested Native Lands: Deputation to Minister’, King Country Chronicle, 27 April 1912, p 5; doc A73, p 210; doc A93, p 103.
214. Document A73, pp 400, 410, 412; see also doc A73(a), vol 1, p 14, vol 2, p 204; doc A73(a), vol 14, p 433.
They offered the block for lease,216 and the commission initially followed their wishes.217 But in early 1909, responding to the Waahi negotiations between the Crown and Kingitanga Māori, the commission issued a new recommendation that 6,170 acres be sold ‘for mana’ (to raise funds for the purchase of land at Ngāruawāhia and Taupiri, which would in turn be held in trust for the Māori King) with the rest being leased.218

Before the Crown issued vesting orders, Hemara arranged for the sale of timber rights on the block.219 The timber merchants informed the Government of this agreement, and asked that it be honoured.220 Nonetheless, in May 1909, the land was vested.221

The board then decided to offer the entire block for sale, notwithstanding the owners’ wishes or the requirement of the Native Land Settlement Act 1907 (section 11) that each area of vested land be split into equal parts for sale and lease.222

Before the board took any action, a group of owners in 1910 wrote to the Native Minister saying they had not appeared before the commission, or consented to vesting, or known of the vesting order.223 The owners, furthermore, said that they had made arrangements prior to vesting for the block to be leased. The lessee had agreed to pay all survey and roading costs. They were apprehensive as to what might happen to the land, and what costs might be imposed, if the land remained with the board.224 At that time, the law provided no power for re-vesting, and so the Government did nothing.225

The block then lay unused for several years. The law was amended in 1912 to allow re-vesting,226 and the owners (including Hemara) made repeated efforts to have the block returned to them, with the intention of selling timber rights for part of the block and living on the rest. One petition in 1912 was signed by 60 owners, and another by 150.227

The board opposed re-vesting, as did the Native Department and the Department of Lands. By 1913, these officials had developed plans for a roading and subdivision scheme encompassing Rangitoto–Tuhua 9 and several large adjacent blocks of Crown land. Any re-vesting would be likely to upset that scheme.228

217. AJHR, 1907, G-1B, p 20. The commission repeated this recommendation in its 1908 report, in which it revised some of its recommendations in light of the impact of the Native Land Settlement Act 1907: AJHR, 1908, G-10, p 16.
218. AJHR, 1909, G-1A, p 12; doc A73, p 234.
221. Document A73, p 400; doc A73(a), vol 2, p 205; doc A73(a), vol 6, p 211.
222. Document A73, p 215; doc A73(a), vol 6, p 205.
225. Document A73, pp 216; doc A73(a), vol 6, pp 342.
228. Document A73, p 404.
When it became apparent that the Native Minister (Herries) was open to the possibility of returning the land, these officials delayed and obstructed the process to ensure it could not be completed. Hearn described their efforts as a ‘carefully orchestrated bureaucratic charade’.\(^{229}\)

For example in April 1913, the Native Department informed its Minister that it had taken time to develop a scheme that suited the whole district but surveying of the proposed subdivisions had finally begun. ‘In the interest of the public,’ the department said, it would be better to keep the lands with the board and open them up for settlement on an open market, rather than re-vest and therefore allow the land to be ‘dealt with . . . for speculative purposes’. The board would ‘no doubt’ be willing to consider setting aside any lands the owners needed for their support.\(^{230}\) The board promised that the block would be ready for sale within a year.\(^{231}\)

In Hearn’s view:

> In that one statement the [Native Department] Under Secretary neatly summarised the basic assumptions which underlay the Crown’s approach to vested lands, namely, that in making decisions about the fate of such lands the Crown (Board) acted less as trustee for the owners than an agent for the ‘wider public interest;’ that owners were incapable of exercising or at least not to be entrusted with the responsibility of dealing with their own property; that any opportunity costs incurred by owners were of no moment; that the Crown had a responsibility to thwart the designs of the ‘speculators;’ and that subsistence reserves were all that owners required.\(^{232}\)

The circumstances around the sale of the block are discussed in chapter 14.

13.3.9 Before vesting, did the Crown do all it could to assist Māori landowners to develop their own lands?

Two fundamental beliefs underpinned the Crown’s vesting decisions, and indeed its broader Māori land policies in the first two decades of the twentieth century. The first was that Māori had large amounts of unused land that could readily be converted to pastoral farming. The second was that Māori landowners were either unable or unwilling to use that land of their own accord, whereas Pākehā farmers would successfully bring it into production.

These beliefs were consistently and forcefully expressed by settlers and settler politicians throughout the inquiry period and, indeed, well beyond. The Crown, in response, pursued policies that limited Māori property rights, and encouraged the transfer of land from Māori to Pākehā.

\(^{229}\) Document A73, p 404.

\(^{230}\) Under-Secretary, Native Department to Native Minister, 8 April 1913 (doc A73, pp 401–402).

\(^{231}\) Document A73, pp 400–401; doc A73(a), vol 14, pp 438, 440.

\(^{232}\) Document A73, p 402.
The Treaty requires that the Crown take all reasonable steps to protect Māori possession of, authority over, and use and development of lands. The Crown can interfere in property relationships only with consent, or in exceptional circumstances, where the national interest demands it and all other options have been exhausted. It must protect the land base not to a subsistence level, but to a level that allows full participation in development opportunities on an equal basis with other New Zealanders. Assistance for development must also be provided on an equal basis. The Crown, in other words, could not favour settlers or discriminate against Māori; it was obliged to ensure, as far as it reasonably could, that both could take advantage of the new opportunities arising from settlement.

Before the Crown vested land, thereby removing the rights of Māori owners to possess and manage their lands, had it met these standards? Had it done all it reasonably could to assist Māori landowners to develop their lands as much as they wished? Had it assisted them as it had assisted non-Māori?

The short answer is no. Although Pākehā commonly complained of Māori land lying idle, the reality was that Māori landowners were genuinely willing to bring land into production, either by leasing or by farming themselves. The scale of private leasing in the district is testament to that. So, too, were the considerable efforts of some Māori landowners to develop farms – the Ormsby and Eketone families among them. In 1907, the Native Land Commission reported that two-thirds of the butter-fat supplied to the Te Kūiti dairy factory in the previous season came from Māori farmers, which is hardly evidence of Māori leaving land idle.

However, one of the constant themes in Te Rohe Pōtae Māori petitions and protests during this period was that they wanted more support to farm their lands.


238. AJHR, 1907, G-18, pp 7, 8, 11, 12; doc A73, pp 82–86, 112, 115.

239. AJHR, 1907, G-18, p 8.
The Crown, in its view, imposed barriers on Māori that were not imposed on Pākehā, and supported Pākehā farmers in ways that were not available to Māori. The Native Land Commission examined these issues in some depth and recommended that support for Māori farming should be the Crown’s first land settlement priority. Indeed, the commission’s view was that the entire future well-being of the Māori people depended on such a policy being adopted. The commission considered that the Crown had actively prevented Māori in Te Rohe Pōtæ, and elsewhere, from farming their own lands through its native land title system, its use of restrictions on land alienation, and its failure to provide Māori farmers with access to training and capital.

Despite these findings, it was not until the 1920s that mortgage finance became more widely available, and that was financed not by the government but by Māori landowners themselves, through diversion of Māori land board funds. As will be discussed in chapters 16 and 17, only in the late 1920s, through Ngata’s consolidation and development schemes, did the Crown begin to make genuine attempts to address the issues that Te Rohe Pōtæ Māori had raised before the commission in 1907 and in their petitions in the decades prior. Certainly, those issues were not addressed before vesting.

13.3.10 Treaty analysis and findings

The entire direction of government policy towards Māori land in the two years before the appointment of the Native Land Commission was towards alienation. The Crown had abandoned its brief experiment with Māori land councils, begun to carry out extensive purchasing, experimented with compulsory vesting, and begun to liberalise private alienation. But none of this was enough, and a significant (or at least vocal) portion of the settler community was clamouring either for free trade or confiscation. The commission’s appointment was yet another response to satisfy their demands for more Māori land. It was essentially an audit exercise to ascertain how much more land was available for Pākehā settlement. That more land would be made available was not negotiable.

It was on this basis that some of the district’s leaders and landowners participated. Under these circumstances, the debates that occurred during the early part of 1907 between the Kingitanga and the ‘progressives’ had echoes of those from a generation earlier, between those who hoped to hold the aukati secure, having nothing to do with the Crown, and those who saw the escallation of settler
demands and believed it was better to find a way of coping with them. We cannot know if, with sufficient time, these fundamentally differing approaches might have been resolved, thereby enabling, for example, Ngāti Maniapoto to present a united front to the commission, and perhaps also to identify land for settlement with less likelihood of later dissent. The Crown's timetable did not leave space to find out; there was too much land to be considered in too short a time.

While many stayed away, the progressives therefore participated. This was not a sign of consent, either for specific land decisions or for vesting in general. Those who participated were immensely frustrated at the Crown's land policies, including its purchasing under unfair conditions, its refusal to let them use their lands as they wished, and its failure to support their farming ventures as it supported those of Pākehā.

They were aware that the Government, influenced by its settler constituency, saw the opening of their lands for settlement as non-negotiable, and might consider more draconian measures, including confiscation, if it was not appeased. They reasoned that it was only by participating in the commission's hearings that they could influence the outcomes, both in terms of policy and in terms of the specific lands that might be taken.

Despite the commissioners’ considerable efforts to engage with them and understand their concerns, this cannot be characterised as a situation where they genuinely consented to vest all the lands that were taken. The general outcome was pre-determined and would have occurred with or without their consent. What was up for debate was the means of achieving that outcome, along with the specific areas of land that would be affected.

Under these circumstances, we do not regard those who participated in the Native Land Commission's hearings and those who identified land for settlement as having consented freely and willingly to vesting. They were pressured to do so by Crown actions and by the broader settler clamour for land, which, they knew from past experience, the Crown would inevitably take steps to appease. Furthermore, those who appeared at the 1907 hearings could not have understood the implications of identifying land for vesting, for the Crown had not told them. The evidence is limited, but it suggests that those who appeared understood themselves to be identifying land either for sale or lease by the land boards on a voluntary basis, like that set out in the Māori Lands Administration Act 1900 and the Māori Land Settlement Act 1905. Those Acts provided for voluntary vesting on terms set out in writing between the owners and the land boards, or for land to be transferred to the boards for administration (not vesting), under terms set down by the owners.

Even then, it is not at all clear that they saw the commission's hearing as the last word on the matter. As noted above, the commission had been established to conduct a stock-take and make recommendations. Nothing in its terms of reference required it to obtain consent for vesting or any other transfer of title. The tribal representatives who appeared certainly knew that they were identifying land for settlement, but this does not mean that they were giving consent there
and then, with no prospect of further discussion or negotiation. Before they gave evidence to the commission, the progressives set out the basis on which they were willing to make land available. Firstly, they asked the Crown to stop purchasing. Secondly, they asked the Crown to give them fair assistance to develop their own lands. If, after those terms were met, Māori landowners had surplus lands, they were willing to make them available to Pākehā settlers by sale or lease, provided that it occurred on a voluntary basis involving all owners, similar to section 17 of the Māori Land Settlement Act 1905. That process involved the written consent of all owners, or the consent of representatives appointed by a meeting of assembled owners, and furthermore required the terms of the trust to be set out in writing between the owners and the board. These were reasonable requests; indeed, the commission made very similar recommendations.

It might be an exaggeration to regard the progressives’ participation as being conditional on the exact fulfilment of their requests – there was, doubtless, some room for negotiation. But it is nonetheless clear that these requests were an important part of the exchange and were the basis on which the progressives participated.

Instead, the lands they identified for settlement at those 1907 hearings were subsequently vested under very different laws. The Native Land Settlement Act 1907 continued under the Native Land Act 1909, which removed almost all rights from Māori owners, giving the board and the Crown complete control over how land would be divided up and sold or leased, at what price, and at what cost to the owners.

In particular, the requirement for a 50:50 split in section 11 of the 1907 legislation made a mockery of the commission's previous consultation, making it not only possible, but highly likely that land which owners had wanted leased would be sold, and vice versa. This provision was such a fundamental imposition on owners’ wishes that, by itself, it would have voided any prior consent. When it is considered alongside the Act’s other provisions, it is clear that no one appearing before the commission in 1907 could have had any genuine idea of the implications of identifying land for settlement, and cannot have been consenting to vesting on the subsequently enacted terms. Furthermore, once the full implications were known, many of the district’s Māori landowners made their dissent clear, by refusing to appear before the commission, and by petitioning the Crown for the repeal of section 11.

On a policy level, the Crown appears to have prioritised those recommendations of the commission that advanced Pākehā settlement, ignoring those that sought to provide equitable support for Māori land development or otherwise serve Māori interests. In particular, it ignored the request for an end to Crown purchasing, thereby unilaterally setting aside the basic trade-off the progressives were proposing: that if the Crown stopped buying land from individuals and by unfair means, Māori would make land available by a fairer method that allowed them to preserve some control. The Crown’s failure to reserve land under part XI of the Native Land Act 1907 made it impossible for the commission to realistically consider the proposals made by the progressives.
of the 1907 Act is another concern. That is because it may have alleviated some of the desperation of the owners to keep the land from being vested under part I of the legislation. After all, owners were able to claim first option to lease the land, and even if the land went to another Māori for lease, the land was not permanently alienated. Clearly part II did not provide for the mana whakahaere of Te Rohe Pōtae Māori over their lands unless they became a lessee, but at least they could be reasonably confident that the land would be returned to them if the land boards administered the scheme properly, a matter we discuss below albeit after many years. In an era when full alienation was more likely, such leases as these may have mitigated some of the damage of compulsory vestings under part I.

While part II of the 1907 legislation did not address 'the preservation of a tribal estate for future generations', as the Native Land Commission had recommended, it was at least a mitigating measure against the possibility of landlessness. What is concerning is that the Crown, so far as it can be determined, took no action to protect the lands recommended for Māori occupation and use.

In respect of individual blocks, the Crown also cherry-picked. It vested blocks for Pākehā settlement if that suited its broader settlement plans; however, if it preferred Crown purchasing or some other method of getting land into Pākehā hands, it did not vest. We did not see any evidence that the owners' wishes had any influence on which of the land recommended for settlement was actually vested.

In some instances, the Crown actively ignored the clearly expressed wishes of the owners. That occurred in respect of the Wharepuhunga blocks, where the owners did not recognise the commission and had no wish for the Crown or Māori land boards to be involved at all in the settlement of their lands. Nonetheless, it suited the Crown to vest 60,000 acres. In doing so, the Crown furthermore ignored the commission's recommendation that, before vesting, areas for Māori occupation be set aside from Wharepuhunga. Similarly, the Crown vested other property without first setting aside a reserve for the owners as they had requested. The Crown vested Maraeroa C, even though it was never clear how much land the owners had identified for vesting. To vest 13,900 acres based on the commission's recommendation for vesting of 2,140 acres, without taking steps to clarify the situation with the owners, was, in our view, scarcely an act of good faith.

Furthermore, as already discussed, the law imposed no requirement that once land was vested, the board and the Crown were to follow owners' wishes. It did the opposite, requiring each area of land to be divided into two equal portions for sale and lease, regardless of what the owners had wanted. None of the vested properties had to be disposed of according to owners' wishes: all would be half-sold and half-leased, but this ratio could be changed as we discussed in chapter 12. The discretion provided by section 238 of the Native Land Act 1909 for the board and Crown to vary the lease areas did not improve matters. It simply meant that land the owners wanted leased could be sold in its entirety, and land the owners wanted sold could be leased.

Other Tribunals have noted that the Treaty requires the Crown to take all
reasonable steps to protect Māori in their possession of, authority over, and use of their lands.\textsuperscript{244} The Crown can interfere with their ownership only by consent,\textsuperscript{245} or in exceptional circumstances, where (as with the rights of other citizens) the national interest demands it and all other options have been exhausted.\textsuperscript{246} Furthermore, assistance for development of that land must also be provided on an equal basis with other citizens.\textsuperscript{247} The Crown could not favour settlers or discriminate against Māori; it was obliged to ensure, as far as it reasonably could, that both could take advantage of the new opportunities arising from settlement.\textsuperscript{248} In other words, the Crown was required to respect Te Rohe Pōtae Māori rights to their land and adhere to its guarantee of Māori tino rangatiratanga over those lands as required by article 2 of the Treaty, whilst providing for the same rights and privileges other citizens enjoyed under article 3 of the Treaty of Waitangi.

We consider that the Crown’s concessions in this inquiry do not go far enough. The Crown in 1907 was aware, because of its own policies and then subsequent legislation, that it never needed Māori consent to the compulsory vesting provisions under part I of the Native Land Settlement Act 1907, as the evidence for Te Rohe Pōtae Māori demonstrates. The Crown’s concessions do not go far enough towards acknowledging the degree to which its policy drivers, its actions in proceeding with the 1907 legislation, even before the Crown’s own commission had completed reporting, and its actions authorising the specific vestings after the legislation was enacted, were all inconsistent with the principles of the Treaty of Waitangi. Therefore, whether Māori consented or not in this context is a red herring as far as determining whether the Crown complied with the principles of the Treaty of Waitangi.

That being the case, we note our findings on the 1907 legislation with respect to compulsory vestings in chapter 12 and adopt them for this chapter.

We further find that the Crown acted in a manner inconsistent with the following principles of the Treaty of Waitangi, namely: the principle of partnership and the principle of mutual benefit, in failing in the first instance to fully ascertain with Te Rohe Pōtae block owners whether they wanted to make any of their lands available for vesting. As demonstrated, the Crown failed to advise Te Rohe Pōtae


leaders and owners that half or more of those lands would be sold. We find that, in doing so, the Crown failed in its duty to act honorably, reasonably and in good faith. The same findings apply to its failure to carry out the wishes of the tribal representatives and owners who appeared before the Native Land Commission.

Finally, by vesting with the aim of making land available for Pākehā settlement, without first taking all reasonable steps to assist Māori to make productive use of their property when such assistance was freely available to Pākehā, we find that the Crown breached the principle of equity under article 3 of the Treaty.

The results of the Crown’s actions continued to widen the abyss that had formed between what was now an expectation for Te Rohe Pōtae Māori mana whakahaere over their lands and the Crown’s determined march towards Pākehā settlement.

These findings apply to all 200,738 acres of Te Rohe Pōtae land vested under part I of the Native Land Settlement Act 1907.249

13.4 What Was the Crown’s Responsibility for Vested Lands?
As the Tribunal has in another context noted, there are two main tests for ascertaining whether a public body is an agent of the Crown. The first considers whether a body is carrying out a traditional ‘function’ of government. While popular in the nineteenth century, the subjective nature of this distinction has made it less widely applied in the twentieth century. The second, and major test, is that of ‘control’. Put simply, this measure considers whether the public body, as a matter of law, was under the direct control of a Minister of the Crown, or, conversely, had independent discretionary powers. The Tribunal has noted that the courts have viewed control as the principal factor determining whether an agency is acting for or on behalf of the State, and have also considered functions, including the question of who was intended to benefit from those functions.250

In determining whether other public entities, such as the Public Trustee and the Native Trustee, were agents of the Crown, the Tribunal has previously found that they did not meet the (strict) threshold of the control test.251 The Wairarapa ki Tararua and Tauranga Moana Tribunals found that while these and other public agencies were not agents of the Crown, the Crown ‘retains an overall duty of active protection towards Māori interests’. This responsibility extends beyond the


statutory framework to include a duty to monitor the operation of delegate bodies for Treaty compliance. Even where such bodies were not part of the Crown, the Crown could not escape responsibility for their actions or for the outcomes.\textsuperscript{252}

The principal statutory role of the land boards in preparing land for settlement involved a high degree of ministerial control. All of the land boards’ substantive functions relating to compulsory vesting required Crown approval. The land boards’ roles were circumscribed by statutory requirements for which the Crown was responsible. They were, in other words, implementing a policy (land settlement in favour of Pākehā) intended mainly to provide new opportunities for settlers with the consequential effect of limiting the rights of and opportunities available to Māori landowners. We conclude, therefore, that for the purpose of implementing the Crown’s policy of land settlement and in terms of its compulsory vesting provisions in part I of the Native Land Settlement Act 1907, Māori land boards were acting either as part of the Crown or as agents for the Crown.

Once land had been sold or leased, however, there was less ministerial oversight. The board was responsible, without ministerial direction, for collecting rents and purchase payments (which could be made in instalments over many years), for investing that money on owners’ behalf or distributing it to them, for monitoring and enforcing the terms of sale or lease, for monitoring improvements, and for overseeing lease transfers or sub-leases. In all of these functions, the board had a fiduciary duty as a trustee to the owners, and discretion to act independently in service of that duty. Therefore, for the purposes of administering land after sale or lease, Māori land boards were not part of the Crown, nor were they agents of the Crown. In respect of those functions, they were trustees for the owners, with an enforceable statutory duty to act independently in a manner that served owners’ interests. However, the Crown retained an overall duty of active protection towards Māori interests administered by the land boards. This responsibility extended beyond the statutory framework to include a duty to monitor the operation of delegate bodies for Treaty compliance. We turn now to examine what the land boards did in Te Rohe Pōtae and how the Crown monitored their performance.

\textbf{13.5 Administering the Vested Lands}

The administration, and subsequent alienation, of compulsorily vested lands is particularly important in this inquiry district because of the scale of compulsory vesting. In other districts, significant amounts of land had been vested voluntarily, under the Māori Lands Administration Act 1900. However, no other inquiry district had nearly as much land vested compulsorily under the provisions of the Native Land Settlement Act 1907 or the Native Land Act 1909.\textsuperscript{253}


\textsuperscript{253} AJHR, 1912, G-9, p 4. Altogether, the Crown vested 328,289 acres in Māori land boards under part XIV of the Native Land Act 1909, of which 203,530 acres was in the Waikato–Maniapoto district.
The Crown had presented vesting, and settlement generally, as being of mutual benefit to settlers and Māori. The idea, as Cabinet Ministers explained it, was that Māori land would be developed into productive farms, which would benefit the colonial economy, allowing it to take advantage of growing demand for New Zealand produce, while also providing incomes to the owners. The Native Land Commission suggested that vesting land for leasing would benefit future generations of Māori, who would have productive farms handed back to them when the leases expired. Owners who had appeared before the commission in 1907 clearly expected that boards would act as agents on their behalf, brokering land settlement deals at fair prices, and acting in accordance with their wishes.

None of this occurred. Once land was vested, the board held all legal rights, and all decisions were made by the board or the Crown. Owners had no statutory right to be informed about those decisions, let alone be consulted or have their wishes carried into effect. Meetings of assembled owners had no decision-making rights, other than a right to approve sales.

Under the board’s management, and the Crown’s oversight, many of the vested properties returned little income to their owners for years or even decades, because they were unleased, or because rents were not paid, or because they were encumbered with development costs and debts. Much of what had been vested was sold within a decade, and what was left either remained unproductive or was leased on terms that made eventual sale almost inevitable.

By 1950, more than two-thirds of land vested in the Waikato–Maniapoto District Māori Land Board had been sold, most of that to the Crown, and another 5 per cent had been returned to the owners (see table 13.4). That left a little over 50,000 acres in the board’s hands, of which a little more than half was returning an income. Much of that was sold within the next decade or two (see tables 13.8 and 13.9 for details).

Throughout the period covered by this chapter (and beyond), Māori landowners protested about the board’s management of vested lands. Typically, they regarded vesting as bringing them no benefit and considerable harm, denying them incomes and access to their lands for years or even decades, and leading almost inevitably to alienation.

254. AJHR, 1907, b–6, p xii; Native Land Settlement Act 1907, preamble; AJHR, 1907, g–1c, pp 13–18; doc A73, pp 87, 112, 143–144, 161–162, 162–165, 203.
256. Native Land Act 1909, s 236.
257. Native Land Act 1909, part XIV.
261. AJHR, 1951, g–5, pp 42–43; doc A75 (Bassett and Kay), pp 130–132.
13.5.1 Preparing vested land for lease and sale

As we noted in chapter 12, the compulsory vesting provisions of the Native Land Settlement Act 1907 were continued under the Native Land Act 1909. Under part xiv of the 1909 Act the Waikato–Maniapoto District Māori Land Board was charged with preparing vested land for lease and sale, under the Crown’s supervision. As previously discussed, when ‘any area of land’ was vested, the board was required to divide it into two ‘approximately equal’ portions, one for sale and the other for lease, to survey and subdivide those portions into allotments suitable for settlement, to build roads and bridges giving access to the land, to classify all land as first, second, or third-class, and then (having set a reserve price) to sell or lease the allotments by public auction or tender.

The Native Minister’s approval was required for the division of land into portions for sale and lease, and for the subdivision of land into allotments. If it was ‘impracticable or inexpedient’ to split a property into equal portions, the governor in council could approve a different split, or order that the whole property be sold or leased – but the board was then required to adjust the portions sold and leased in other properties ‘so as to conform in any one year as nearly as possible’ to the 50:50 split.

The Act provided for the Crown to make advances to Māori land boards, or offer subsidies, to cover the costs of subdivision and roading. Boards could also borrow from State loan departments. Once the land was earning income, boards were required to repay these debts and deduct various other expenses before paying the residue to the owners. The other expenses included the board’s administrative costs, rates and taxes, contributions (as directed by the Native Minister) to a ‘sinking fund’ to pay for any improvements made by lessees, and (with the Minister’s approval) other purposes connected with the administration of the land or the benefit of its owners. The board also had discretion to invest the proceeds of land sales on behalf of the owners, instead of paying them directly.

The law made no provision for Māori landowners to be involved in, or even informed about vested lands, with one very limited exception: when the Crown wanted to buy vested (or other) land that had 10 or more owners, a meeting of assembled owners was required. This provision was repealed in 1913.

263. Native Land Act 1909, s 239.
266. Native Land Act 1909, s 242.
267. Native Land Act 1909, ss 244, 257.
269. Native Land Act 1909, s 239.
271. Native Land Act 1909, ss 265(5), 277(1). The Native Land Amendment Act 1913 (section 53) introduced the additional requirement that survey costs associated with road-building would be charged against the properties those roads served.
272. Native Land Act 1909, s 277(2).
In addition, and as discussed in chapter 12, the land boards were dealing with other lands vested in them under the Māori Lands Administration Act 1900 and its amendments, and the Māori Land Settlement Act 1905 and its amendments. This land, along with new land vested under part XV of the 1909 legislation could be sold, leased, or managed, and occupied by the land boards as a farm.

As well as preparing vested land for settlement, the board had extensive responsibilities for administering non-vested land. In particular, it was responsible for calling and administering owner meetings to discuss proposals to sell or lease non-vested land, and for confirming alienations of non-vested land.

As discussed in chapter 12, the board was not greatly equipped for its land development function and was never adequately resourced for any of its roles.

By December 1910, the board’s work was already well in arrears, and difficulties continued to grow in the following years. Decisions about staffing were made by the Native Department, and the board made numerous appeals for more staff. According to Hearn, ‘where the Native Department responded it was usually in the form of temporary assistance.’

While the department was unsympathetic about the board’s resourcing issues, it also pressured the board to put land on the market as quickly as possible. Under these circumstances, it is scarcely surprising that the board leaned heavily on the Department of Lands to complete its land development responsibilities.

In practice, the department drew up the subdivision and roading plans for vested and Crown lands, often dealing with both together, especially where vested and Crown lands intermingled, or where the Crown intended to purchase vested lands.

The Department of Lands also had practical control over implementation of any subdivision plans, since it carried out the surveys and built the roads. This work was financed by the board, either from borrowings or from income on land that had already been sold or leased.

Unlike the boards, the department had no direct responsibility to protect the interests of Māori landowners. Rather, it was concerned with the Crown’s interests and the interests of settlement more generally, and it acted accordingly. It was reluctant therefore to defer to the board, despite the latter’s formal authority.

274. Native Land Act 1909, ss 220, 370. No confirmation was required for sales to the Crown except when the sale was conducted through a meeting of owners: Native Land Act 1909, ss 360, 366–371.
277. Document A71, p 610. The outbreak of the First World War contributed to staff shortages.
278. Document A73(a), vol 5, pp 224, 228.
(under the Native Minister’s oversight) over subdivision of vested lands. Rather, it treated the board as an organisation it should consult and could negotiate with, as part of a larger land development programme for which it had practical responsibility. On one occasion, the department prepared a subdivision plan for an extensive area of vested land (exceeding 17,000 acres) without consulting Māori. The owners themselves had no legal right to be involved in these decisions.

There were obvious practical difficulties with this system. Hearn provided this inquiry several examples of the Department of Lands preparing subdivision and roading plans with the main aim of benefiting Crown lands, nonetheless imposing a share of the cost on adjacent vested lands. In Rangitoto–Tuhua, for example, the president of the board acknowledged that subdivisions were made and roads placed ‘with a view to affording access to the adjacent Crown land.’

In sum, the board was left with limited control over subdivision and roading of vested lands, especially in areas where Crown and vested lands were located together. It therefore had limited control over the lands themselves.

When the department’s priorities did not accord with the board’s, the board sometimes protested or sought to negotiate, and enlisted the Native Department to help. But the board also frequently acquiesced, acknowledging its limited power. The Department of Lands, in turn, sometimes expressed frustration at the need to involve the board in its decisions, and at the complications that could occur when an area was under ‘dual control’ (ie Crown and board).

Amid the to-and-fro of Crown purchasing, one early casualty was the requirement that ‘any area of land’ that was vested must be split into approximately equal portions for sale and lease. The provision had been a political compromise and meant that the board’s decisions about sales and leases could bear little relation to the wishes of landowners who had appeared before the Native Land Commission.

The requirement to divide ‘any area’ of vested land into equal parts for sale and

287. President to Under-Secretary, 25 August 1911 (doc A73, p 443). On another occasion, the Maniapoto–Tuwharetoa board was informed that the Crown was building a road – to which it would have to contribute funds – through several vested and Crown blocks in the west of the district: doc A73(a), vol 5, p 232.
290. Knight, Auckland to H M Skeet, Wellington, 17 April 1913 (doc A73(a), vol 15, p 147; doc A73, p 458).
lease\textsuperscript{293} implies that each property should have been split in that manner. However, the board does not appear to have interpreted it that way. Indeed, it is not clear how the board interpreted the provision, or whether it genuinely attempted to comply.

As noted above, the board had some discretion in respect of the 50:50 split and could seek approval from the governor for a different split if it was ‘impracticable or inexpedient’ to split a property into equal portions. However, the board was then required to adjust the portions sold and leased in other properties ‘so as to conform in any one year as nearly as possible’ to the 50:50 split.\textsuperscript{294}

When it brought land to market, it certainly did not split each property. Nor did it ensure that the aggregate areas offered for sale and lease at any one time were equal. Hearn provided details of five offers of vested lands for sale and lease, which took place between April 1911 and March 1914. In the first three, the area for lease outweighed the area for sale by a considerable margin. For the other two offers, the reverse was true (see table 13.5).\textsuperscript{295}

What’s more, the areas offered for sale and lease were in different parts of the district. Typically, the board offered Rangitoto–Tuhua lands for lease, and lands in other parts of the district for sale. For example, in December 1911 it offered 2,926 acres for sale and 5,003 acres for lease. The sale properties were all in Kinohaku East or West, and the lease properties all in Rangitoto–Tuhua.\textsuperscript{296}

Likewise, in December 1913, the board offered 2,353 acres for sale and 1,265 acres for lease. The sale properties were in Kinohaku West, Maraetaua, Orahiri, and Taumataotara, and the lease properties were in Rangitoto–Tuhua.\textsuperscript{297} Over the five sales, the area offered for lease outweighed the area for sale by a few thousand acres (31,996 for lease, 27,760 for sale). But the later offers tended more heavily towards sale.\textsuperscript{298}

The discrepancies were deliberate and appear to have reflected the board’s view of what would make the land attractive to settlers, irrespective of the legal requirement for a 50:50 split. Regarding the December 1911 offer, the president informed the Native Department that ‘the respective areas for sale and lease are not equal, but I think it is desirable that the land should be offered on the tenure shown in the poster.’\textsuperscript{299}

\begin{itemize}
  \item \textsuperscript{293} Section 239(1) of the Native Land Act 1909 stated, ‘From time to time, when any area of land has by any Order in Council, whether made before or after the commencement of this Act, become subject to this Part of this Act . . . the Board in which that land is vested shall, with the approval of the Native Minister, divide that land into two portions approximately equal, and set apart one of those portions for sale, and the other portion for leasing in accordance with this Part of this Act.’
  \item \textsuperscript{294} Native Land Act 1909, s 239(4).
  \item \textsuperscript{295} Document A73, pp 266–267.
  \item \textsuperscript{296} Document A73, pp 266–267; doc A73(a), vol 4, pp 317–318.
  \item \textsuperscript{297} Document A73, pp 266–267; doc A73(a), vol 4, pp 328–329.
  \item \textsuperscript{298} Document A73, p 267.
  \item \textsuperscript{299} President, Waikato–Maniapoto Māori Land Board, to Under-Secretary, 13 October 1911 (doc A73(a), vol 3, pp 315–316; doc A73, p 266).
\end{itemize}
We saw no evidence of the department showing any concern about this discrepancy. The president asked whether an order in council might be needed, and, if so, casually requested that the department ‘kindly have the matter so dealt with’. But the correspondence provided to the Tribunal does not show any response.

Likewise, regarding the December 1913 offer, the president wrote that the sale and lease areas were unequal, ‘but I have dealt with each block so as to most readily [ensure] its being taken up, while at the same time paying due regard to the wishes of the beneficial owners’. The reference to owners’ wishes is hard to understand: in this offer, the board was selling six properties, of which the Native Land Commission had recommended just one for sale, and the other five for leasing.

If the interests of settlement was one factor tending to undermine the equal split between sales and leases, the Crown’s willingness to purchase vested land was another, and proved to be far more significant. Both the board and the Crown appear to have taken the view that the equal split applied to private sales and leases, but not to Crown purchases.

The result was that purchasing outstripped leasing from 1915 onwards, and ultimately by a considerable margin. As discussed previously, by 1950 more than two-thirds of the board’s vested land had been sold.

It is possible to see why the board might have taken the approach it did. The 50:50 split was ill-conceived from the start, as the Native Land Commission had so forcefully pointed out. The split did not reflect owners’ wishes, and nor did it reflect the practical realities involved in preparing land for settlement.

A strict split of each property might have led in some cases to small, isolated, landlocked or otherwise hard-to-develop blocks being made even less attractive for settlement. But ignoring the split with respect to each property inevitably meant that owners would be treated differently: some would have more than half of their land sold, and others would have less.

The Department of Lands and the Waikato–Maniapoto District Māori Land Board, in preparing and approving subdivision and roading plans, did not always concern themselves with the underlying ownership or legal boundaries of the regions.
properties they were carving up. Rather, at times they created subdivisions that crossed two, three, or even more separate properties and owner groups.

This occurred in 1910 for an extensive area of land in the west of Rangitoto–Tuhua, covering more than 17,000 acres and incorporating several vested blocks (on that occasion, the department acted unilaterally, without consulting the board, though its scheme was subsequently adopted). It had also occurred in Taumatatotara Wharepuhunga 14B, and Rangitoto–Tuhua 26A2.

Wharepuhunga 14B, for example, comprised more than 15 Native Land Court partitions, most with areas of several hundred acres or more. Instead of offering these properties for sale or lease as they were, the board first repackaged them into a dozen or so new allotments, each of which crossed multiple land titles. The owners of Wharepuhunga 14B, for example, had their property split across three allotments, and the owners of Wharepuhunga 14B6 and 1489 each had their properties split across four allotments. The situation was no less complex in Taumatatotara.

The Department for Lands (in drawing up plans) and the board (in approving them) may have taken this course in order to create subdivisions that were suitable for settlement. The Tribunal saw no evidence that any thought was given to the board’s responsibilities as trustee for each group of owners, nor to the potential difficulties that this approach to subdivision might cause.

For the Rangitoto–Tuhua subdivisions referred to above, the Native Department was not initially aware that the subdivisions crossed different titles, and expressed considerable concern once it found out, both because additional court expenses would be necessary to resolve the situation but also because there would be ‘no end of complications in the disbursement of rents’. It similarly objected once it

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307. Document A73, pp 260–261, 766–777; doc A73(a), vol 5, pp 176–177, 179; doc A73(a), vol 7, pp 34, 41, 44, 58–61. The vested blocks were Rangitoto–Tuhua 60B, 60C2, 60F2, 60G, 75B, and 77A2B. Hearn said that Rangitoto–Tuhua 75B and 77A2B were vested and the other blocks were not. In fact, all had been vested during 1909: doc A73, pp 260–261, 766–777; ’Declaring Land to be Subject to Part I of “The Native Land Settlement Act, 1907”’, 10 May 1909, New Zealand Gazette, 1909, No 39, pp 1295–1299; ’Declaring Land to be Subject to Part I of “The Native Land Settlement Act, 1907”’, 14 December 1909, New Zealand Gazette, 1909, No 105, pp 3247–3249.


311. Document A73, p 454; doc A60, p 1247.


313. Document A73, p 492.


315. Partitions of Māori land sometimes occurred along whānau and hapū lines, which did not always create properties that were suitable for farming – or, in some cases, properties that could be fenced. Partitions were also heavily influenced by alienation, particularly to the Crown: AJHR, 1932, G-7.

316. Under-Secretary to president, 23 September 1911 (doc A73(a), vol 7, p 16; doc A73, p 261).
became aware that Taumatatotara subdivisions ignored the legal and ownership boundaries. The Under-Secretary wrote:

I have informed the boards at various times that each trust should be dealt with in such a way as to prevent overlapping or confusion by intermixing with adjoining trust lands.

As far as I can gather with the information before me, there are about thirteen different trusts and the survey seems to have been carried out in such a manner that the accounts will be a regular ‘hotch-potch’ and will require considerable transfers . . .

Further difficulties would arise if some sections within a trust were sold and others were not, and owners ‘may complain that they are not getting adequate compensation, considering the way their portions of trusts may be intermixed with others’.317

In practice, distribution of rents and purchase money turned out to be the least of the difficulties.318 Far greater problems were associated with raising mortgages to improve the properties,319 and with changes in possession or use (including re-vesting) when each subdivision had several sets of owners.320

The Liberal Government had sought to explain compulsory vesting as mutually beneficial for Māori landowners, settlers, and the economy. The theory was that vesting would bring land quickly into production, giving settlers the land they craved, providing incomes for Māori landowners, and benefiting the economy as a whole through increased production.321

In their haste to bring this plan to fruition, the Government appears to have given little consideration to the practicalities involved – in particular, to the question of how Māori land boards, with their limited resources, might go about the considerable task of readying hundreds of thousands of acres for settlement.

The Waikato–Maniapoto District Māori Land Board was responsible for more than 60 per cent of the land vested nationwide under the compulsory vesting provisions.322 Within the inquiry district, just over 200,000 acres was vested under these provisions – more than 10 per cent of the district’s total area.323

317. Under-Secretary to president, 12 March 1913 (doc A73(a), vol 1, p 283).
318. Decades later, in 1946, with some of the affected land still in its possession, the board referred to allocation of rent among different sets of owners as ‘purely a matter of internal arithmetic’: President to Under-Secretary, 9 March 1945 (doc A73(a), vol 5, p 179).
321. AJHR, 1907, B-6, p xii; Native Land Settlement Act 1907, preamble; AJHR, 1907, G-1c, pp 13–18; doc A73, pp 87, 112, 143–144, 161–165, 203.
322. Native Land Settlement Act 1907, pt 1; Native Land Act 1909, pt xiv; AJHR, 1912, G-9, p 4. Altogether, the Crown vested 328,289 acres in Māori land boards under part xiv of the Native Land Act 1909, of which 203,530 acres was in the Waikato–Maniapoto district. The Aotea and Tokerau boards also had large areas of land to manage, but the bulk of their vesting had occurred under 1900–06 statutory provisions.
323. Document A73, pp 182, 209; see also submission 3.4.304, p 45. The inquiry district’s land area is 1,928,182 acres: doc A21, p 34.
At the time of vesting, much of the vested land had not been surveyed, let alone subdivided, roaded, and bridged.\textsuperscript{324} By any measure, completing a land development project of this scale would be a major undertaking, and not one that could be completed quickly.

Although the Crown was aware of the potential difficulties,\textsuperscript{325} it placed considerable pressure on the Waikato–Maniapoto District Māori Land Board to complete its work quickly, and repeatedly questioned it about progress.\textsuperscript{326} Even as it issued vesting orders for land in the district,\textsuperscript{327} the Crown was growing impatient with compulsory vesting as a means of opening land for settlement, and was moving towards statutory provisions that would smooth the way for increased sales of Māori land.\textsuperscript{328}

The reality was that the board had very limited control over the opening of vested lands. The main barrier was that the Department of Lands could not keep up with demand for surveys and roading. As well as being responsible for these tasks on vested lands, it had similar responsibilities for Crown lands that were being opened for settlement. It lacked the capacity to do all that was asked of it, and vested lands were not always a priority.\textsuperscript{329}

A second factor was that, for some vested properties, there was little point in completing surveys and building roads, since the costs would outweigh the value of the land itself. This was true of properties that were small and/or surrounded by Crown land, and also of larger blocks (such as Taumatatotara) where the costs were expected to be high.\textsuperscript{330}

In May of 1910, the board’s president (Bowler) warned of considerable delay if these issues were not addressed. He recommended a law change to allow sales and leases before surveys and roading had been completed, warning that otherwise ‘it will necessarily be years before some of the blocks can be opened up.’\textsuperscript{331} This call went unheeded.

By 1914, according to the Department of Lands, surveys had been completed for 99,409 acres of Waikato–Maniapoto vested land and were under way for another 38,720 acres. This was about two-thirds of the board’s vested land. The

\textsuperscript{324} Document A73, pp 250–251.
\textsuperscript{325} Document A73, pp 167, 252–253, 258–259; AJHR, 1911, G-9, p 1.
\textsuperscript{326} Document A73, pp 250–258; Loveridge, Māori Land Councils, p 132.
\textsuperscript{328} Document A73, pp 129–130, 167; doc E29, pp 75, 87.
\textsuperscript{329} Document A73, pp 258–260; AJHR, 1911, G-9, p 1; AJHR, 1912, G-9, pp 1, 2; AJHR, 1913, G-9, pp 1, 3; AJHR, 1914, G-9, p 2; AJHR, 1915, G-9, p 1; doc A93, p 115 n
\textsuperscript{330} Document A73, pp 187, 254, 276–277, 281.
\textsuperscript{331} President to Under-Secretary, Native Department, 4 May 1910 (doc A73(a), vol 6, pp 276–277; doc A73, pp 252–253).
Native Department disputed these figures and claimed that much less had been surveyed.332 Whatever the exact picture, the result was that the board struggled to bring large areas of vested land to market. By 31 March 1911, less than 5 per cent of the Waikato-Maniapoto vested lands had been leased or sold.333 Two years later, that had increased significantly, to over 33 per cent, but this nonetheless meant that the bulk of the vested lands remained unused.334 By 31 March 1920, just over 57 per cent of the vested lands had either been sold or leased, leaving the other 43 per cent unused.335

The time taken to open vested lands was a source of frustration for all involved, but the greatest effect was on Māori landowners, whose lands had been locked up on the pretext that they would quickly begin to return incomes. In reality, large areas of vested land remained unproductive for years after the Native Land Commission had been through. In general, the district’s landowners were willing to lease. By 1911, several hundred thousand acres of Waikato-Maniapoto land was under private lease.336 The effect of vesting was frequently to lock up lands that owners would otherwise have been able to use productively. In 1910, for example, Taonui Hīkaka and other owners of Maraetaua 10 petitioned the Native Minister, saying that the block—having been vested without their consent—had been with the board for a considerable time and nothing had yet been done. They wanted the land to be returned, as they wanted ‘to work the land by farming it as family holdings amongst the various owners.’ In this instance, some of the owners had taken matters into their own hands and had already started working and grassing portions of the block.337

Others who complained of land lying idle included owners of Maraetaua 28 sections 3, 4, 9B, 9C, and 10,338 Rangitoto-Tuhua 9 and 15,339 Kakepuku 2A,340 and Rangitoto A blocks 46B, 18A2, 18B2, 21B2, 25B, and 29B.341 Many of these owners asked for the land to be returned, a request that was usually rejected. As with Maraetaua 10, some owners continued to use or moved back on to vested land that would otherwise have remained unproductive.342

The consequences were significant. Hearn suggested that Māori landowners may have collectively been foregoing income of several thousand pounds per

333. Out of 203,530 acres vested, 9712 acres had been leased or sold: AJHR, 1912, G-9, p.4.
334. Out of 203,530 acres vested, 67,454 acres had been leased or sold: AJHR, 1913, G-9, pp 5–6.
336. Document A73, pp 574–576; doc A93, p 119; see also doc A115, p 33.
337. Taonui Hīkaka and others to Native Minister, 1 June 1910 (doc A73(a), vol 6, pp 406–407; doc A73, p 213).
They were also, in many cases, foregoing opportunities to put the land to other uses. Meanwhile, Hearn suggested, the lands lay idle, ‘incapable of being rated’, and ‘a source of weed and pest infestation’.

Where land was offered for sale or lease, this almost always involved considerable costs, especially for surveys and roading. The Native Land Act 1909 required that these costs be deducted from the proceeds of any sale or lease before the residue was distributed to the owners.

The owners had no influence over the amounts that would be charged against their land, nor over the uses that money would be put to. In effect, having had their lands taken for a large-scale land settlement scheme, the owners were also required to carry the financial risks.

The immediate effect was foregone income, as rents or purchase money were diverted to pay the Department of Lands for the work it had done in preparing the land for settlement. The longer-term effect, if the development was not profitable, was that lands might remain encumbered with debt for years or even decades.

Māori landowners were certainly aware of the longer-term risks and sought to avoid them where possible. Private lessees of Māori freehold land were frequently willing to take on the development costs themselves (perhaps because, in the view of Judge MacCormick in 1929, ‘everyone was rushing to get native land on any terms at all’), and owners seem to have preferred these arrangements wherever possible.

One group of owners in 1909 sought the return of their property (which they said had been taken without consent) so they could enter such a private arrangement. If the land remained with the board, they asked:

Who is to pay for surveys, roadings etc . . . ? We Maori know something as to this (which causes us uneasiness). In our case our lessee shouldered all that. You [Under Secretary, Native Department] and the Hon Native Minister must be aware that these burdens will now be laid on our land. Who then among the elders will live to see those burdens removed, and receive some small benefit accruing from our land?

The Tribunal has no comprehensive data about roading costs, but it is clear that they often accounted for a significant proportion of the total land value. For example, one Rangitoto–Tuhua block sold in 1916 for £821. From that, more than

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344. Document A73, p 255.
345. Native Land Act 1909, s 277. Section 274 of the Act allowed the Crown to advance £50,000 per year to fund ‘forming and constructing roads and bridges’ and other development costs, repayable at four per cent interest within a period not exceeding 42 years.
347. Judge MacCormick, Waikato–Maniapoto Native Land Lease Tenures Commission minutes, 7 May 1929 (doc A73(a), vol 10, p 278; doc A73, p 735); doc A73, pp 211–217.
348. Hapeta Matenga and others to Under-Secretary, Native Department, 20 July 1910 (doc A73, p 216).
one-quarter (£221) was deducted to pay for roading.\footnote{349} Sometimes, costs were even higher, amounting to half or more of the land value.\footnote{350} In all, from the 1920/21 to 1923/24 fiscal years (the only years for which the Tribunal has data), the board spent a total of £2,599 on roading.\footnote{351}

Survey costs were lower, but nonetheless significant. For example, survey of the 6,142-acre Rangitoto–Tuhua 75\footnote{B} block cost £712 16s 10d, or approximately 2s 4d per acre.\footnote{352} According to Hearn, 9 per cent of Rangitoto–Tuhua land was taken as payment for surveys.\footnote{353}

Another significant cost, at least for the Taumatatotara block, was interest on money borrowed from the Crown to carry out roading and other development works.\footnote{354} As discussed above, some of these costs were incurred in ways that brought more benefit to Crown lands than to vested lands. Roads, for example, were put in place through vested lands to provide access to adjacent or surrounding Crown blocks. The vested lands nonetheless bore their share of the costs.\footnote{355} At times, the board and the Native Department protested over roading and survey costs that they regarded as excessive but had only limited success at persuading the Department of Lands to reduce those costs.\footnote{356}

Owners’ concerns proved well-founded. The requirement to repay development costs, when combined with other difficulties such as delays in leasing or selling, or non-payment of rents, sometimes resulted in owners receiving little or no income from their land for years or decades after vesting. The worst examples occurred in the Taumatatotara block. By 1920, the board had received £7,707 for sections it had sold in the block, but the owners had seen just £536 – the balance going almost entirely towards repayment of roading costs.\footnote{357} Over the next 15 years, the owners received nothing more.\footnote{358} Another example was that of Arihia Maihi, who in 1926 asked for her share of rentals from Wharepuhunga 14\footnote{B}10, and was told that owners would receive nothing until the roads had been paid for. The block had been vested for 16 years and leased for much of that time, but only £465 of the £1,820 roading costs had been repaid.\footnote{359}
13.5.2 Early applications for re-vesting

In the first few years after vesting, the Crown dealt with numerous petitions from Māori landowners seeking the return of their land. There were three common themes: (i) the owners frequently said they had never consented to vesting; (ii) the vested lands were lying idle, therefore returning no income; and (iii) the owners wanted the lands for other uses, either developing farms themselves or leasing privately. Vesting, they argued, was therefore delaying settlement. Furthermore, in a few cases, owners said vesting had left them with little or no other land.\footnote{360}

The Native Land Act 1909 made no provision for land to be returned to owners prior to 1957, when – it was anticipated – long-term leases would expire and land would be returned to owners in a state that made it ready for farming.\footnote{361} The Crown therefore turned down the initial requests for re-vesting,\footnote{362} or advised owners to approach the board and ask that part of the land be set aside as a reserve.\footnote{363}

Although this was consistent with the law at the time, the responses revealed a view that any difficulties were the result of Māori leaving their lands unused.

For example, the owners of parts of Wharepuhunga 14 and 15 argued that vesting had occurred without their consent, had left them without sufficient land for their needs, and, as a result, ‘all our fences, farms, cultivations, kaingas, have been taken away, and our burial cave, the cave of our ancestors.’\footnote{364} The Native Department did not address these points, instead responding that ‘[t]he land was lying idle and will by reason of vesting come into profitable occupation.’\footnote{365}

While most applications were from people who said they had never consented to vesting, one was from Hari Hemara Wahanui, who said he had changed his mind about vesting the 12,340-acre Rangitoto–Tuhua 9 and now wanted to lease the land privately. He asked for the land to be returned, but no action was taken because the law made no provision for re-vesting.\footnote{366} The Crown later purchased this block (see chapter 14).

The Native Land Amendment Act 1912 changed the law, allowing the Crown to return land to its owners. Section 18 provided for a two-step process, under which the governor, by order in council, would declare that the land was no longer subject to the vesting provisions of the Native Land Act 1909, and the Native Land Court could then determine who the owners were and return the title to them.
The provision could only be used if the land was not subject to any lease, licence, or contract of sale, and had no charges owing on it.\(^{367}\) This was not a response to owners’ concerns that land had been vested without consent, in a manner that had left some of them landless. Rather, the Crown’s concern was that vesting had effectively delayed settlement of significant areas of land.\(^{368}\) Herries informed the House that the boards lacked ‘sufficient money or, perhaps, inclination’ to deal with all of the vested lands, making it ‘impossible’ for all lands to be opened up within a reasonable timeframe:

> The Native owners cannot use them, the Pakehas cannot use them, and the Maori Land Boards have not sufficient funds to open them up . . . It is useless to leave them in the hands of the Boards, because for twenty or thirty years perhaps the Boards will not be able to deal with them.\(^{369}\)

Herries’s hope, at the time, was that the boards could either quickly alienate the remaining lands, or return them to their owners, who might then sell or otherwise put the land to use.\(^{370}\)

To that end, as well as making various provisions to ease alienation of Māori land, the Native Land Amendment Act 1913 provided for owners to apply to the governor for re-vesting. For properties with 10 or more owners, this could occur through a meeting of assembled owners. For properties with fewer than 10 owners, it could occur when a majority of owners, who together owned at least three-quarters of the shares, applied to the governor in writing.\(^{371}\)

Neither the 1912 Act nor the 1913 amendment provided any criteria on which decisions about re-vesting should be made, except that they be unaffected by any leases, licences, contracts of sale, or charges.

Regulations issued in January 1913 relating to the 1912 amendment set out a process for considering applications for re-vesting, under which owners would apply to the Māori land board, paying a £2 fee, and the board would then report to the Native Department with a recommendation, which would be forwarded to the Native Minister and on to the governor in council.\(^{372}\) In practice, the board’s recommendations were usually followed. There is no evidence that either the board or the Crown considered whether the owners had consented to vesting. Nor is there any evidence of them considering landlessness, nor any wish by the owners to live on and/or farm the land themselves. Rather, the sole criterion was settlement. If the land was already leased, or if the board felt it would be able to offer the
land for lease or sale within a reasonable timeframe, it would not be returned. If, on the other hand, the land was of poor quality, unsurveyed, isolated, or lacking road access, then it might be returned. In this way, according to Hearn, both the board and the Crown could be relieved ‘of a political embarrassment and a potential costly liability’.

The Crown did not re-vest blocks it wanted to purchase. It turned down several further applications for re-vesting of Rangitoto–Tuhua 9 for this reason, along with applications for re-vesting of Wharepuhunga 15, 16, and 17, and Rangitoto A46B and A59. These six blocks together covered almost one-quarter of the district’s vested lands. In the cases of Rangitoto–Tuhua 9 and Wharepuhunga 16 and 17, Crown officials actively delayed or obstructed the re-vesting process to ensure the land would be available for purchase. Regarding the Wharepuhunga blocks, officials also pressured the board to recommend against re-vesting.

One of the few properties to be re-vested was Maraetaua 9B. The owners applied in 1913 for the return of this section, which had an area of just 14 acres, had no road access, and was not being used. The board did not believe the owners would make use of the land but acknowledged that it would not either. Under those circumstances, the board could see no reason not to return the land. Re-vesting was approved, though not until 1915.

The only sizeable block was the 2,797-acre Rangitoto A46B, which was returned to the owners because 1,849 acres had been leased privately (with board approval) prior to vesting, and the vesting order therefore undermined the lessees’ legal rights. That property aside, just 531 acres was returned during the decade, in three properties. In contrast, the Crown declined or simply ignored applications in respect of blocks totalling tens of thousands of acres (see table 13.6).

### 13.5.3 Crown purchasing of vested lands, 1909–22

Though the Native Land Act 1909 required that vested land be sold or leased (in equal proportions) by public auction or tender, the Crown was exempted from this provision and was instead empowered to buy vested land by other methods. If a property was owned by 10 or more people, the Act provided that the Crown must purchase through a meeting of assembled owners. If a property had fewer than 10 owners, the Crown could buy directly from the board by private contract. It could not buy shares in vested land directly from the owners.

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374. Document A73, p 305.
379. Native Land Act 1909, ss 239, 244, 257, 360, 368, 370.
381. Native Land Act 1909, s 369.
The Act was silent on whether Crown purchases counted as sales for purposes of maintaining equality between the areas offered for sale and lease. Both the board and the Native Department appear to have believed they did not: that is, if the Crown bought vested land, the board was still required to split what remained into equal areas for sale and lease.382

In 1909, the board proposed the sale or lease of 12,199 acres of vested land that had road access and did not require further survey. Instead of dividing the land into equal portions for sale and lease, the board divided the land into three groups: 3,703 acres (in 16 blocks) for lease by auction or tender; 2,362 acres (in seven blocks) for sale by auction or tender; and 6,232 acres (in 12 blocks) for sale to the Crown.383 The board’s president reported that all of the sections identified for sale to the Crown were “contiguous to Crown lands, some of which are now being cut up for selection.”384

In developing these proposals, the board appears to have paid little or no attention to the views of landowners who had appeared before the commission. Of the seven blocks identified for public sale, the commission had recommended three for lease. Similarly, of the 12 blocks identified for sale to the Crown, the commission had recommended 10 for lease. Those 10 blocks had a combined area of 5,316 acres.385 The Native Department advised the board to sell a little more land by public auction, in order to ensure that the areas for sale and lease were equal.386

At that time, the Crown was not yet ready to buy vested lands. Having already purchased 168,700 acres between 1905 and 1909, it may have acquired all it could develop and sell for the time being.387 In 1910, however, the Department of Lands and Survey identified 28 vested blocks it was willing to buy, covering a total area of 57,511 acres.388

Of this, almost half (26,268 acres) was in Wharepuhunga, where the owners had refused to recognise the commission. Another 17,411 acres was in other blocks

385. Document A73, pp 242–243; doc A73(a), vol 5, pp 229–231. Of the blocks identified for public sale, the commission had recommended Kaingapipi 2, Kinohaku East 4B2, and Mangaawakino 3 for lease. Of the blocks identified for sale to the Crown, the commission had recommended 10 for lease. Those 10 blocks had a combined area of 5,316 acres. The Native Department advised the board to sell a little more land by public auction, in order to ensure that the areas for sale and lease were equal.
386. Document A73, p 242; doc A73(a), vol 5, p 228.
388. Document A73, pp 332–335; doc A73(a), vol 6, pp 355–359. Of the 57,511 acres, a total of 51,042 acres was in Rangitoto A, Rangitoto B, and Wharepuhunga. Of the 57,511 acres, a total of 51,042 acres was in Rangitoto A, Rangitoto B, and Wharepuhunga.
(mainly in Rangitoto A) that the commission had recommended for vesting.\(^{389}\)
In other words, the Crown by 1910 had expressed its willingness to buy almost a quarter of the vested lands against the wishes of all owners who had expressed a view.

Crown purchasing of vested land appears to have provided a quick, convenient option for both the board and the Crown. The Crown’s intention was to add to its existing landholdings in the district, and in particular to fill in gaps in its previous purchases so it would have large, contiguous areas to prepare for settlement. All the properties identified for Crown purchase were therefore adjacent to or in-between existing Crown lands. Vesting, in effect, had provided the Crown with a convenient land bank.\(^{390}\)

From the board’s point of view, sale to the Crown provided a convenient way of quitting vested lands that would be difficult to develop for sale or lease, because they were small or isolated or (most often) because they were already surrounded by Crown lands.\(^{391}\) Crown purchasing also removed the need for difficult and sometimes messy negotiation between the board and the Department of Lands.\(^{392}\)

Despite the Crown’s willingness to buy vested lands, progress was initially slow. The board and the Native Department had conflicting views over when meetings of owners were required, either by law or by Crown policy. The board initially believed it could sell directly to the Crown regardless of the number of owners and attempted to offer a block with 14 owners directly to the Crown.\(^{393}\) At times, the department advised that meetings were not needed even for vested lands with 10 or more owners; at other times, it or the Native Minister insisted on owners being involved even when that was not legally required.\(^{394}\)

Where meetings were called, the owners tended to vote against the Crown’s purchase offers, leaving the Crown with no option other than direct purchase from the board.\(^{395}\) Although the Crown had reasonable success at buying non-vested lands between 1910 and 1913,\(^{396}\) it made only a handful of purchases of vested land,
most of those directly from the board (along with one substantial block from owners who had set it aside to pay survey liens).397

The legal situation was clarified from December 1913, when the Native Land Amendment Act removed the requirement for the Crown to buy from assembled owners under some circumstances, instead providing that the Crown could buy from anyone – individuals, assembled owners, Māori land boards, or others – who was entitled to sell.398

Owner meetings had imposed a very low barrier to sale and could be effectively used to block the Crown’s offers only if there was clear and near-unanimous opposition. The quorum was just five (including proxies, and regardless of how many owners there were), and a resolution to sell would be carried if those voting in favour had a greater share of land than those voting against. Furthermore, if a resolution to sell did carry, very little protection was offered for those who opposed it.399

Nonetheless, the Crown had grown frustrated with these meetings, and in particular with the owners’ practice of sending a handful of representatives along to convey opposition to sale (either by voting against the offer or leaving the meeting inquorate).400 More generally, the Native Minister wanted to hasten alienation of Māori lands generally, and vested lands in particular, and saw Crown purchasing as the most effective means of achieving these goals.401

The 1913 amendments effectively gave the Crown a menu of purchasing methods from which it could select, allowing it to overcome collective opposition and buy the land it wanted.402

Certainly, the Crown took full advantage of the options available to it, and Crown purchasing of vested lands accelerated under the new provisions. Wherever possible, the Crown sought to buy either through meetings of owners or directly from the board without involving the owners, as these options – if effective – were relatively quick and inexpensive.403

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397. Document A73, pp 367–368, 382, 439–440, 443, 498–500. The Crown made only two large purchases of vested land during 1910–13. One was the 5,000-acre Rangitoto B, which the owners had set aside to pay survey liens. The other was the 6,142-acre Rangitoto–Tuhua 75B, which the Crown acquired directly from the board. It was surrounded by Crown land. We have few details about the circumstances of that sale: doc A73, pp 382 n, 443; doc A73(a), vol 11, p 156; submission 3.4.304, p 51.

398. Native Land Amendment Act 1909, s 109; doc A73, p 176.

399. In theory, a meeting could be attended by one person armed with four proxies, and a resolution to sell could be carried by one person if he or she had more shares than those voting against: Native Land Act 1909, ss 341–343, 346, 360, 368.

400. Document A73, pp 170, 540–541, 554. The Crown had also grown frustrated with the boards, which did not always manage owner meetings in a manner that suited the Crown’s purposes: doc A73(a), vol 25, pp 173–178; doc A73, pp 364–365, 569.


However, if neither of those methods proved successful, the Crown quickly turned to purchasing from individuals, and many of the Crown’s largest purchases during the 1910s were conducted in this manner, or through a combination of owner meetings and individual purchasing.

When it bought vested land, the Crown was effectively exempt from private competition, since the board tended to make no attempt to develop land for sale or lease if it knew the Crown was interested. By law, the price could be no less than government capital valuation, and this is usually what the Crown paid.

Resolutions by meetings of assembled owners were not valid until confirmed by the boards, which could only occur if none of the owners would be left with insufficient land for his or her ‘adequate maintenance.’ When the Crown purchased directly from owners, it was responsible for ensuring that they retained sufficient land. The Tribunal has found previously that this test scarcely offered adequate protection. Furthermore, it was subject to exceptions, both under the Native Land Act 1909 and subsequent amendments.

The Waikato–Maniapoto District Māori Land Board did apply this test, but only in a perfunctory manner. The Crown showed even less interest, regularly pursuing purchases that would leave owners with little or no land and seeking to persuade the board to approve them.

Having acquired just 12,092 acres of the district’s vested land by the end of 1914 (and most of that in two properties), the Crown then acquired a further 73,177 acres before the end of 1922 – giving the Crown about 42 per cent of Te Rohe Pōtae vested land. The specific purchases are shown in table 13.8.

This acceleration was made possible by new purchasing methods but motivated by the outbreak of the First World War and the Crown’s policy of settling returned...
soldiers on farms. After the outbreak of the First World War, the Crown’s purchasing stepped up, as it sought Māori land with the aim of setting up returned soldiers on farms. According to Hearn, buying Māori land was less expensive than the alternatives of acquiring land under the Lands for Settlement Act, or acquiring existing farms, especially as prices of developed land were escalating rapidly during the later 1910s.

The bulk of the Crown’s purchases were in Wharepuhunga and Rangitoto–Tuhua, where the Crown acquired several large blocks. Elsewhere, the general pattern was of numerous relatively small purchases alongside a handful of larger ones. The largest single purchase was of the 12,340-acre Rangitoto–Tuhua, which the Crown acquired in spite of several requests for re-vesting.

At least 35,970 acres of vested land was purchased from individuals, and another 15,905 acres was purchased through a combination of owner meetings and individual purchasing. A further 13,886 acres was acquired directly from the board without input from the owners. Even where land was sold through owner meetings, the turnouts could be small, and the resolution to sell could be carried despite dissent.

The Crown conceded that it breached the Treaty whenever it vested lands – and making them subject to possible sale – when the owners had not consented to selling. It not only vested those lands, it bought them. Of the 31 properties it acquired during 1910 to 1922, 15 had been recommended for lease. The Crown’s purchases in those properties totalled 17,563 acres, and a further 34,242 acres was in Wharepuhunga blocks that had been recommended for sale despite owners’ opposition. This was scarcely consistent with mana whakahaere.

13.5.4 Private buyers’ purchases of vested lands, 1909–22
Whereas the Crown, by 1922, had acquired more than 81,000 acres of vested land, the scale of private buyers purchases of vested lands was more modest, at least

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414. The properties were: Kinohaku West C2 (209 acres), E1F2 (759 acres), G1A2 part (919 acres); Rangitoto A18A2 parts (1,020 acres and 371 acres in separate purchases); Rangitoto A25B (617 acres), 26B (569 acres), A59 (581 acres), and A65B (88 acres); Rangitoto–Tuhua 6B (97 acres), 9 (12,340 acres), 15 (506 acres), 25 sec 1A2 (480 acres), 26C (620 acres), 26E2 part (674 acres), 35B2 (472 acres), 41 (557 acres), 50 (6,230 acres), 61E (2,403 acres); Taumatatotara 1D2B part (126 acres); and Wharepuhunga 6 (1,641 acres), 15 (2,092 acres), 16 parts (10,690 acres and 218 acres in separate purchases), 17 (9,581 acres), 19 (4,500 acres), 20 (7,614 acres), and the Wharepuhunga Reserve (3,770 acres); doc A21, annex 7, Kinohaku West, Rangitoto A, Rangitoto–Tuhua (6, 9, 15, 25, 26, 35, 41, 50, and 61), Taumatatotara, and Wharepuhunga; see also doc A73, p 451.
417. The properties were: Kinohaku West C2 and E1F2; Orahiri 6B1; Rangitoto A18A2, A25B, A29B, A59; Rangitoto–Tuhua 26C, 26E2, 35B2, 41, and 61E; Taumatatotara 1D2B; Wharepuhunga 15, and the Wharepuhunga Reserve.
418. The properties were Wharepuhunga 6, 16, 17, 19, and 20.
during this period. By 1922, the board had sold approximately 13,562 acres of vested land to private buyers (the transactions are shown in table 13.9).\footnote{199}

Most of these sales were in relatively small blocks, ranging from 30 or 40 acres up to a few hundred. Many of these were in the west of the district, in the Kinohaku, Kaingapipi, and Kakepuku blocks, where the Crown had already offered considerable areas for private settlement.\footnote{420} Only four purchases exceeded 1,000 acres, three in Rangitoto–Tuhua and one in Rangitoto A: the 1917 acquisition by a private land company of the 5,784-acre Rangitoto A18A2C.\footnote{421}

Of 22 vested properties that were sold to private buyers during this period, the Native Land Commission had recommended 17 for lease, including all of those that exceeded 1,000 acres.\footnote{422} Rangitoto A18A2C was sold after the Crown had rejected an application for re-vesting.\footnote{423} Other properties were also sold after owners had protested that they were living there and had no other lands.\footnote{424}

Māori took up a small proportion of the lands sold and leased. The board sold six Taumatatotara properties in 1913, three of them (with a combined area of 1,169 acres) to Māori purchasers.\footnote{425} We also know (from returns of payment arrears) of one other sale to a Māori buyer,\footnote{426} and of at least five leases to Māori.\footnote{427}

### 13.5.5 Administering the leases, 1909–20

Where vested land was sold or leased, the Native Land Act 1909 required that the price be set by public tender or auction. The board determined the upset (ie reserve) price for sales and upset rental for leases, with the latter requiring the Native Minister’s approval.\footnote{428}
If the land was offered for sale, the board could require that the purchase price was paid in full on settlement, or it could offer a deferred payment scheme, allowing the buyer to pay instalments for up to 10 years. Interest of 5 per cent would be charged on any outstanding balance. This scheme was intended to bring vested lands within reach of settlers with modest capital.

For leases, the board could determine the term provided that no lease could remain in force beyond 25 November 1957. This provision was intended to ensure that unsold vested lands could be returned to future generations of owners as working farms. If the lease term was 10 years or more, the lessee would have a right to compensation for 'all substantial improvements of a permanent character' (such as converting land to pasture, and constructing fences, buildings, and roads or paths). The value of those improvements would be determined when the lease expired, by arbitration between the board and the lessee. The board was responsible for keeping a record of improvements throughout the term of the lease.

In practice, boards usually offered long-term leases (up to 24 years) at fixed rentals, renewable for one term. Rent for the second term was set at a standard 5 per cent of unimproved value. These terms were comparable to those offered for leases of rural Crown lands elsewhere in New Zealand at the time (though the Crown sometimes offered perpetually renewable terms). However, they differed markedly from the terms and conditions of leases negotiated privately between Te Rohe Pōtae Māori and lessees in the district.

Private leases were valid only if confirmed by the board, which required among other things that the board be satisfied that the rent was fair. The detailed negotiations, however, were worked out between owners (or their agents) and lessees, and this generally resulted in arrangements that were more varied and flexible than those for vested lands.

431. Native Land Act 1909, s 263(1).
434. According to Gazette notices from 1906–14, leases of Crown land were commonly for terms of 21 years, usually with a right of renewal for a similar term. Initial rents were typically set by auction or tender, with rents for any subsequent term set as a proportion of government valuation. Compensation was usually provided for improvements: 'Lands in Selwyn Settlement, Auckland Land District, open for Selection', 12 March 1906, New Zealand Gazette, 1906, no 21, p 859; 'Education Reserves in Auckland Land District for Lease by Public Auction', 21 July 1914, New Zealand Gazette, 1914, no 91, p 3320; 'Reserve in Auckland Land District for Lease by Public Tender', 14 August 1914, New Zealand Gazette, 1914, no 91, p 3321; 'Education Reserve in the Town of Reefton for Lease by Public Auction', 5 August 1914, New Zealand Gazette, 1914, no 91, p 3321; 'Education Reserve in the Town of Gore for Lease by Public Auction', 5 August 1914, New Zealand Gazette, 1914, no 91, p 3322.
Terms of 21 years or thereabouts were common for private leases, but the terms could be considerably shorter (seven to 10 years) or longer (up to 50 years). Rents were set by negotiation and were generally comparable to those for vested lands. However, rent reviews tended to be much more frequent (every seven to 10 years or so was common) and the increases were typically by fixed amounts. For example, Hearn referred to one lease in which the rent doubled after seven years and increased by another 50 per cent seven years later.  

These leases were being struck during a period of rapid growth in demand for rural land. Fuelled by strong demand for farm produce and a spirit of speculative optimism, settlers were flooding into the district, paying previously unheard-of sums to buy or lease Māori land.

As an indication of the speed at which prices were rising, the government valuation of Rangitoto A29 doubled between 1912 and 1916, and the valuation of Rangitoto A23 more than doubled between 1916 and 1921.  

By 1920, private leases were changing hands for ‘goodwill’ payments of several pounds per acre, while freehold land was sometimes selling for £15 to £25 per acre or more, with settlers taking on heavy mortgages in anticipation of even heavier returns. This was in a district where, prior to 1905, the Crown had rarely paid more than six shillings per acre for the freehold.

Under these circumstances, the long-term fixed rent leases arranged by the board clearly imposed costs on Māori landowners, who were denied the opportunity of rent reviews in a rising market. Whereas land prices could double in a few years, rents on vested lands remained frozen. The Te Whanganui a Tara Tribunal regarded long-term fixed-rent arrangements for lands held in trust as inherently unfair to the owners, who could not have rents reviewed in a timely manner and could not therefore be assured that they were receiving fair returns over the full length of the lease.

Owners clearly preferred the certainty, flexibility, and control provided by these private arrangements. They had leased almost 600,000 acres of freehold land in the Waikato–Maniapoto district by 1911 and leased another 150,000 acres in the next decade. In contrast, they did not voluntarily vest any land in the Waikato–Maniapoto District Māori Land Board after 1910.

The other key difference between vested and private leases concerned compensation for improvements. Such provisions gave lessees a financial incentive to

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439. Document A73, pp 365–366, 271. Far larger increases were recorded in other properties. For example, the unimproved value of the non-vested Kahuwera B287a grew from £1,952 in 1915 to £5,056 in 1921, and the unimproved value of Rangitoto A54A2 grew from £930 in 1913 to £3,928 in 1917 (though the latter included a value for timber): doc A73, pp 434, 517; see also pp 40–42, 50–53, 434, 468–469.
441. Document A96(i), Crown purchases.
442. Waitangi Tribunal, Te Whanganui a Tara me ona Takiwa, p 428.
develop lands but could also be used as a means of obtaining the freehold. As the *New Zealand Herald* explained in 1907, settlers sought to include compensation clauses in leases 'because they think that the Maori will not have money enough or inclination to pay for the improvements when the term is up.'

Māori landowners seem to have been aware of these risks and sought to avoid compensation clauses where possible. As a result, very few private leases made provision for compensation, and there is anecdotal evidence that owners were willing to accept lower rents in return. With vested lands, owners had no choice, and the compensation clauses, along with the failure to set aside sinking funds for improvements, would lead to sales.

When it came to collecting rents and paying the owners, the board struggled to carry out its responsibilities. By early 1911, the board’s accounts were already several months in arrears, it did not have an up-to-date list of native township beneficiaries, and it had several hundred leases waiting to be prepared. The president blamed understaffing and reported that he viewed the situation ‘with alarm.’ The following year, the board decided it would not pay owners the small amounts they were owed on one block, as it had ‘more pressing work’ to complete.

Over the next three years, matters worsened. By 1915, the board was seriously behind in its administrative work and was struggling to keep its accounts in order both at a general level and in respect of specific properties. Cheques came in and were not banked for days or weeks. No one knew how much was in the bank account that was used for payments to beneficiaries: it fell into overdraft, sometimes by more than £1,000, while a sum exceeding £22,000 was left in another account, neither paid out to beneficiaries nor invested on their behalf.

Twenty or 30 owners wrote in every week asking where their money was, and by June the board had at least 270 such applications outstanding, some of which were months old. Rent arrears were also beginning to accumulate, and amounted to well over £1,000, but nothing could immediately be done because none of the board’s staff were quite sure who owed what. In addition, more than 200 property transactions were awaiting completion.

Judge Holland, who had been appointed as president in 1913, complained

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444. ‘Settling the King Country’, *New Zealand Herald*, 26 December 1907, p 6 (doc A73, p 269); see also ‘Gross Injustice Inflicted on Māori Land Owners’, *Standard*, 14 November 1940 (doc A73(a), vol 5, p 184).


446. President to Under-Secretary, 24 February 1911 (doc A73, p 619; doc A73(a), vol 4, p 312); see also doc A73, pp 619–620; doc A73(a), vol 4, pp 312–317; Loveridge, *Māori Land Councils*, pp 130, 143–144; doc A71, pp 165–166.

447. President to Broadfoot, Finlay, and Phillips, Otorohanga, 24 May 1912 (doc A146 (Hearn), p 139).

448. Document A73(a), vol 4, pp 251–264, 269–284, 315–316; doc A73, pp 619–621. In June 1915, the board acknowledged its non-compliance with Native Land Amendment Act 1913, section 36(3), which required an annual of income and expenditure to be completed within 30 days of the end of the financial year.

of understaffing. Like his predecessor, he seems to have had only two clerical staff devoted to board work (and a few others for the Native Land Court). The Government provided a temporary clerk but otherwise refused to help, claiming that the Waikato–Maniapoto District Māori Land Board was better staffed than others with comparable workloads, and could deal with its problems if it restricted its public opening hours.  

In practice, all of the book-keeping workload appears to have fallen on one person, who arrived in 1914 and worked day and night to catch up work that was already ‘very much in arrear.’ Later in 1915, the Audit Office identified irregularities: a little over £85 owed to landowners was instead deposited back into the board’s accounts, apparently to offset shortfalls. Another 18s 3d disappeared entirely. The book-keeper promptly disappeared, and a warrant was issued for his arrest.  

13.5.6 Administering the vested land during the 1920s and the Great Depression

Having taken on heavy debts to acquire or improve Te Rohe Pōteo land, some settlers found themselves in difficulty as commodity prices became unstable and land prices began to fall from 1921. Many failed to pay their rents. Some no longer bothered to maintain their land. Some walked off, abandoning leases and even freeholds. Others stayed, but made repeated appeals to the Crown for assistance.

Under these circumstances, demand for Māori land declined. From 1923, the Crown no longer sought to open up large new areas of Māori land for settlement. It did, however, complete a handful of purchases of vested lands that had got under way during the previous decade. The largest of these was the 2,612-acre purchase of parts of Wharepuhunga 8, 10, and 13, for which purchasing had begun in the 1910s. It appears that by the time it purchased Wharepuhunga 13 in 1921 the Crown, on direction of the Native Minister, was no longer purchasing directly from the board, without reference to the owners. Bowler’s attempt to do so in that instance was rebuffed.

During the early 1930s, the Crown also made a handful of purchases on behalf of lessees. By far the largest of these was of the 6,333-acre Rangitoto–Tuhua 77A2B (Tangitu) block. The lessees had begun to agitate for the freehold of this block almost as soon as they had taken up their leases in the 1910s.

In all, the Crown acquired just 5,557 acres of vested land between 1923 and 1928, and another 8,305 acres during the 1930s. The transactions are listed in table 13.8.

451. Registrar to Under-Secretary, 19 February 1915 (doc A73(a), vol 4, pp 274, 282–284).
Of the purchases, all but two (Taharoa B1 and Wharepuhunga 17) were in blocks that the Native Land Commission had recommended mainly or entirely for leasing.\(^{458}\) The dominant purchasing method was acquisition of individual shares.\(^{459}\)

At least 7,663 acres of vested land was sold to private buyers during this period, in 18 separate transactions, very few of which exceeded 500 acres (see table 13.9). The largest of these was a 1,057-acre purchase in Rangitoto–Tuhua 74B1 during 1927.\(^{460}\) All of the blocks sold to private buyers during this period had been recommended for lease.\(^{461}\)

Scarcely any new leasing of vested lands occurred during the 1920s. Official records show that two new leases, totalling 1,673 acres, were taken up between 1920 and 1927.\(^{462}\) However, the figures do not show leases that were abandoned.\(^{463}\)

Several Wharepuhunga 14B blocks were sold to private buyers during the 1930s, and others were offered for lease. The owners protested these sales and appealed to the board and the Prime Minister for the land to be returned so they could farm it. The owners were told that they could submit a tender to lease the land, but it could not be returned because it had been vested for leasing and, if returned, they might try to sell it.\(^{464}\)

The decline of Crown purchasing can largely be attributed to changing economic circumstances that effectively eliminated settler pressure for more land and made land buying a poor financial prospect.\(^{465}\) But, as these pressures eased, Crown attitudes were also beginning to change, and Ministers and officials were beginning to acknowledge the impacts of their previous policies.

The Native Department reported in 1920 that Māori throughout New Zealand retained, on average, just 19 acres per person, an area that was ‘barely sufficient’ for their needs.\(^{466}\) As Seddon had in the 1890s,\(^{467}\) the department’s under secretary expressed concern that further sales of Māori land would leave ‘the bulk of them landless . . . to become a charge on the state.’\(^{468}\)

The Crown was also beginning to recognise that nothing had been done to support development of Māori land, despite the Native Land Commission’s 1907 warnings,\(^{469}\) and that Māori land boards had failed to bring land into productive use by any means other than by selling.\(^{470}\)

In its legislative reforms during the 1920s, the Crown began to respond to some

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\(^{458}\) AJHR, 1907, G-1D, pp 1–2; AJHR, 1909, G-1A.


\(^{460}\) Document A21, annex 7, Rangitoto–Tuhua 74.

\(^{461}\) AJHR, 1908, G-10; AJHR, 1909, G-1A.

\(^{462}\) AJHR, 1920, G-9, p 4; AJHR, 1921, G-9, p 3; AJHR, 1926, G-9, p 3.

\(^{463}\) Document A73, pp 723–724.


\(^{465}\) Document A73, p 342.

\(^{466}\) AJHR, 1920, G-9, p 2 (doc A73, p 584).

\(^{467}\) Document A73, p 111.

\(^{468}\) AJHR, 1920, G-9, p 2 (doc A73, p 584).


\(^{470}\) Document A73, p 301; see also Loveridge, Māori Land Councils, p 135.
of these issues, while also responding to other, sometimes contradictory forces. The law was amended in 1922 to provide a new mechanism for re-vesting, which was partly a response to owners asking for their land back but was also intended to encourage further sales to private buyers.471

This law was used in 1924 to re-vest 12 subdivisions of Wharepuhunga 16, totalling 4,023 acres (the Crown having purchased the rest).472 The following year, the 534-acre Rangitoto–Tuhua 54B block was re-vested. Table 13.10 provides a list of re-vested properties.473

On other occasions, re-vesting applications were dismissed or ignored, as with the example of the Wharepuhunga subdivisions cited above.474

Along with re-vesting, statutory amendments during the 1920s enabled boards to make development loans to Māori landowners, and paved the way for consolidation and development schemes (see chapters 16 and 17).475 But the same laws also made private purchasing of the remaining vested lands easier and removed any obligation for the boards to maintain the equal split between sales and leases.476

While seemingly providing for the development of Māori lands, the Crown also responded to the economic challenges of the time with a series of statutory reforms aimed at protecting the interests of lessees and mortgagees at the expense of Māori landowners.

Throughout this time, the Waikato–Maniapoto District Māori Land Board continued to be plagued by accounting errors, rent and purchase payment arrears, slow or non-existent payouts to owners (and occasional overpayments), and general difficulty meeting its financial and trustee obligations.

In 31 March 1916, lessees on vested lands had outstanding rents totalling £2,273.477 Just seven years later, arrears exceeded £6,000, and by 1928 the total had grown to £9,600.478 The total arrears then fell to around £3,100 in 1932, at least partly because of rent reductions and write-offs, but climbed again thereafter.479 Arrears on non-vested lands, which the board was also responsible for collecting, also grew during this period.480

471. Native Land and Land Claims Amendment Act 1922, s10; doc A73, pp 300–301.
473. Document A73(a), vol 8, p 320; see also doc A73, pp 304, 434, 695.
474. Document A75, pp 112–114; see also doc A73, p 762.
476. Section 12 of the Native Land Amendment and Land Claims Amendment Act 1929 provided that boards could sell vested land privately, irrespective of the 50:50 split of the purpose it had been vested for, so long as it had the precedent consent of a majority (by share) of owners or the approval of a meeting of assembled owners. The Native Minister also had to consent; see also doc A73, pp 265, 748–749; doc A146, p 322.
479. Document A73, pp 624–625, 761; doc A73(a), vol 8, pp 184–186; doc A75, pp 100, 103; see also doc A73(a), vol 8, pp 184–186, 247–249. Enforcement action was almost impossible under the laws applying by this time: doc A73(a), vol 10, pp 222–223.
Overall, the board’s accounts (which included vested and non-vested lands) show income steadily declining from £218,690 in the 1920–21 financial year to £88,967 in 1928–29, and £48,609 in 1935–36. The main reason for this decline was the dramatic fall in land sales after 1922, a development that made rents more important as a proportion of the board’s total income.

Payments to Māori landowners fell away commensurately, from £156,755 in 1920–21 to £58,606 in 1927–28 and £31,952 in 1935–36. While these might seem like large amounts, they are not so impressive when the district’s Māori population is considered, amounting to an average of little more than £31 per person in 1920–21 and little more than £11 per person six years later. It is likely that some received considerably more, while others received less. According to Hearn, an unskilled labourer in 1918 would expect to receive about £3s 5d per week, or £168 per year. Even if rents on unvested lands were factored in, it does not seem that Māori incomes from selling and leasing were large.

In 1920, the board discovered a series of payment errors that had occurred in the previous four years, resulting in overpayments to some beneficiaries, and payouts to others who had no interests in vested land. Altogether, £2,207 was paid in error, of which £1,875 was later recovered by withholding rents.

Those errors aside, the board more commonly delayed or withheld payments. Owners made numerous complaints about this during the 1920s and beyond, with some owners claiming they had received little or nothing for years. The board told some owners they would receive no payment until development costs had been paid. In 1923, Ani Te Amohanga wrote to the Native Department: ‘No benefit comes from the Board. When we apply for rent money this is the reply, “there is no money.”’

By mid-1932, the board could no longer make payments at all. Several owners, out of work and struggling through a cold winter, were told they would have to wait until a government loan had come through. The board’s position, according to the registrar, was ‘daily becoming more desperate.’

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481. Document A73(a), vol 24, p 128; AJHR, 1929, B-1, pt IV, p 96; AJHR, 1936, B-1, pt V, p 44.
482. Document A73, pp 280, 621.
483. Document A73(a), vol 24, p 130; AJHR, 1929, B-1, pt IV, p 97; AJHR, 1936, B-1, pt V, p 45; see also doc A73, p 626.
484. The district’s Māori population was about 5,000 between 1906 and 1926: doc A73, pp 33, 36, 47; Arthur S Ormsby, ‘Government Dealings with Māori Lands’, King Country Chronicle, 31 May 1907, p 1.
485. Hearn calculated rents for non-vested land in 1909 and found that a handful of owners were receiving in excess of £30 per year, while the majority were receiving less than £5: doc A146, pp 136, 138.
486. Document A146, p 140.
487. Document A73, p 621.
489. Ani Te Amohanga to Under-Secretary, 5 November 1923 (doc A73(a), vol 8, p 92).
491. Registrar to Native Department, 22 June 1932 (doc A73(a), vol 3, p 231).
These difficulties were not all the board’s making. The First World War created conditions that impacted on the board’s income on some properties, in particular because of a 1914 law allowing mortgagors to make interest-only repayments so long as hostilities continued. Recession led some lessees to abandon their properties and contributed to non-payment of rent by others. Furthermore, several of the lessees who fell into financial difficulty had acquired their properties at the height of the market, taking on large debts, and had been struck by the combined impacts of recession and discovery that Te Rohe Pōtae lands were much less fertile than they had hoped.

But this was only part of the story. The other part related to the board’s poor financial decisions and lax enforcement of contracts, both of which were direct reflections of the size and competence of its staff. Rent arrears were becoming a problem even before the outbreak of war and continued to grow even while demand for farmed commodities remained strong. As early as 1914, the board acknowledged ‘a certain amount of laxity’ in its enforcement.

Once the recession began to bite, the board became even more reluctant to act, fearing that lessees might walk off the land. Re-entry proceedings were used occasionally, but only as a last resort, and typically after arrears far exceeded £100. The lessee on Rangitoto–Tuhua 32B2, for example, accumulated £306 in arrears between 1921 and 1926, and then abandoned the lease before any action was taken. By the early 1930s, arrears had declined, but only because of new laws that allowed the amounts owing to be reduced or remitted.

Furthermore, rent arrears were not the only reason that the board had difficulty paying out money owed to owners. Another reason – and possibly more significant – was that the board kept significant sums of money tied up in investments with the Native Trustee and private mortgagors.

The Native Trust Office had been established in 1920 to fund development of Māori land, since banks and government lending departments were reluctant to lend on properties in multiple ownership. During the 1920s, all Māori land boards

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492. This was the first of several laws aimed at protecting mortgagors and lessees from the effects of war and recession: doc A73, pp 277–278, 722; Mortgages Extension Act 1914, ss 3, 6, 7.
494. Document A73, pp 285, 628; registrar to Under-Secretary, 23 November 1914 (doc A73(a), vol 4, pp 283–284).
495. Document A73, pp 628–631; doc A73(a), vol 8, pp 130, 144, 239, 241, 243, 251. Another lessee accumulated £139 over the same time period. The board did nothing until 1928, when it reclaimed the property and leased it back to the same farmer who again accumulated debts: doc A73(a), vol 8, pp 96, 114, 243. A September 1926 return showed more than 100 lessees of vested land in arrears. Three months later, the board took action against 22 of them. So long as some attempt was made to pay rent, the board seems to have been content to leave the lessees alone: doc A73(a), vol 8, pp 239–241; doc A73, pp 723–724.
496. Document A73(a), vol 8, p 184; doc A73(a), vol 10, p 223; doc A75, pp 100, 103. The laws providing for rent reduction or remission included: Mortgagors Relief Act 1931; Mortgagors and Tenants Relief Act 1932, s 6; Mortgagors and Tenants Further Relief Act 1932, s 9; Mortgagors and Tenants Relief Amendment Act 1932, s 4.
invested funds with the Trustee, who in turn on-loan to Māori owners and Pākehā lessees on Māori lands.

This scheme relied entirely on boards being willing to hold back money they had received for sale and lease of Māori land, investing it with the Trustee instead of paying it out to the owners. In 1920, the Waikato–Maniapoto District Māori Land Board deposited £178,613 with the Native Trust Office under these provisions, and over the following decade more was deposited, and some came back in advances.\(^\text{497}\)

The board justified these and other investments on the basis that the owners were better off with money invested on their behalf than they were with cash. But the reality was that every cent invested in this way was locked into long-term loans, as well as being placed at risk of being lost if the mortgagors defaulted. In 1932 and 1933, when the board was unable to pay Māori landowners what they were owed, it had significant funds tied up with the Native Trustee but could not get its money out. The Trustee, too, was in financial difficulty.

Furthermore, other funds were tied up in private mortgages. The board's accounts do not reveal whether these funds were from vested or non-vested lands, but in either case the money received on behalf of Māori landowners had been held back.\(^\text{498}\)

The board even seems to have offered a short-term credit facility for the Crown’s land purchasing agents, lending them money to allow them to complete purchases and then receiving a refund of the same amount (without interest) during the same financial year.\(^\text{499}\)

Although the board kept individual financial records for each vested property,\(^\text{500}\) in practice, it did not always deal with them as separate trusts. In Taumatatotara, for example, it held back £2,700 received from the sale of some properties to cover loan repayments on others that had not sold. Owners complained about this practice, and the Native Department acknowledged that it was not consistent with the board's obligations as a trustee. Nonetheless, both the department and the board preferred that the payments not be made.\(^\text{501}\)

The board's practice of delaying, rationing, and withholding payments had significant impacts on beneficiaries. Hearn provided evidence that Māori landowners were heavily dependent on their incomes from the board, having limited access to either jobs or land development opportunities.\(^\text{502}\)

\(^{497}\) Document A73, pp 662–669.

\(^{498}\) In 1932–33, when the board had no cash to pay Māori landowners, it had £57,909 on deposit with the Native Trustee and in excess of £50,000 in various mortgages (though much of this money was likely to be owed on non-vested lands): doc A73, pp 638–639, 647–648, 662–666; AJHR, 1934, B-1, pt V, p 16.


\(^{500}\) See, for example, AJHR, 1912, G-9, pp 16–19.

\(^{501}\) Document A73, p 283; doc A75, pp 116–120.

In 1932, Te Raraka Te Ringitanga wrote to the Education Board in Auckland, saying that his family was entirely dependent on rents and royalties that had not been paid for five months, and his children could not attend school as they were not being fed: '[I]t is my intention to take them away and we will all go and live in the bush, where we will at least be assured of a supply of fresh meat and . . . vegetable foods. Living [here] we are faced with starvation. This is also the position of several other Maori families.'

In a separate letter to the Native Minister, Ringitanga said that Māori lessees of vested land had kept up their payments, but nothing had been passed on to owners. According to a lawyer acting for two other owners: 'It is . . . difficult to understand why trust moneys should be withheld from the unfortunate natives at any time. At present when work is practically unobtainable we consider that every effort should be made to pay over moneys with the least possible delay.'

Even after the Treasury loan was received, the board continued to ration payments. It experienced a similar financial squeeze the following year, and was again unable to make payments. Things improved as the economy recovered in the second half of the decade, but even so in 1936 the board retained only enough cash to pay only 73 per cent of what it owed beneficiaries.

While Māori landowners bore the impact of the economic difficulties of the 1920s and 1930s, the Crown took several steps to assist lessees and mortgagors. Lessees of Māori land in the district lobbied throughout the 1920s for rents to be reduced, and for the terms of their leases to otherwise be varied. Much of this pressure came from private lessees who wanted to escape from fixed rental increases and wanted to be compensated for any improvements they made even though their leases contained no such provision. But lessees of vested land also sought assistance, including rent reductions and rights to obtain the freehold.

Although the Crown had acted in the past to assist lessees and mortgagors, it had mostly targeted specific circumstances (war) and populations (returned soldiers, lessees of ‘deteriorated’ Crown lands). In 1929, however, specific provisions were made to assist lessees in the Waikato–Maniapoto Māori Land District. In 1931,
those provisions were extended to cover lessees of Māori land nationwide. \(^{512}\) The MacCormick commission had acknowledged in 1929 that rents on vested lands, which had remained unchanged since the early 1910s, were not unfair to lessees and were causing them no hardship. \(^{513}\) Nonetheless, the 1929 and 1931 provisions also covered vested lands.

These provisions mainly benefited lessees of non-vested lands, and for that reason are covered in more detail in chapter 14. The board did, however, grant rent reductions to a handful of lessees of vested lands. Specifically, the annual rent on Rangitoto A18B2B was reduced from £166 to £97; \(^{514}\) the rent on Maraetaua 2B3, an annual rent reduction from £14 to a little over £3; \(^{515}\) and the rent on Mohakatino–Parininihi 1C West 1B, to reduce from £250 to £200 per year, against the wishes of the owner who was farming another property and wanted the land returned. \(^{516}\)

Other tenants applied for and won rent reductions and other concessions under the Mortgagors and Tenants Relief Act 1932. The commission responsible for hearing those claims reduced the rent on Maraetaua HH from £68 to £32, and remitted £90 in back-rents; \(^{517}\) and it reduced the rent on Maraetaua II from £63 to £26, and remitted £85 in back-rents. \(^{518}\) The lessee of Rangitoto A18B2B, having already received a reduction from the board, also tried her luck under the Mortgagors and Tenants Relief Act 1932, winning a further rent reduction to £83, along with remittance of rent arrears totalling £165. This was one of several cases leading the Government to repeal the Native Purposes Act 1931 provisions specifically targeting Māori land. \(^{519}\)

The other means by which the Crown assisted lessees was by purchasing vested lands and on-selling. This was its solution in Rangitoto–Tuhua 77A (Tangitu), \(^{520}\) and in parts of Wharepuhunga 14B. \(^{521}\) The Tangitu settlers had lobbed almost unceasingly during the late 1910s and the 1920s for variations on their leases. They sought, at various times, lower rents (which they claimed were excessive at, typically, a few shillings per acre); increased compensation for improvements; and a right to acquire the freehold on a rent-to-buy basis at no additional cost to them. \(^{522}\)

As the Native Department observed, they had known the terms when they took up their leases. \(^{523}\) It appears their real concerns lay elsewhere, particularly in the fact that they were incurring large costs to keep down weeds and scrub regrowth.

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513. AJHR, 1929, G-7, p 5.
514. Document A73, p 761; doc A73(a), vol 5, pp 136, 139, 142, 236, 244, 249–250; doc A73(a), vol 10, p 256.
515. Document A73, pp 758, 761; doc A73(a), vol 5, p 160.
516. Document A73, pp 758, 761; doc A73(a), vol 5, p 160; doc A73(a), vol 10, p 42.
517. Document A73(a), vol 5, p 142.
518. Document A73(a), vol 5, p 142.
519. Document A73, pp 761; doc A73(a), vol 5, pp 136, 139, 142, 244; doc A73(a), vol 10, p 256.
523. Document A73, p 767.
on land they had converted to pasture. As this work was not a ‘substantial improvement of a permanent character’, they were not eligible for compensation, and could not borrow against it.\(^{524}\) They also appear to have been unhappy that nearby Crown tenants were leasing with a right of purchase.\(^{525}\)

Despite their numerous complaints, it seems that the Tangitu settlers were mostly able to keep up with their mortgage payments. Many fell into arrears with their rents during the late 1920s, but the sums were generally modest.\(^{526}\) After a decade of lobbying, the Crown acquiesced in 1930, acquiring the block by purchasing from individual Māori. None of the lessees subsequently sought the freehold, and some walked away from their leases during the 1930s.\(^{527}\)

13.5.7 Administering vested lands after 1940

When the Crown first vested land in the Waikato–Maniapoto District Māori Land Board, it did so on the basis that half would be leased and ultimately returned to future generations of owners. The land was to be developed – cleared, fenced, sown in pasture, provided with houses and other buildings, and so on. Those improvements would be monitored and recorded, and lessees would be generously compensated. The implicit promise was that, in 1957 or thereabouts, 100,000 acres of productive farms would be handed over to their owners.\(^{528}\) What had not been predicted was the impact the provisions of the legislation authorising compensation to lessees for improvements during the terms of leases might impact on the owners.

By 1940, the Waikato–Maniapoto District Māori Land Board had sold well over two-thirds of the vested land, and much of what remained was unused, either because it had been abandoned or because it had never been taken up in the first place. Either way, it had scarcely been improved by 30 years under the board’s control.

Probably no more than 20,000 acres was being farmed, and the landowners had little reason to hope that any of this might one day be returned.\(^{529}\) The conditions under which leases had been offered, the board’s lapses in administration, the Crown’s lapses in oversight, and the challenging economic circumstances of the preceding two decades had all combined to impose seemingly insurmountable obstacles on re-vesting of working farms. Māori landowners could only regain

\(^{524}\) Registrar to Under-Secretary, 8 January 1930 (doc A73(a), vol 23, p 322); see also doc A73(a), vol 23, pp 323, 331–332, 339, 353; doc A73, pp 766–771. Valuations reveal that clearing timber was by far the largest of their improvements: doc A73(a), vol 23, pp 348–352.

\(^{525}\) Document A73(a), vol 23, p 339; doc A73, pp 768–769.

\(^{526}\) Document A73(a), vol 23, p 319; doc A73(a), vol 8, pp 219–224; doc A73, pp 768, 770–771; see also pp 628, 690.

\(^{527}\) Document A73, pp 771–773.


\(^{529}\) The 1951 Royal Commission found that just 14,940 acres of Waikato–Maniapoto vested lands were leased by 1950. Of that, just 10,980 acres was leased on terms that required payment of compensation for improvements, implying that the rest was on short-term lease: AJHR, 1951, G-5, pp 42–43; doc A75, p 132.
possession of leased lands if they bought out the lessee’s improvements, usually for a price that was far higher than the underlying value of the land itself.\textsuperscript{530}

The Native Land Act 1909 provided that lessees of vested land, so long as their lease was for 10 years or longer, were entitled to compensation for ‘all substantial improvements of a permanent character’\textsuperscript{531} which were made during the lease and remained ‘unexhausted’ when the lease expired.\textsuperscript{532}

Implementation of the provisions of this Act and amending legislation required concerted action over very long timeframes.\textsuperscript{533} The board had to carefully monitor the development of leased lands, ensuring that improvements were made and maintained, and that all covenants were complied with. And it had to set aside sufficient money, over more than 50 years, to cover the ultimate cost of improvements.

Neither of those things occurred. Hearn found ‘[n]o evidence . . . to indicate that the Waikato–Maniapoto District Maori Land Board ever acted in any systematic fashion’ to ensure that lease terms and conditions were met. There were few records of the board conducting systematic inspections or proceeding against lessees who failed to comply with the covenants.\textsuperscript{534} A 1931 Treasury report commented that, at that time, there were no field inspections being conducted, nor any planned. This was a matter for attention ‘in the near future’\textsuperscript{535}.

In 1936, Judge MacCormick acknowledged that the board was not keeping up with its obligation to inspect properties and keep a record of the condition they were in and any improvements made. He asked for staff to carry out this task: ‘I have been trying to get a ranger for more than 15 years and I am satisfied one would have saved his salary many times over.’\textsuperscript{536}

Complaints about the board’s failure to inspect leased properties and ensure that covenants were complied with were continuing in the early 1940s,\textsuperscript{537} when the registrar acknowledged that there was still ‘no system in operation . . . providing for the inspection of leased areas of vested lands in order to ensure that the provisions of leases are being carried into effect.’\textsuperscript{538}

\begin{itemize}
\item \textsuperscript{531} ‘Substantial improvements of a permanent character’ were defined as meaning ‘reclamation from swamps, clearing of bush, gorse, broom, sweetbriar, or scrub, cultivation, planting with trees or live hedges, the laying-out and cultivating of gardens, fencing, draining, making roads, sinking wells or water-tanks, constructing water-races, sheep-dips, making embankments or protective works of any kind, in any way improving the character or fertility of the soil, or the erection of any building.’ A district land board could also declare any rabbit-proof fence to be a substantial improvement of a permanent character: Land Act 1908, s 2.
\item \textsuperscript{532} Native Land Act 1909, s 263.
\item \textsuperscript{533} Native Land Act Regulations 1910; Native Land Amendment Act 1913.
\item \textsuperscript{534} Document A73, pp 289, 631.
\item \textsuperscript{535} AJHR, 1932, B-4A, p 34; see also doc A73(a), vol 2, p 118.
\item \textsuperscript{536} CE MacCormick to Under-Secretary, Native Department, 22 July 1936 (doc A73(a), vol 3, p 183).
\item \textsuperscript{537} Document A73(a), vol 5, p 186.
\item \textsuperscript{538} Registrar to Under-Secretary, 4 February 1941 (doc A73(a), vol 5, p 182).
\end{itemize}
Nor did the board ever set aside money in sinking funds to cover (or at least contribute to) the cost of improvements. In 1934, the registrar informed the Native Department that the Waikato–Maniapoto District Māori Land Board ‘has made no provision for payment of compensation’ to lessees. Though the matter had ‘cropped up at various times’, the board’s view was that it did not have to set aside any sinking funds until the Native Minister directed it to. This was in accordance with the Native Land Act 1931 provisions that boards should set aside ‘such sum as the Native Minister from time to time directs’.

The registrar was not greatly concerned about the lack of a sinking fund, since most of the lessees were taking up their right to renew ‘and the need for a fund in these cases is not yet apparent’. There was, furthermore, ‘always the alternative’: the amount owing could be charged against the land and recovered by a receiver. The effect of such a charge would be a further term of leasing, with the owners receiving no rent.

In fact, as previously discussed, owners and lessees had known for decades that compensation clauses could be used to force sales of Māori land and it was for this reason that such clauses were sometimes a source of tension.

Officials, Ministers, and Māori land boards debated the need for a sinking fund through the 1930s and into the 1940s, but no decisive action was taken. The specific legal reason for the board’s inaction was that the Native Minister had never issued a directive, as required under Native Land Act 1909. But the underlying cause was the considerable imbalance between rents and the value of improvements. Put simply, for most of the vested blocks under lease, paying for improvements would have required most or all of the rental income, leaving nothing to pay out to owners.

As Judge MacCormick explained in 1937:

The amount which may be payable in compensation is . . . in no way proportionate to the rent payable under the lease. It is obvious that there may be large improvements, though only a small rental. In such a case even a setting aside of the whole of the rent may fall far short of the compensation charge. And with respect to vested lands, where the term is short, that probably would be the result in the majority of cases. The Native owners would naturally greatly resent such a position. And would

541. Native Land Act 1931, s 327(5); Native Land Act 1909, s 263(5).
542. Registrar to Under-Secretary, 20 June 1934 (doc A73(a), vol 5, p 199).
543. Document A73, pp 70, 269, 735, 782, 822; see also doc A73(a), vol 5, p 184.
strenuously object to losing a great part if not the whole of their rent without solving the problem.  

In 1930, for example, the improvements on a 124-acre part of Maraetaua 9C were valued at £938, compared with an unimproved land value of £534. The annual rent had been £29 12s since 1911. The total rent on the block from 1 January 1911 (when the lease began) to 31 December 1929 would have been £562 – more than £350 short of the value of improvements. The lessee bought the property outright in 1931 for the unimproved value of £534. In another example, in 1930, the improvements on a 207-acre part of Rangitoto–Tuhua 26A were valued at £1,878, and the unimproved land value was £775. This block was also sold to the lessees.

In 1934, the Waikato–Maniapoto District Māori Land Board provided a schedule of 40 vested properties for which leases were coming up for renewal. The total area covered by these leases was approximately 14,500 acres. The value of improvements totalled £46,654, an average of more than £1,000 per property.

Whereas private leases that provided for compensation generally imposed an upper limit on improvements (usually, £2 or £3 per acre), no such provision applied to leases of vested land. While this incentivised lessees to keep investing in the property, it also meant that improvements could keep accumulating out of all proportion to the rent or the underlying land value.

Other factors further exacerbated the imbalance between rents and compensation. First, lessees were very often in arrears or defaulting on their payments. Secondly, the rents on vested lands had already been encumbered with other costs, such as those associated with survey and roading. Finally, rents could not increase during the first term of the lease, whereas improvements could grow at the lessee’s discretion. Even without a sinking fund, Māori landowners struggled during the 1920s and 1930s to get income from the board.

In 1940, Judge MacCormick wrote to the Native Department, informing it that neither the owners nor the board had money to pay for compensation. Unless public funding was used, there was little hope of owners regaining possession of their land when leases expired. ‘The theory of compensation is a perfectly sound one,’ he wrote, ‘but in practice it will not work out. . . . who is to find the cash[?]’

The Under Secretary for the Native Department freely admitted that the leases had originally been designed to offer ‘terms which would be attractive for prospective [Pākehā] settlers.’ Nonetheless, Māori landowners must now pay if they

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547. MacCormick to Under-Secretary, 4 January 1937 (doc A73(a), vol 5, p 191).
549. Document A73(a), vol 10, p 300. The total rent from 1 January 1911 to 31 December 1929 would have been £542 12s.
552. Document A73, p 780.
554. Chief judge to Under-Secretary, 7 February 1940 (doc A73(a), vol 5, pp 189–190).
wanted their lands back. They ‘cannot expect to have the land and improvements returned to them . . . free of all charges.’\(^{555}\)

Rather than address the underlying issue, the Crown gradually readjusted its policy. Returning all remaining vested land to owners was no longer considered feasible. Instead, board and Crown officials debated options for returning some of the land, as well as transferring some to development schemes. The remainder would be leased to Pākehā for another generation.\(^{556}\)

The board’s registrar advised that, with most leases running for another 17 years (until 1957), it may not be too late for sinking funds to be established: ‘The Maori as a rule, however, does not take a long view of these matters, which perhaps accounts for the fact that Boards in this district have never used the legislative authority given them to accumulate current rents for this purpose.’ (Emphasis added.)\(^{557}\)

By this time, further difficulties were emerging. About 10,000 acres of the remaining land was unused, and, with the leases due to expire in 1957 at the latest, the land was unattractive for potential lessees. In many cases, lands that were leased were poorly maintained, with improvements deteriorating and noxious weeds an increasing problem.\(^{558}\)

The board’s president (Judge Beechey, who had replaced Judge MacCormick\(^{559}\)) also warned of potential difficulties arising from its practice of leasing subdivisions that did not align with the legal block boundaries. Where lands remained under the board’s control this caused little difficulty, other than requiring the board to calculate the amount of rent owing to each owner. But, if land was to be re-vested, lessees would often have to negotiate separate leases with three or four sets of owners.

The only two options, Judge Beechey said, were to extend the vesting period beyond 1957, or to amend the legal boundaries so they aligned with the subdivision boundaries used by the board.\(^{560}\) The Native Department’s view was that any option other than returning the land to the owners would require their consent.\(^{561}\)

### 13.5.8 The Royal Commission on Vested Lands

With pressure mounting from lessees and owners throughout the North Island, the Crown appointed a royal commission to investigate. It also legislated to allow lessees to stay on the land until a permanent solution was found.\(^{562}\)

The commission’s report highlighted the difficulties associated with payment of compensation and return of land where no money had been set aside, and where

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555. Under Secretary to Native Minister, 3 December 1940 (doc A73(a), vol 5, p 183).
557. Registrar to Under-Secretary, 4 February 1941 (doc A73(a), vol 5, p 182).
560. Document A73(a), vol 5, p 179.
subdivisions did not align with the legal property boundaries. In respect of the boundaries, it noted the potential for difficulty if one group of owners had money and wanted the land, but another group of owners interested in the same lease had no money or did not want the land.

It also expressed concern about the methods used to value improvements. Whereas, in the Waikato–Maniapoto district, government valuations had been used to determine rents, the law provided for improvements to be valued by two independent valuers, one appointed by the board and the other by the lessee.

In the commission’s view, the Native Land Act 1909 gave insufficient guidance as to how these valuers should go about their work. In practice, they had tended to include all improvements carried out by lessees over the entire term of the lease, and to value those improvements at present-day cost, instead of valuing the improvements according to the contribution they were making to the property’s present-day capital value.

For example, if, at the time of valuation, it cost £5 an acre to burn off bush and scrub, that was the price that valuers would use, and they would include that cost even if the burning had been carried out decades ago at no cost other than the lessee’s labour, and even if the burning was no longer contributing to soil fertility, and even if the land had since reverted to scrub. The effect of this method, in the commission’s view, was that improvements were overvalued by a considerable margin. This was of particular concern to Waikato–Maniapoto landowners, who saw lessees as deriving considerable benefit as leases expired from improvements that had cost them little.

Furthermore, the commission believed that valuers in most districts might have used the ‘residue’ method to determine unimproved land value. Under this method, unimproved value was determined by subtracting the value of improvements from the capital or market value. The result was that improvements accounted for an ever-increasing proportion of the capital value, while underlying land values declined, both as a proportion and in absolute terms. In other words, Māori land was worth less in its improved state than it had been in its natural state.

The commission saw obvious injustice in the methods used to value improvements. In its view, unimproved land values should not decline over time. On the contrary, they should tend to rise as roads, bridges, schools, and other amenities were built. On leased Māori land throughout the North Island, that was not
occurring. Instead, unimproved land values were declining as a proportion of overall property values, as valuers attributed ever-increasing amounts to ‘improvements’ that in many cases contributed nothing to a property’s overall market value.\textsuperscript{570}

The commission reported that, in all districts, ‘the general feeling’ of the owners was that they wanted their lands returned once the leases expired, though in the Waikato–Maniapoto district some owners indicated that they were willing to see leases continue if it would not be practical for them to take over the land.\textsuperscript{571} The commission supported the return of vested lands where possible, with the proviso that existing contracts should be honoured and that no action should be taken ‘which would be likely to lead to a deterioration in the condition and productivity of the vested lands’.\textsuperscript{572}

The question was how to achieve these objectives given the difficulties over compensation, boundaries, and so on.\textsuperscript{573} The commission suggested that, wherever possible, owners and lessees resolve the difficulties themselves. Otherwise, it recommended that Māori land boards be made responsible for gathering information about the productive potential of the land, how much compensation must be paid, and how those costs might be met. With that information, owners could be called to a meeting, to decide whether they wanted the land back.\textsuperscript{574}

It proposed a system under which Māori landowners could get their land back either by paying full compensation on expiry of the lease (in which case the lessee had to vacate immediately), or by paying two-thirds of the compensation owing (in which case the settler had the option of vacating immediately or taking another 15 years).\textsuperscript{575}

If owners did not want the land back, or if they did not have sufficient money to pay compensation, the board would be empowered to offer leases for 21 years, perpetually renewable, with rent set at 4.5 per cent of the owners’ interest. At the end of each term, the owners could reclaim the land by paying the compensation. The boards would also have power to lease any land that was neglected or likely to become neglected.\textsuperscript{576}

Regarding compensation, the commission proposed that lessees be paid only the unexhausted value of improvements when the lease expired. The commission recommended that sinking funds be established, leased properties be regularly inspected, and improvements properly recorded. All of this should have been done under existing laws but was not.\textsuperscript{577}
13.5.9 The Māori Vested Lands Administration Act 1954 and the end of the vested lands

The Crown responded by preparing draft legislation, which was circulated to Māori landowners, lessees, and officials for their comment. A note accompanying the draft legislation suggested that it was intended to take account of all interests – owners, lessees, and the general public – but this meant ‘a compromise [with] a lot of doubts and difficulties.’ The response from all parties was unfavourable, with owners believing the draft Bill provided for too much compensation, and lessees believing it provided for too little. However, in Whanganui, which had most of the remaining vested lands, direct negotiation between owners and lessees led to an agreement in 1953, and that agreement provided the basis for new legislation.

The Crown’s response to the compensation issue was contained in the Māori Vested Lands Administration Act 1954. It provided that the ‘value of improvements’ was limited to the actual value added to the land at the time of valuation, and it set out options for the return or re-vesting of vested land. Specifically, on expiry of a lease, the Māori Trustee (who had taken over the functions of the boards after their abolition in 1952) could either pay compensation to the lessee and resume control of the land, or lease the land again setting aside half of the rent to cover future compensation. Then, on expiry of the next term, the Trustee again had a choice of paying compensation or leasing for a further period.

Whenever the Trustee wanted to resume control of the land but did not have enough money set aside for compensation, it could make an advance from its general fund. The amount advanced would then be a charge against the land. Land that was no longer subject to a lease could be leased, licensed for timber or other resource extraction, sold, or farmed by the Māori Trustee. Sale required the involvement of at least some of the owners, either for a majority (by value) to give precedent consent in writing, or for three or more owners to pass a resolution at a meeting of assembled owners. The Māori Trustee, or the owners, could apply to the Māori Land Court for an order re-vesting the property.

Nothing in the Act required that owners be consulted about the fate of their land, except if it was to be sold (in which case the provisions were inadequate) or if the Trustee wanted to set aside more than half of a lessee’s rent to pay for

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579. ‘Māori Vested Lands’, no date (doc A75, p 139).
582. Māori Vested Lands Administration Act 1954, ss 2, 13; doc A75, pp 147–152. The board and their districts were dissolved by the Māori Land Amendment Act 1952 (section 3) and their duties transferred to the Māori Trustee (section 4).
584. Māori Vested Lands Administration Act 1954, s 56(3).
586. Māori Vested Lands Administration Act 1954, s 70.
compensation. In House of Representatives debates, Māori members criticised the legislation for this reason.

For the Waikato–Maniapoto district, the Māori Trustee was only willing to advance £25,000 in total to Māori landowners. Even if they wanted to reclaim the land by borrowing in this way, the amount was utterly inadequate. The improvements on the 1,338-acre Wharepuhunga lot 2 DP 7301 alone were valued at £23,950 (according to the 1953 government valuation), and this was one of more than 30 vested properties for which the Trustee had become responsible.

Nor did the Act require the Māori Trustee to consult owners before deciding whether or not to pay the compensation and have the land re-vested. In the Waikato–Maniapoto district, it appears that owners were sometimes consulted, but generally were not.

In effect, after 25 years of discussion among officials, Ministers, Māori landboards, owners, and lessees, the owners were no closer to regaining control of their lands. From the Trustee’s point of view, the only realistic option was to issue new leases. Owners could either sit by and watch this occur, or volunteer to sell. Many did the latter.

During the mid- to late 1950s, as leases came up for renewal, most of the remaining Wharepuhunga 14B land (a little over 3,830 acres) was sold to lessees. Almost all of Rangitoto–Tuhua 32B2 was sold, in four separate transactions. Likewise, just over 680 acres of Maraetaua 9C and 10 was sold. Some of the land that survived the 1950s was leased for a further period, but the end result was typically sale. In all, we know of 16 blocks that were sold after 1950, with an area around 6,300 acres (see table 13.11).

If land was unlikely to earn an income and had no compensation owing on it, the Māori Trustee was willing to re-vest, if only to avoid the responsibility and potential liability arising from retaining it. Between 1961 and 1975, 17 vested properties with a combined area of 12,614 acres were returned to their owners (see table 13.10).

Some of the largest such blocks included: Hauturu West G2 section 2B2
These, along with a dozen or so smaller blocks, were the remnants of the vested lands scheme. They had been taken from their owners on the pretext that they were unproductive, then been locked up under board or trustee control for 50 years or more while all pleas for their return were dismissed. They returned little or no income, and contributed little or nothing to their owners’ welfare, nor to the settlement of the district, and were finally returned when the Trustee could find no better use for them.

### 13.5.10 How much vested land was sold?

The Crown conceded that, of the approximately 200,000 acres of Māori land vested in the Waikato–Maniapoto District Māori Land Board under part I of the Native Land Settlement Act 1907 continued by part XIV of the Native Land Act 1909, approximately 70,000 acres was sold, ‘despite the owners having previously consented to the sale of only approximately 57,000 acres’.  

While we acknowledge this concession, the evidence before the Tribunal shows that considerably more land was actually sold, and that the Crown alone purchased over 100,000 acres. Hearn provided evidence about sales of vested land in the Waikato–Maniapoto district during the period 1912 to 27. He referred to sales increasing sharply during the 1910s, with the total area sold reaching 70,351 acres at 31 March 1922, after which ‘alienation by way of sale apparently ceased’. This was the basis for the Crown’s 70,000-acre figure. We note that it was a figure for the Waikato–Maniapoto Māori land district, not for the inquiry district, and that it quite clearly covered a discrete 15-year period up to 1927.

Separately, Hearn provided evidence that the Crown purchased 98,714 acres of vested land within the inquiry district between 1909 and 1935. He listed all these purchases, and his list tallies with the block-by-block lists of land transactions provided by Douglas, Innes, and Mitchell (see tables 13.7 and 13.8).

The Crown acknowledged that Hearn had provided two different sets of figures (70,351 acres of vested land sold in the Waikato–Maniapoto district during 1912–27, and 98,714 acres of vested land in the inquiry district sold to the Crown during 1909–35). It sought to reconcile the two figures by claiming that the 70,351 acres included vested land ‘purchased by the Crown direct from the Board’

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598. One of the re-vested blocks overlapped three board subdivisions. Land sales records for the subdivisions and the block did not agree, so by the time of re-vesting no one could be certain how much of the land had been sold: doc A75, pp 162–163; see also doc A73, pp 276–277.
600. Submission 3.4.304, pp 2–3.
601. Document A73, pp 262–263.
602. Submission 3.4.304, pp 50–51.
604. Submission 3.4.304, pp 50–51.
but excluded 20,208 acres of Crown purchases of vested land through meetings of assembled owners.\textsuperscript{605}

Waikato–Maniapoto District Māori Land Board annual returns between 1912 and 1927 show the Crown buying 20,208 acres of Waikato–Maniapoto land through meetings of assembled owners, although it does not specify if the land was vested.\textsuperscript{606} They also show the board selling 70,351 acres of vested land, but do not say whether that land was sold to the Crown or to private buyers. Nor do they say how it was sold (whether directly to the Crown, or through assembled owners, or by public auction or tender).\textsuperscript{607}

The Crown also referred to evidence from Bassett and Kay that, by 1950, the Crown had purchased 103,086 acres of vested land, and private buyers had purchased another 34,679 acres.\textsuperscript{608} In respect of the Crown purchasing figure, the Crown submitted that it was based on ‘the entire Waikato Māori Land District which included a large amount of Part xiv [vested] land located in the Coromandel district’. It also submitted that it ‘undoubtedly’ included vested land ‘that had been sold to the Crown following resolutions in favour of selling by meetings of assembled owners.’\textsuperscript{609}

The Bassett and Kay figures were drawn from the 1951 Royal Commission on Vested Lands. The commission did not report that ‘a large area’ of Waikato–Maniapoto vested land was in the Coromandel district; it simply described the district’s boundaries, including the eastern boundary which ended at the Coromandel Peninsula.\textsuperscript{610} The Crown has therefore dismissed the 1950 figures based on an erroneous reading of the commission’s report. It is unclear, to us, why the Crown should dismiss the 1959 Waikato–Maniapoto land district figures, when it relied entirely on the 1912–27 figures for the same district.

In fact, of the 203,530 acres vested in the Waikato–Maniapoto District Māori Land Board under part xiv of the Native Land Act 1909, a total of 200,738 acres was within the inquiry district as Hearn shows, by listing all the vested properties.\textsuperscript{611}

Therefore, for lands vested under part xiv of the Native Land Act 1909, the Waikato–Maniapoto district figures provide a very close approximation for the inquiry district.

Given the uncertainties about the land sold by the board, and how much of that the Crown purchased, the most reliable way to determine how much land was vested and then sold within the inquiry district, whether privately or to the Crown, is to consider each property individually. This is what Hearn did for

\textsuperscript{605} Submission 3.4.304, pp 50–51.
\textsuperscript{606} AJHR, 1912–27, G-9.
\textsuperscript{607} AJHR, 1912–27, G-9.
\textsuperscript{608} Submission 3.4.304, p 52; doc A75, pp 130, 132.
\textsuperscript{609} Submission 3.4.304, pp 51–52.
\textsuperscript{610} AJHR, 1951, G-5, pp 42–43.
\textsuperscript{611} Document A73, p 209.
Crown purchases, leading to the conclusion that the Crown purchased 98,714 acres of vested land between 1909 and 1935. The specific properties are listed in table 13.8, along with the relevant Native Land Commission recommendation and the Crown’s method of purchase. The Crown did not cease purchasing altogether in 1935: according to Douglas, Innes, and Mitchell, it purchased small areas in 1937 and 1938, bringing its total up to approximately 100,000 acres. The Tribunal accepts the claimants’ evidence that the Crown purchased about 100,000 acres of vested land. This figure also is consistent with the Waikato–Maniapoto figure provided by the 1951 commission.

The Crown drew a distinction between lands sold directly by the board and those sold through assembled owners. By doing so, the Crown appears to be suggesting that land sold through owner meetings could be excluded from the area of vested land sold without consent. We are not sure why that should be the case, given the numerous findings in other Tribunal reports that meetings of assembled owners utterly failed to provide for communal decision-making about land, and on the contrary allowed small minorities to sell.

As discussed in sections 13.3.7 and 13.3.8, land was sold with the owners’ free and informed consent only if all owners were involved and resolved to sell in full knowledge of the implications, and without pressure or coercion (including the coercion of orders prohibiting private sale). The onus is on the Crown to show that these conditions were met with respect to all of its purchases. So far as we can determine, they were met only very rarely if ever.

Hearn did not provide data for private sales of vested land. The Tribunal has been able to account for private sales of more than 27,000 acres (see table 13.9), but we note that the 1951 royal commission found that approximately 35,000 acres was sold within the broader Waikato–Maniapoto district.

In conclusion, the Crown’s concession that ‘[t]he Board sold more than 70,000 acres despite the owners having previously consented to the sale of only approximately 57,000 acres’ significantly underestimates the area actually sold. The evidence is that the Crown alone purchased approximately 100,000 acres up to 1950, as shown in tables 13.7 and 13.8, and private buyers purchased at least 27,000 acres prior to 1950 and a few thousand acres more afterwards, as shown in tables 13.9 and 13.11.

13.5.11 Treaty analysis and findings
The Tribunal has established that the Crown ‘cannot divest itself of its Treaty obligations by conferring an inconsistent jurisdiction on others.’ Thus, where the Crown delegated power to the land boards, it had to do so in terms which ensured

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614. See, for example, Waitangi Tribunal, Wairarapa ki Tararuia Report, vol 1, p 106; Waitangi Tribunal, He Maunga Rongo, vol 2, pp 685–687.
that its duty to actively protect Māori lands was fulfilled.\(^{616}\) Even where Māori land boards were not acting as part of the Crown or as its agent, the Crown had to ensure that the laws and policies they operated under, and their administration of those laws and policies, were in all ways consistent with the Crown’s Treaty obligations.\(^{617}\)

Under the Native Land Settlement Act 1907, and continued under the 1909 Native Land Act, land was compulsorily vested without owners’ consent, for purposes that served settler interests, in accordance with a Crown policy that unilaterally required settlement and farming of Māori land, unfairly blamed Māori landowners where settlement was not occurring, and took rights from small Māori landowners that were not being taken from small Pākehā landowners.

The Crown was not only responsible for the relevant legislation, policies, practices, acts, and omissions (including, for example, board staffing and resourcing) and the actions of the Native Minister, but it was also responsible for actively monitoring board activities and taking remedial action where necessary and where such activities clearly were contrary to Te Rohe Pōtae Māori rights under the Treaty. Thus, where the land boards in the administration of their lands were acting independently from the Crown, the latter still remained responsible for monitoring their performance to ensure that its Treaty obligations were being fulfilled. It was therefore responsible not only for adverse outcomes arising from its own actions, but also from the actions of the land boards.

Under these circumstances, it is difficult to see how the Crown can claim that it had only ‘limited . . . responsibility’ for the administration of vested lands, and that it cannot be held responsible for any outcomes or consequences it did not explicitly intend or foresee.\(^{618}\)

The Crown could have reversed its policy once the impact of its provisions on Te Rohe Pōtae were known and once it became apparent that the relevant land board – the Waikato–Maniapoto District Māori Land Board – was struggling to meet its legislative requirements, let alone act in a manner consistent with the principles of the Treaty of Waitangi. We refer in this regard to the evidence of Tame Kawe and others who petitioned the Native Minister in 1912. For them, vesting without consent was only part of their concerns. The impact of vesting was also on their minds. Vesting, they said, had and would continue to deny them the right to offer their own lands for settlement, while tying those lands up in a scheme that was so poorly conceived as to make delays inevitable and to ensure that some lands would never be used. They made it clear, furthermore, that Māori landowners would be much better off if they retained control of their lands and were able to offer those lands for sale or lease under the Native Land Act 1909. As discussed in parts 1 and


\(^{617}\) Waitangi Tribunal, Wairarapa ki Tararua Report, vol 2, p 789; see also Waitangi Tribunal, He Maunga Rongo, vol 4, p 1246.

\(^{618}\) Submission 3.4.304, pp 2, 29, 73.
11 of this report, a key premise of negotiations to lift the aukati and enable the railway during the 1880s had been that Māori would retain control of their lands. They asked, quite reasonably, that the law be amended to provide for re-vesting if that was wanted by a majority of owners. The Crown responded by giving itself discretion to re-vest under the Native Land Amendment Act 1912 and the Native Land Amendment Act 1913 – a discretion it rarely exercised.619

In this exchange, we can see four key impacts of vesting: the owners lost control of their land; they lost opportunities to possess, use, manage, and develop their land as they wished; through the scheme’s operation, in particular because land was unused and because rents were not collected, they lost income; and, irrespective of their wishes, they were not able to regain possession except on the Crown’s say-so. All of this occurred, furthermore, without any evidence that vesting served the interests of settlement.

For several decades afterwards, these impacts continued to play out as the board and the Crown managed vested lands as they saw fit, paying little heed to a decades-long, almost continuous chorus of protest from Māori owners. Vested lands were the subject of hundreds of letters or petitions, with owners asking for their lands to be put to use or returned, for rents to be paid, and for lessees to comply with their covenants.

They were forced to watch as property after property was sold off, and often without consultation. Prior to sale, those lands had been subjected to lax management that frequently favoured lessees and rode roughshod over the board’s relationship of trust with individual owners.

From the evidence presented to the Tribunal, it is clear that the Waikato–Maniapoto District Māori Land Board failed in numerous ways to discharge its responsibilities to Māori landowners. The board operated a risky scheme that the Crown designed and imposed on Māori landowners, who were not consulted about any of the details. It required Māori land boards to act as trustees for Māori landowners, while also imposing on those boards a series of contradictory responsibilities. They were required to divide areas of land into equal portions for sale and lease, irrespective of the owners’ wishes. They were required to impose certain costs on the land, irrespective of owners’ wishes.

The Crown vested 10 per cent of the inquiry district, handed it over to a board that was under-qualified and hopelessly under-resourced, and invited that board to bring the land to market. It furthermore required the board to build roads to each property, no matter how uneconomic or impractical.

In practice, the board could only carry out its business by relying heavily on the Department of Lands, both for the preparation of subdivision plans and for the conduct of surveys. The department, though much larger than the board, also lacked capacity and struggled to keep up with its survey workload. Furthermore, it had no direct responsibility to the owners of vested lands. Rather, its responsibility was to prepare Crown lands for settlement, and it elevated this agenda above

619. Document A59(a), p56.
any competing considerations by designing subdivisions and roading plans that
ignored the owners’ land titles and interests, but suited Crown purposes.

In these respects, the Crown was directly responsible, through its poor design
of the scheme and inadequate discharge of its own responsibilities in respect of
survey, subdivision, and roading.

When land was taken up for sale or lease, the board did a poor job of collecting
rent and payments, and an equally poor job of paying out to owners or securing
their interests. Owners sometimes waited years for payments, as the board either
failed to inform them of money owing or held that money back for re-investment.

Non-payment caused considerable hardship, particularly during the 1920s and
1930s, when the Crown and the board worked together to protect lessees by shifting
costs from them to the owners, regardless of the unfairness of such a policy
and regardless of the fact that owners were facing equally difficult times.

Although the scheme was founded on the basis that half of vested lands would
ultimately be returned, the board and the Crown consistently disregarded that
provision. The board signed off on subdivision plans that completely ignored
underlying land titles, adding considerable complexity to any future decision
about returning the land. Neither the board nor the Crown took any steps prior
to 1949 to ensure that funds would be set aside to repay lessees for their improve-
ments. The law provided that the board could only set aside such funds if directed
by the Native Minister, which never occurred.

Many of these difficulties resulted directly from the Crown’s actions. In all cases,
the Crown was aware from an early stage, and responded in a limited manner if at
all. The Crown knew of all of these difficulties because its officials were frequently
discussing them; and it knew because owners were also frequently writing and
petitioning.

The board’s solution to most difficulties was to get rid of the land, most often by
selling to the Crown, thereby relieving itself of the burden of subdividing, road-
ing, selling or leasing, gathering payments from unreliable buyers or tenants, and
paying out to owners. The Crown was a willing partner in this, buying almost half
of the vested land, often to complement adjacent areas it had bought or planned
to buy directly from Māori owners. It frequently ignored the original Native Land
Commission recommendations, and it regularly purchased directly from the
board, without consulting owners let alone obtaining their consent. It and the
board furthermore appear to have treated Crown purchases as if they were exempt
from the statutory requirement that only half of vested lands be offered for sale; in
fact, by 1930, well over half had been sold, with the Crown as the major purchaser.

Throughout all of the difficult history of vested lands, the Crown usually ignored
or refused requests for re-vesting. For most of the larger vested blocks, the owners
at some time or other asked for their land to be returned, and had their request
refused. For some blocks, owners made several requests. Typically, those owners
referred to the board’s failure to use the land, or collect rent, or pay out rent that
was collected, as well as explaining their own plans to develop or lease the land.
The Crown tended to accede to such requests only when neither it nor the board
had any use for the land.
The board’s consistent attitude was that owners could not make decisions for themselves. The Crown’s consistent attitude was that the interests of settlement were paramount, and owners’ interests and wishes for their lands were secondary.

The Crown did not deny that vesting land led to poor outcomes for Māori landowners, except to claim that the board sold less land than it actually did. In other respects, the Crown’s approach was to disclaim or diminish responsibility. It said that it was not responsible for outcomes that it could not have foreseen, and that were beyond its control, such as the economic collapse of the 1920s. Its duty, it said, had not been to ensure success, but to enable participation.

This argument might be valid if Māori landowners had vested their land freely and in full knowledge of the implications, instead of vesting in response to Crown pressure and in a manner that excluded many owners from having a say and denied most from knowledge of the full implications. Likewise, the Crown cannot disclaim responsibility for outcomes that it intended, nor for outcomes that occurred under its control or that resulted from its own actions, nor can it disclaim responsibility for harmful outcomes that it was aware of and chose to ignore.

We find that by failing to establish the vested lands scheme in a manner that was workable and compatible with owners’ interests, and by failing to adequately oversee the board’s administration of vested lands and address any such failings, the Crown acted in a manner inconsistent with the principles of the Treaty of Waitangi, namely the principles of partnership, reciprocity, and mutual benefit, the guarantee of Te Rohe Pōtae Māori rangatiratanga over their lands, and the Crown’s duty of active protection of that authority over those lands – all derived from article 2 of the Treaty of Waitangi.

We also find that the Crown acted inconsistently with its duty of active protection by failing to adequately oversee the board’s administration of vested lands and, in particular, by failing to take reasonable steps to ensure that the board subdivided vested lands in accordance with legal titles; that the board offered all vested land for settlement (either by sale or lease) without undue delay; that the board collected income and distributed payments in a timely manner; that the board set aside sufficient funds to pay for improvements to vested lands; that the board set aside a sinking fund for improvements; that the board invested owners’ funds prudently; and that the board did not sell land without the owners’ consent.

Furthermore, by failing to make statutory provision for re-vesting as of right when owners wanted it, and by ignoring or refusing requests for re-vesting, the Crown acted inconsistently with the principle of good governance derived from article 1, the guarantee of tino rangatiratanga in article 2, and the principle of equity in article 3.

We further examine Crown purchasing of Te Rohe Pōtae lands in chapter 14 and make findings there concerning vested land purchases.

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621. Submission 3.4.304, pp 2–3.
13.6 Prejudice
The Crown’s breaches in respect of the vested lands caused serious and long-lasting prejudice to affected Te Rohe Pōtae Māori landowners.

When land was vested in the Waikato–Maniapoto District Māori Land Board, the owners lost control over that land. At the very least, they were denied the possession and use of their lands, as well as any development opportunities they might have wished to pursue, for an extended period of time. At worst, they were denied ownership of their land entirely when it was sold by the board. Furthermore, irrespective of their wishes, they were not able to regain possession of their land except on the Crown’s say-so. In these ways, Te Rohe Pōtae Māori were denied the ability to exercise their tino rangatiratanga over the vested lands. We consider this prejudice to be particularly serious because the lands were vested in the board without the owners’ free and informed consent.

Te Rohe Pōtae Māori owners of vested lands also paid a heavy financial cost as a result of vesting. Most directly, the Crown imposed the costs and risks of land development on the Māori landowners themselves. The Crown and the board furthermore subdivided land in ways that did not accord with ownership interests, complicating both income distribution and the process by which land might later be returned to the owners’ control.

The regime continued to have financial impacts for Te Rohe Pōtae Māori after vested land had been leased. When vested land that might otherwise have been used was left unused, or when land was used but rents were not collected or were not paid out, Te Rohe Pōtae Māori were denied income. Such non-payment caused considerable hardship to landowners, particularly during the 1920s and 1930s. The Crown then exacerbated this hardship by working with the board to protect lessees by shifting costs from them to the owners.

The vested lands scheme had been founded on the basis that half of the vested lands would ultimately be returned to the owners. In Te Rohe Pōtae, that aim was never realised, and most of the vested lands were instead sold and lost from Māori ownership forever. Alongside other forms of land alienation, the vested lands scheme thus failed to protect Te Rohe Pōtae Māori ownership and control of their land. It produced results nothing like what Te Ōhākī Tapu and its various agreements promised, as the legislation and administrative scheme it established were incapable of delivering mana whakahaere on the basis that Te Rohe Pōtae Māori had fought so hard to achieve.

13.7 Summary of Findings
Our key findings in this chapter have been:

- By 1907, the Crown had abandoned its brief experiment with Māori land councils, begun extensive purchasing, experimented with compulsory vesting in other districts, and begun to liberalise private alienation. But settlers continued to clamour for even more land. In response, it established the Native Land Commission to satisfy the demand for land. The commission was not charged with determining whether Māori land should be provided
for settlement; it was charged with determining how much, and by what method.

- The commission did not hear from all of the district's landowners, either directly or through representatives. A large proportion of Māori in the district refused to recognise the commission at all. Those who did participate and identify land for settlement did not do so freely and willingly. They were pressured to do so, by Crown actions and by the broader settler clamour for land, which, they knew from past experience, the Crown would inevitably take steps to appease.

- Those who appeared at the commission's 1907 hearings also did not understand the implications of identifying land for vesting, and could not have done, because the legislation that would give effect to the commission's recommendations had not yet been introduced or passed.

- With some exceptions, the commission's recommendations in respect of specific blocks generally reflected what the commissioners had been told by the owners who participated in their hearings, with a strong emphasis on retention and a preference for leasing over selling.

- But the Crown, having established the commission, then decided to essentially ignore its findings, passing legislation – the Native Land Settlement Act 1907 – that required half of all land identified by the commission for settlement to be leased, and for the other half to be sold.

- In practice, the Crown vested land to suit its own purposes, ignoring the commission's recommendations as to which blocks should be leased and sold, and cherry-picking individual blocks for vesting or Crown purchasing depending on which method would best serve the interests of settlement. In Te Rohe Pōtae, it did not vest any of the land identified by the commission for Māori occupation.

- The Crown's claim in this inquiry that Te Rohe Pōtae Māori landowners consented to vesting through the Native Land Commission does not withstand scrutiny. We found, therefore, that the Crown breached the Treaty and its principles by vesting land under part 1 of the Native Land Settlement Act 1907 without the free, informed consent of all of the owners.

- Once land was vested, the board held all legal rights, and all decisions were made by the board or the Crown. Owners had no statutory right to be informed about those decisions, let alone be consulted or have their wishes carried into effect.

- Under the board's management, and the Crown's oversight, many of the vested properties returned little income to their owners for years or even decades, because they were unleased, or because rents were not paid, or because they were encumbered with development costs and debts. Much of what had been vested was sold within a decade, and what was left either remained idle or was leased on terms that made eventual sale almost inevitable.

- This was, in essence, an ambitious and risky scheme which the Crown designed and imposed on Māori landowners to advance settlement.
The Crown acted in a manner inconsistent with several principles of the Treaty of Waitangi by failing to establish the vested lands scheme in a manner that was workable and compatible with owners’ interests, and by failing to adequately oversee the board’s administration of vested lands and address any failings.

Te Rohe Pōtae Māori suffered serious and long-lasting prejudice as a result of the Crown’s Treaty breaches, particularly through the loss of control and ownership of their land, as well as the financial impacts of the vested lands scheme.
# BLOCKS WITH ONE OWNER

<table>
<thead>
<tr>
<th>Block Name</th>
<th>Owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kakepuku 2A</td>
<td>Maraetaua 2B3</td>
</tr>
<tr>
<td>Karu o Te Whenua</td>
<td>Rangitoto A35B</td>
</tr>
<tr>
<td>Kinohaku East 2, 28B13</td>
<td>Taumatatotara 1E</td>
</tr>
<tr>
<td>Kinohaku East 4B2B</td>
<td>Turoto B2B</td>
</tr>
<tr>
<td>Kinohaku East 4E38</td>
<td>Wharepuhunga 14B8</td>
</tr>
<tr>
<td>Kinohaku West E, K2C2</td>
<td></td>
</tr>
</tbody>
</table>

# BLOCKS WITH TWO OWNERS

<table>
<thead>
<tr>
<th>Block Name</th>
<th>Owners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kinohaku West H2B2D</td>
<td>Rangitoto-Tuhua 35B2</td>
</tr>
<tr>
<td>Kinohaku West H2B2E2</td>
<td>Wharepuhunga 14B3</td>
</tr>
</tbody>
</table>

# BLOCKS WITH THREE TO FIVE OWNERS

<table>
<thead>
<tr>
<th>Block Name</th>
<th>Owners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rangitoto A42B</td>
<td>Rangitoto-Tuhua 74B3</td>
</tr>
</tbody>
</table>

# BLOCKS WITH FIVE TO 10 OWNERS

<table>
<thead>
<tr>
<th>Block Name</th>
<th>Owners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kaingapipi 2</td>
<td>Wharepuhunga 14B1</td>
</tr>
<tr>
<td>Kaingapipi 6</td>
<td>Wharepuhunga 14B2A</td>
</tr>
<tr>
<td>Kinohaku East 1B2B</td>
<td>Wharepuhunga 14B2B</td>
</tr>
<tr>
<td>Kinohaku East 2, 28B10</td>
<td>Wharepuhunga 14B3</td>
</tr>
<tr>
<td>Kinohaku East 2, 28B11B</td>
<td>Wharepuhunga 14B4</td>
</tr>
<tr>
<td>Kinohaku East 2, 28B12B</td>
<td>Wharepuhunga 14B6</td>
</tr>
<tr>
<td>Rangitoto A37</td>
<td>Wharepuhunga 14B7</td>
</tr>
<tr>
<td>Rangitoto A59</td>
<td>Wharepuhunga 14B9</td>
</tr>
<tr>
<td>Rangitoto A65B</td>
<td>Wharepuhunga 14B10</td>
</tr>
<tr>
<td>Rangitoto-Tuhua 7</td>
<td>Wharepuhunga 14B12</td>
</tr>
<tr>
<td>Rangitoto-Tuhua 64O</td>
<td>Wharepuhunga 14B14</td>
</tr>
</tbody>
</table>

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**Table 13.1: Vested blocks in Te Rohe Pōtāe – number of owners**

*Source: Document A73 (Hearn), pp 239–240.*
<table>
<thead>
<tr>
<th>Acres</th>
<th>Number of blocks</th>
<th>Proportion of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–100</td>
<td>22</td>
<td>15.8</td>
</tr>
<tr>
<td>100–200</td>
<td>17</td>
<td>12.2</td>
</tr>
<tr>
<td>200–320</td>
<td>13</td>
<td>9.4</td>
</tr>
<tr>
<td>320–640</td>
<td>31</td>
<td>22.3</td>
</tr>
<tr>
<td>640–1,000</td>
<td>17</td>
<td>12.2</td>
</tr>
<tr>
<td>1,000–2,000</td>
<td>14</td>
<td>10.1</td>
</tr>
<tr>
<td>2,000–5,000</td>
<td>15</td>
<td>10.8</td>
</tr>
<tr>
<td>5,000–10,000</td>
<td>6</td>
<td>4.3</td>
</tr>
<tr>
<td>10,000+</td>
<td>4</td>
<td>2.9</td>
</tr>
</tbody>
</table>

Table 13.2: Vested blocks in Te Rohe Pōtae – block size
<table>
<thead>
<tr>
<th>Block</th>
<th>Recommended for sale (acres)</th>
<th>Recommended for lease (acres)</th>
<th>Area vested (acres)</th>
<th>Area vested (% of block)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hauturu East</td>
<td>0</td>
<td>458</td>
<td>458</td>
<td>100.0</td>
</tr>
<tr>
<td>Hauturu West</td>
<td>0</td>
<td>4,512</td>
<td>4,480</td>
<td>99.3</td>
</tr>
<tr>
<td>Hurakia</td>
<td>1,770</td>
<td>0</td>
<td>1,770</td>
<td>100.0</td>
</tr>
<tr>
<td>Kaingapipi</td>
<td>0</td>
<td>72</td>
<td>72</td>
<td>100.0</td>
</tr>
<tr>
<td>Kakepuku</td>
<td>399</td>
<td>301</td>
<td>429</td>
<td>61.3</td>
</tr>
<tr>
<td>Karu o Te Whenua</td>
<td>0</td>
<td>106</td>
<td>106</td>
<td>100.0</td>
</tr>
<tr>
<td>Kinohaku East</td>
<td>0</td>
<td>3,008</td>
<td>2,812</td>
<td>93.5</td>
</tr>
<tr>
<td>Kinohaku West</td>
<td>3,012</td>
<td>4,697</td>
<td>6,325</td>
<td>82.0</td>
</tr>
<tr>
<td>Mangaawakino</td>
<td>0</td>
<td>1,755</td>
<td>1,755</td>
<td>100.0</td>
</tr>
<tr>
<td>Maraeora</td>
<td>0</td>
<td>2,140</td>
<td>13,900</td>
<td>649.5</td>
</tr>
<tr>
<td>Maraetaua</td>
<td>0</td>
<td>10,183</td>
<td>3,232</td>
<td>31.7</td>
</tr>
<tr>
<td>Mohakatino–Parininihi</td>
<td>0</td>
<td>10,739</td>
<td>10,741</td>
<td>100.0</td>
</tr>
<tr>
<td>Orahiri</td>
<td>0</td>
<td>194</td>
<td>194</td>
<td>100.0</td>
</tr>
<tr>
<td>Pokuru</td>
<td>0</td>
<td>230</td>
<td>230</td>
<td>100.0</td>
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<tr>
<td>Rangitoto A</td>
<td>1,175</td>
<td>20,602</td>
<td>19,523</td>
<td>89.6</td>
</tr>
<tr>
<td>Rangitoto B</td>
<td>5,000</td>
<td>0</td>
<td>5,000</td>
<td>100.0</td>
</tr>
<tr>
<td>Rangitoto–Tuhua</td>
<td>27,797</td>
<td>37,990</td>
<td>63,048</td>
<td>95.8</td>
</tr>
<tr>
<td>Taharoa</td>
<td>823</td>
<td>0</td>
<td>796</td>
<td>96.7</td>
</tr>
<tr>
<td>Taumatatotara</td>
<td>739</td>
<td>7,417</td>
<td>5,892</td>
<td>72.2</td>
</tr>
<tr>
<td>Turoto</td>
<td>43</td>
<td>0</td>
<td>43</td>
<td>100.0</td>
</tr>
<tr>
<td>Umukaimata</td>
<td>2,460</td>
<td>0</td>
<td>460</td>
<td>18.7</td>
</tr>
<tr>
<td>Wharepuhunga</td>
<td>16,895</td>
<td>36,450</td>
<td>59,472</td>
<td>111.5</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>57,653</strong></td>
<td><strong>143,314</strong></td>
<td><strong>200,738</strong></td>
<td><strong>99.9</strong></td>
</tr>
</tbody>
</table>

Table 13.3: Native Land Commission and areas vested in Te Rohe Pōtae (by land block)
Source: Document A73 (Hearn), p 209
## Table 13.4: Sales, leases, and re-vesting Waikato–Maniapoto District Māori Land Board lands to 1950

**Source:** Document A73 (Hearn), pp 131–132; AJHR, 1951, G-5, pp 42–43. The Waikato–Maniapoto Māori Land Board district was larger than the inquiry district, although most vested lands were in the district. Hearn’s figures can be compared with the individual transactions in tables.)

**Notes:** We do not have reliable figures for the Te Rohe Pōtae inquiry district for lands that were still vested in the board in 1950. Hearn provided 1950 outcomes for the Waikato–Maniapoto Māori Land Board district, which was larger than the inquiry district (although most vested lands were from the district). Hearn’s figures were: sold to the Crown 103,086 acres; sold to private buyers 34,679 acres; re-vested 10,843 acres; leased 14,940 acres; unleased 35,478 acres: doc A146 (Hearn), p 324. The lands vested at 1950 included Maraeroa C (13,727 acres), over which there was a private forestry licence: doc A75 (Bassett and Kay), p 132.

<table>
<thead>
<tr>
<th>Category</th>
<th>Area (acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sold to the Crown</td>
<td>103,085</td>
</tr>
<tr>
<td>Sold to private buyers</td>
<td>34,679</td>
</tr>
<tr>
<td>Re-vested in Māori ownership</td>
<td>10,843</td>
</tr>
<tr>
<td>Remaining vested lands (leased)</td>
<td>14,940</td>
</tr>
<tr>
<td>Remaining vested lands (unleased)</td>
<td>35,478</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>199,025</strong></td>
</tr>
</tbody>
</table>

### Table 13.5: Vested lands offered by the Waikato–Maniapoto District Māori Land Board for sale and lease, 1911–14

**Source:** Document A73 (Hearn), p 267

<table>
<thead>
<tr>
<th></th>
<th>Apr 1911</th>
<th>Dec 1911</th>
<th>Jun 1913</th>
<th>Dec 1913</th>
<th>Mar 1914</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offered for lease (acres)</td>
<td>17,821</td>
<td>5,003</td>
<td>4,093</td>
<td>1,265</td>
<td>3,814</td>
</tr>
<tr>
<td>Offered for sale (acres)</td>
<td>13,877</td>
<td>2,926</td>
<td>327</td>
<td>2,353</td>
<td>8,277</td>
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### Block

#### Before 1912 amendment

<table>
<thead>
<tr>
<th>Block</th>
<th>Date</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kakepuku 1F2, 2A</td>
<td>1909</td>
<td>Declined</td>
</tr>
<tr>
<td>Rangitoto A18</td>
<td>1910</td>
<td>Not recorded</td>
</tr>
<tr>
<td>Maraetaua 2B sections 3, 4, 9B, 9C, 10</td>
<td>1910</td>
<td>Declined</td>
</tr>
<tr>
<td>Umukaimata 3B1</td>
<td>1909</td>
<td>Declined</td>
</tr>
<tr>
<td>Kaingapipi 2</td>
<td>1910</td>
<td>Declined</td>
</tr>
<tr>
<td>Maraeoa C</td>
<td>1910</td>
<td>Declined</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 9</td>
<td>1910</td>
<td>Declined</td>
</tr>
<tr>
<td>Wharepuhunga 16A</td>
<td>1912</td>
<td>Declined</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 26A2</td>
<td>1912</td>
<td>Declined</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 26A3</td>
<td>1912</td>
<td>Declined</td>
</tr>
<tr>
<td>Wharepuhunga 14/15</td>
<td>1912</td>
<td>Declined</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 9</td>
<td>1912</td>
<td>Declined</td>
</tr>
<tr>
<td>Wharepuhunga 16</td>
<td>1912</td>
<td>Ignored</td>
</tr>
<tr>
<td>Wharepuhunga 16/17</td>
<td>1913</td>
<td>Declined</td>
</tr>
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</table>

#### After 1912 amendment

<table>
<thead>
<tr>
<th>Block</th>
<th>Date</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rangitoto A46B</td>
<td>1913</td>
<td>Accepted *</td>
</tr>
<tr>
<td>Kinohaku East 2, section 28B13</td>
<td>1913</td>
<td>Declined</td>
</tr>
<tr>
<td>Kinohaku East 2, section 28B12</td>
<td>1913</td>
<td>Declined</td>
</tr>
<tr>
<td>Rangitoto A29B</td>
<td>1913</td>
<td>Declined</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 9</td>
<td>1913</td>
<td>Declined</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 9</td>
<td>1915</td>
<td>Ignored †</td>
</tr>
<tr>
<td>Rangitoto A42B</td>
<td>1913</td>
<td>Declined</td>
</tr>
<tr>
<td>Maraetaua 9B</td>
<td>1913</td>
<td>Accepted</td>
</tr>
<tr>
<td>Rangitoto A46B and A59</td>
<td>1913</td>
<td>Declined †</td>
</tr>
<tr>
<td>Wharepuhunga 16/17</td>
<td>1914</td>
<td>Declined</td>
</tr>
</tbody>
</table>

#### After 1922 amendment

<table>
<thead>
<tr>
<th>Block</th>
<th>Date</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rangitoto A42B</td>
<td>1921</td>
<td>Ignored</td>
</tr>
<tr>
<td>Rangitoto A42B</td>
<td>1928</td>
<td>Accepted</td>
</tr>
</tbody>
</table>

* Rangitoto A46B was re-vested in order to protect the rights of a private lessee who had leased the land before it was vested.

† The board ignored the application for Rangitoto–Tuhua 9 and declined the applications for Rangitoto A46B and A59 so that the Crown could purchase them. The application for re-vesting of Maraetaua 9B was accepted because the board considered it hilly and inaccessible.

Table 13.6: Outcomes of applications for re-vesting

<table>
<thead>
<tr>
<th>Block</th>
<th>Area vested (acres)</th>
<th>Area purchased (acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kinohaku West 1A3B</td>
<td>198</td>
<td>198</td>
</tr>
<tr>
<td>Kinohaku West C2</td>
<td>209</td>
<td>209</td>
</tr>
<tr>
<td>Kinohaku West E1F2</td>
<td>778</td>
<td>759</td>
</tr>
<tr>
<td>Kinohaku West G1A2</td>
<td>1,000</td>
<td>985 *</td>
</tr>
<tr>
<td>Maraetaua 2B4</td>
<td>572</td>
<td>571</td>
</tr>
<tr>
<td>Rangitoto A18A2</td>
<td>7,190</td>
<td>1,020 †</td>
</tr>
<tr>
<td>Rangitoto A25B</td>
<td>617</td>
<td>617</td>
</tr>
<tr>
<td>Rangitoto A26B</td>
<td>569</td>
<td>569</td>
</tr>
<tr>
<td>Rangitoto A29B</td>
<td>3,732</td>
<td>3,645</td>
</tr>
<tr>
<td>Rangitoto A59</td>
<td>581</td>
<td>581</td>
</tr>
<tr>
<td>Rangitoto A65B</td>
<td>119</td>
<td>88</td>
</tr>
<tr>
<td>Rangitoto B</td>
<td>5,000</td>
<td>5,270 ‡</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 6B</td>
<td>97</td>
<td>97</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 9</td>
<td>12,340</td>
<td>12,340 §</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 15</td>
<td>500</td>
<td>506 †</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 25 sec 1A2</td>
<td>485</td>
<td>480</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 25 sec 3B</td>
<td>431</td>
<td>431</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 25 sec 4B</td>
<td>162</td>
<td>162</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 26C</td>
<td>620</td>
<td>620</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 26E2</td>
<td>1,309</td>
<td>674</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 31D</td>
<td>109</td>
<td>109</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 35B2</td>
<td>472</td>
<td>472</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 41</td>
<td>557</td>
<td>557</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 50</td>
<td>6,230</td>
<td>6,230</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 60B</td>
<td>1,629</td>
<td>26</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 61E</td>
<td>2,475</td>
<td>2,403</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 68O</td>
<td>783</td>
<td>777</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 74B5</td>
<td>3,512</td>
<td>331</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 75B</td>
<td>6,130</td>
<td>6,142</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 772AB</td>
<td>6,213</td>
<td>6,333</td>
</tr>
<tr>
<td>Taharoa B1B2</td>
<td>796</td>
<td>793</td>
</tr>
<tr>
<td>Taumatatotara 1D2B</td>
<td>1,884</td>
<td>126</td>
</tr>
</tbody>
</table>
Table 13.7: Hearn’s list of Crown purchases of Te Rohe Pōtae vested lands, 1909–35

<table>
<thead>
<tr>
<th>Block</th>
<th>Area vested (acres)</th>
<th>Area purchased (acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wharepuhunga 6</td>
<td>1,628</td>
<td>1,641 †</td>
</tr>
<tr>
<td>Wharepuhunga 8, 10, 13</td>
<td>3,141</td>
<td>2,612</td>
</tr>
<tr>
<td>Wharepuhunga 14B9</td>
<td>709</td>
<td>176</td>
</tr>
<tr>
<td>Wharepuhunga 14B10</td>
<td>851</td>
<td>338</td>
</tr>
<tr>
<td>Wharepuhunga 14B13</td>
<td>1,528</td>
<td>657</td>
</tr>
<tr>
<td>Wharepuhunga 15</td>
<td>2,211</td>
<td>2,092</td>
</tr>
<tr>
<td>Wharepuhunga 16</td>
<td>16,000</td>
<td>10,690</td>
</tr>
<tr>
<td>Wharepuhunga 17</td>
<td>10,166</td>
<td>10,166 ‡</td>
</tr>
<tr>
<td>Wharepuhunga 19</td>
<td>4,500</td>
<td>4,500</td>
</tr>
<tr>
<td>Wharepuhunga 20</td>
<td>7,556</td>
<td>7,614</td>
</tr>
<tr>
<td>Wharepuhunga reserve</td>
<td>3,776</td>
<td>3,770</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>98,714</strong></td>
<td></td>
</tr>
</tbody>
</table>

* Includes purchases of G1A2 and G1A lots 1, 2.
† Block Rangitoto A18A3A.
‡ Hearn’s table contains some discrepancies between areas sold and areas originally vested for the same block.
§ Includes purchases of Rangitoto–Tuhua 9A (12,137 acres) and 9B (203 acres).
‖ Includes Wharepuhunga 17A (9,581 acres) and 17B (585 acres).

Sources: Document A73, pp 336–337. Hearn’s list tallies with the record of transactions provided by Douglas, Innes, and Mitchell in document A21, annex 7, individual block summaries (see table 13.8). That table also lists additional Crown purchases after 1935.
<table>
<thead>
<tr>
<th>Block</th>
<th>Recommendation</th>
<th>Area vested</th>
<th>Crown purchaser</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kinohaku West 1A3B</td>
<td>Lease</td>
<td>197 1 25</td>
<td>1 1 9</td>
<td>1928</td>
</tr>
<tr>
<td>Kinohaku West C2</td>
<td>Lease</td>
<td>209 0 0</td>
<td>209 0 0</td>
<td>1915</td>
</tr>
<tr>
<td>Kinohaku West E1F2</td>
<td>Lease/retain</td>
<td>778 0 0</td>
<td>759 1 14</td>
<td>1917</td>
</tr>
<tr>
<td>Kinohaku West G1A2</td>
<td>Sell</td>
<td>1,000 0 0</td>
<td>66 1 0</td>
<td>1913</td>
</tr>
<tr>
<td>Kinohaku West G1A2</td>
<td>Lease</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maraetaua 284</td>
<td>Lease</td>
<td>571 2 20</td>
<td>571 1 11</td>
<td>1930</td>
</tr>
<tr>
<td>Mohakatino–Parininihi 1C West 2</td>
<td>Lease</td>
<td>5,927 1 12</td>
<td>2 0 0</td>
<td>1924</td>
</tr>
<tr>
<td>Orahiri 6B1</td>
<td>Lease</td>
<td>80 0 29</td>
<td>22 3 23</td>
<td>1912</td>
</tr>
<tr>
<td>Pokuru 2D</td>
<td>Lease</td>
<td>229 2 12</td>
<td></td>
<td></td>
</tr>
<tr>
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<td>7,189 3 38</td>
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<td>Lease</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Rangitoto A25B</td>
<td>Lease</td>
<td>616 2 29</td>
<td>616 2 29</td>
<td>1916</td>
</tr>
<tr>
<td>Rangitoto A26B</td>
<td>Sell</td>
<td>569 0 23</td>
<td>569 0 23</td>
<td>1916</td>
</tr>
<tr>
<td>Rangitoto A29B</td>
<td>Lease/sell</td>
<td>3,731 2 0</td>
<td>3,645 0 10</td>
<td>1916</td>
</tr>
<tr>
<td>Rangitoto A59</td>
<td>Lease</td>
<td>581 0 0</td>
<td>581 0 0</td>
<td>1915</td>
</tr>
<tr>
<td>Rangitoto A65B</td>
<td>Sell</td>
<td>118 2 20</td>
<td>87 2 20</td>
<td>1916</td>
</tr>
<tr>
<td>Rangitoto B</td>
<td>Sell</td>
<td>5,000 0 0</td>
<td>5,270 0 0</td>
<td>1913</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 6B</td>
<td>Sell</td>
<td>96 3 0</td>
<td>96 3 0</td>
<td>1916</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 9</td>
<td>Sell</td>
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<td>12,136 3 20</td>
<td>1922</td>
</tr>
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<td>Rangitoto–Tuhua 9</td>
<td>Sell</td>
<td></td>
<td>203 0 20</td>
<td>1923</td>
</tr>
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<td>Rangitoto–Tuhua 15</td>
<td>Sell</td>
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<td>506 0 0</td>
<td>1919</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 25 sec 1A2</td>
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<td>480 0 25</td>
<td>1918</td>
</tr>
<tr>
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<td>Sell</td>
<td>431 1 32</td>
<td>431 1 31</td>
<td>1913</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 25 sec 4B</td>
<td>Sell</td>
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<td>161 3 2</td>
<td>1913</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 26C</td>
<td>Lease</td>
<td>619 2 0</td>
<td>619 2 0</td>
<td>1917</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 26E2</td>
<td>Lease</td>
<td>1,308 2 14</td>
<td>674 0 0</td>
<td>1917</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 31D</td>
<td>Lease</td>
<td>108 2 10</td>
<td>108 2 10</td>
<td>1930</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 3582</td>
<td>Lease</td>
<td>479 2 10</td>
<td>472 1 10</td>
<td>1917</td>
</tr>
<tr>
<td>Block</td>
<td>Area (ha)</td>
<td>Year</td>
<td>Type</td>
<td>Notes</td>
</tr>
<tr>
<td>-------</td>
<td>-----------</td>
<td>------</td>
<td>------</td>
<td>-------</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 41</td>
<td>Lease</td>
<td>557</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 50</td>
<td>Lease</td>
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<td>0</td>
<td>0</td>
</tr>
<tr>
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<td>1,629</td>
<td>0</td>
<td>0</td>
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<tr>
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<td>Lease</td>
<td>2,475</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 680</td>
<td>Lease</td>
<td>783</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 74B4</td>
<td>Lease</td>
<td>351</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 74B5</td>
<td>Lease</td>
<td>3,511</td>
<td>0</td>
<td>20</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 75B</td>
<td>Sell</td>
<td>6,129</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Rangitoto–Tuhua 77A2B</td>
<td>Lease</td>
<td>6,212</td>
<td>2</td>
<td>11</td>
</tr>
<tr>
<td>Taumatatotara 1D2B</td>
<td>Lease</td>
<td>1,884</td>
<td>1</td>
<td>28</td>
</tr>
<tr>
<td>Taharoa B 18 2</td>
<td>Sell</td>
<td>796</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Wharepuhunga 6</td>
<td>Sell</td>
<td>1,628</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Wharepuhunga 8</td>
<td>Sell</td>
<td>1,029</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Wharepuhunga 148 sec 9</td>
<td>Lease</td>
<td>708</td>
<td>3</td>
<td>35</td>
</tr>
<tr>
<td>Wharepuhunga 148 sec 10</td>
<td>Lease</td>
<td>850</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td>Wharepuhunga 148 sec 13</td>
<td>Lease</td>
<td>1,528</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Wharepuhunga 15</td>
<td>Lease/sell</td>
<td>2,210</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Wharepuhunga 16</td>
<td>Sell/lease</td>
<td>16,000</td>
<td>0</td>
<td>0</td>
</tr>
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**TOTAL CROWN PURCHASING**: 99,143 | 0 | 39

**Table 13.8**: Crown purchasing of Te Rohe Pōtae vested lands, 1907–50

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<th>Block</th>
<th>Recommendation</th>
<th>Area vested</th>
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<td>Kakepuku 1F 2</td>
<td>Lease/retain</td>
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<td>162 1 17</td>
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<td>100 2 14</td>
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<td>33 2 4</td>
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<td>197 2 1</td>
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<td>21 0 28</td>
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<td>Pokuru 2D</td>
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| TOTAL PRIVATE PURCHASING                |          | 27,020| 0      | 20   | 27,020|

Table 13.9: Private purchasing of Te Rohe Pōtai vested lands, 1907–50

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<th>Block</th>
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<th>Year</th>
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<td><strong>Re-vesting since 1950</strong></td>
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<td>4,188 2 28.5</td>
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<td>Year</td>
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<td>1966</td>
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<td>Wharepuhunga Reserve</td>
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**TOTAL RE-VESTED SINCE 1950** 12,614 2 21

Table 13.10: Re-vesting of Te Rohe Pōtāe vested lands

Sources: Native Land Commission recommendations: AJHR, 1907, G-18; AJHR, 1907, G-10; AJHR, 1908, G-10; Vested lands: ‘Declaring Land to be Subject to Part I of “The Native Land Settlement Act 1907”’, 10 May 1909, New Zealand Gazette, no 39, pp.1295–1299; ‘Declaring Land to be Subject to Part I of “The Native Land Settlement Act 1907”’, 14 December 1909, New Zealand Gazette, no 105, pp.3247–3249; Purchases: doc A21 (Hearn), annex 7, individual block summaries
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<tr>
<th>Block</th>
<th>Recommendation</th>
<th>Area vested</th>
<th>Areas purchased</th>
<th>Year</th>
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<td>1954</td>
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<td>Lease/sell</td>
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<td>1954</td>
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<td>Lease</td>
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<td>4,168</td>
<td>1950s–60s</td>
</tr>
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</table>

**TOTAL PRIVATE PURCHASES** 6,254 3 22

*Table 13.11: Crown and private purchasing of Te Rohe Pōtae vested lands since 1950*
CHAPTER 14

NGĀ RĪHI ME NGĀ HOKO WHENUA:
LEASING AND PURCHASING, 1905–50

I am quite aware that this state of affairs is quite common in the Waikato Land District. As far as my people are concerned [the land boards] are all powerful it being quite useless to question their decisions, backed up as they are by ‘Acts’ which were supposed to be in our best interests, but which are really impediments to progress, a brake on the industrious Native and certainly discouraging to those of our race who want to farm their lands in the latest and most up to date methods.

—Atiria Te Rata

14.1 INTRODUCTION

In 1905, Te Rohe Pōtæ Māori retained possession of 1,142,196 acres – 59 per cent of the original inquiry district. This was largely because from 1900 to 1905, the Crown had attempted to make leasing, through the vesting of Māori land in councils, the primary means of land alienation for settlement. It had slowed its purchasing of Māori land to complete purchases already under negotiation before the turn of the century. It did not exert much pressure on Te Rohe Pōtæ Māori to make their land available by other means. As detailed in chapter 13, however, Te Rohe Pōtæ Māori did not make wide use of the provisions for voluntary vesting in the land councils due to caution over the fate of their lands if they were vested.

In response, the Crown experimented with an element of compulsory vesting in 1905, began extensive purchasing in the district in 1906, and aggressively pursued such measures under the Native Land Settlement Act 1907. It then allowed direct private leasing of Māori land without the intervention of a council or board and, from 1909, allowed private sales. In this chapter, we examine the effect of Crown and private purchasing and leasing of Te Rohe Pōtæ Māori land in the first half of the twentieth century.

From 1905 until 1950, the area in Māori possession dwindled to just 402,253 acres, 21 per cent of the inquiry district. Crown purchases during this period totalled 379,260 acres. Private purchases accounted for another 358,912 acres.  

14.1.1 The purpose of this chapter

From 1905, the Crown bowed to settler pressure for more Māori land. Instead of empowering Te Rohe Pōtae Māori to exercise mana whakahaere or authority over their lands, it replaced land councils with land boards, in doing so reducing Māori representation on these boards, enabling the boards to administer Te Rohe Pōtae Māori lands and facilitate alienations. As discussed in chapters 12 and 13, many of these alienations (by lease or sale) were the only outcomes available to the owners considering the 1907 and 1909 legislation. The Crown was heavily focused on implementing its policies of land settlement, through its purchasing activities and its Māori land legislation.

The Crown did make some attempts to address the challenges caused by individualisation of title but provided Māori communities only limited assistance to address those challenges. It became increasingly difficult for them to retain land, let alone develop it for their own benefit in accordance with their tikanga and values. This was the result, even though the Crown was initially keen to ensure Māori retained land sufficient for their needs to prevent them from becoming so impoverished that they were a burden on the State.

Where land was surplus to their needs, Te Rohe Pōtae Māori preferred leasing because they could retain the land whilst earning some income. However, while leasing was provided for in the legislation, it was designed and predicated on an assumption that settlers needed encouragement to enter into such leases. Therefore, lessees and their demands for compensation for improvements and reduced rentals received elevated attention up to and including the 1920s.

The purpose of this chapter is to examine the consequences of the Crown’s policies, purchasing activities, and legislation that led to the transfer of Te Rohe Pōtae Māori land in this district in the period 1907 to 1953, whether by sale or lease. In doing so, the activities of the Waikato–Maniapoto District Māori Land Board are also considered. The Tribunal considers the Crown’s actions, policies, and use of legislation in this period to ascertain whether the measures it adopted were consistent with the principles of the Treaty of Waitangi.

14.1.2 How this chapter is structured

A dedicated discussion of leasing, and Crown and private purchasing of Te Rohe Pōtae Māori land is necessary, given the enormous effect these transactions had

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2. Document A21 (Douglas, Innes, and Mitchell), pp 37, 127, 129. An additional 1,768 acres was alienated for public works and ‘other’ purposes (including gifts, exchanges, and status changes).
3. Nineteen fifty-three is the year when the Māori Affairs Act 1953 was enacted.
on the district. The chapter begins by considering the conclusions of previous Tribunal inquiries about land alienation in the first half of the twentieth century. It proceeds to review submissions of the claimants and Crown to arrive at a series of issues for discussion. Next, the chapter examines the scale and pattern of Crown and private alienation of Te Rohe Pōtāe Māori land between 1905 and 1950. Finally, it considers the response of the Crown and the Waikato-Maniapoto District Māori Land Board to the difficulties experienced by lessees during turbulent economic times in 1920s and 1930s.

14.2 Issues

14.2.1 What other Tribunals have said

Previous Tribunals have concluded that, from 1905 through to at least the mid-twentieth century, the Crown’s primary objective was ‘to secure Maori land for white settlement’, and the Crown therefore progressively simplified land laws between 1905 and 1913 to expedite alienation. Those laws did not make effective provision for Māori owners to make collective decisions about land, nor did they ensure that Māori owners could retain sufficient land for their needs. According to the Hauraki Tribunal, the Crown saw Māori in the first half of the twentieth century as having a limited role to play in the nation’s economy, except as ‘a source of land for the use of others, or as labourers on public works schemes’.

Tribunals have found previously that the Crown breached the duty of active protection and other Treaty principles by resuming land purchasing, bypassing provisions for collective decision-making about land sales, or failing to ensure

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they worked effectively; they bought land from individuals, buying land against the wishes of a majority of owners, or without due regard for owners’ interests or their retention of sufficient land; purchasing land that had been vested for leasing; selectively imposing orders prohibiting private alienation of Māori land, and failing to ensure that owners could obtain market prices for their land.

The Te Urewera Tribunal found, for example, that both the Crown’s individual purchasing methods as well as their collective effect – what it referred to as ‘the Crown’s purchase machine’ – were in breach of the Treaty. Among the practices that it found to be in breach were:
- the practice of purchasing from individuals to defeat communal opposition, which was ‘particularly coercive in both principle and practice’;
- the exclusion of private competition, in a manner that protected Crown interests while denying Māori options to use their land other than by selling to the Crown;
- the ‘extremely low’ quorum for meetings of assembled owners, which disenfranchised the majority of owners and allowed the Crown to obtain land without their consent; and
- the 1913 amendment allowing the Crown to bypass meetings of assembled owners altogether.

These purchasing methods and legislative provisions, the Tribunal found, were a continuation of the Crown’s deliberate nineteenth-century destruction of Māori communal authority over land, and the resulting disempowerment of Māori communities. With its ‘interlocking policies and practices’, this ‘purchase machine . . . coerced Maori to part with their land, in a manner utterly inconsistent with the Treaty of Waitangi’. The Crown ‘failed to provide a fair and proper system for groups of owners to make collective decisions about their land’. In doing so, it breached its duty of active protection, and the owners’ tino rangatiratanga.
In respect to leasing land, the Central North Island Tribunal noted that Māori in its district ‘were determined to participate in the colonial economy, and preferred to develop their land by leasing substantial areas to settlers’, rather than selling, thereby losing control forever. While this may have resulted in a pattern of ‘slower settlement’, the Tribunal found that pursuing large-scale leasing remained a viable option available to the Crown and one that would not have precluded some settlers from eventually obtaining freehold through strategic sales. The Tribunal concluded ‘[t]here is no certainty that [leasing] would have been smooth or entirely to the benefit of all, but the possibility was there, and the canvassed option was not taken.’

14.2.2 Crown concessions
The Crown did not make any specific concessions concerning land purchasing during this period. However, it acknowledged its general obligation to protect Māori in possessing land and resources ‘for so long as they wish to retain them’, and it conceded that individualisation of land titles had made land susceptible to alienation and had undermined tribal decision-making structures.

14.2.3 Claimant and Crown arguments
More than 45 claims in this inquiry contain grievances related to leasing and purchasing. The claimants submitted that the Crown’s early twentieth-century land policies were intended to move land from Māori into Pākehā ownership and achieved this aim. These policies elevated settler interests above those of Māori, and were implemented without the consent of Māori landowners, and without proper regard for their tino rangatiratanga or property rights.

In respect of land sales, the claimants submitted that the Crown failed to adequately provide for collective decision-making by Māori communities, failed to provide satisfactory safeguards to ensure that Māori retained sufficient land, failed to ensure that even the minimal safeguards provided were adequately enforced,

22. Submission 3.4.298, pp 1, 8.
23. Wai 457 (submission 3.4.238); Wai 551, Wai 948 (submission 3.4.250); Wai 784 (submission 3.4.147); Wai 847, Wai 1054, Wai 1095, Wai 1437, Wai 1612 (submission 3.4.140); Wai 1482 (submission 3.4.154(a)); Wai 586, Wai 753, Wai 1396, Wai 1585, Wai 2020 (submission 3.4.204); Wai 587 (submission 3.4.177); Wai 1409 (submission 3.4.197); Wai 1497 (submission 3.4.203); Wai 1606 (submission 3.4.169(a)); Wai 478 (submission 3.4.155(a)); Wai 762 (submission 3.4.170); Wai 729 (submission 3.4.240); Wai 928 (submission 3.4.175(a)); Wai 1255 (submission 3.4.199); Wai 1824 (submission 3.4.181); Wai 2102 (submission 3.4.229); Wai 48, Wai 81, Wai 146 (submission 3.4.211); Wai 366, Wai 1064 (submission 3.4.205); Wai 845 (submission 3.4.166); Wai 987 (submission 3.4.167); Wai 1147, Wai 1203 (submission 3.4.151); Wai 1230 (submission 3.4.168); Wai 1447 (submission 3.4.187); Wai 691, Wai 788, Wai 2349 (submission 3.4.246); Wai 1962 (submission 3.4.172); Wai 1534 (submission 3.4.217); Wai 1611 (submission 3.4.152); Wai 1995 (submission 3.4.144); Wai 426 (submission 3.4.146); Wai 537 (submission 3.4.179); Wai 2273 (submission 3.4.141).
24. Submission 3.4.120, pp 57–58; see also pp 2–4, 16.
and failed to take steps to ensure that all owners were involved (either collectively or as individuals) in decisions about the alienation of their lands.\(^{25}\)

In respect of Crown purchasing particularly, the claimants submitted that the Crown breached the Treaty principle of partnership and the duty of active protection and did not act in good faith when resuming land purchasing, by purchasing from a minority of owners (via meetings of assembled owners), from individuals, or against owners’ wishes; by prohibiting private alienation on selected properties; and by failing to pay fair prices.\(^{26}\) The Crown did not respond specifically to claims about its land purchasing tactics during this period, except to submit that it paid fair prices for vested lands it purchased.\(^{27}\)

The claimants argued that the Crown: (i) purchased without adequate regard for the owners’ wishes or interests;\(^{28}\) (ii) used purchasing methods that were unfair or intended to bypass community opposition to selling;\(^{29}\) and (iii) fixed the prices for its purchases, and paid less than market value.\(^{30}\) More generally, they argued that the Crown failed to actively protect Māori possession of their land when purchasing in the district.\(^{31}\)

The Crown acknowledged its duty to protect Māori in possession of land, but said that this duty must be considered alongside other factors, such as economic conditions, population changes, the Crown’s reasons for buying land (including national development), the willingness of owners to sell, and whether Māori owners had access to incomes from sources other than land.\(^{32}\) In respect of vested

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\(26.\) Submission 3.4.112, pp 4–7, 9–17, 30–35.

\(27.\) Submission 3.4.304, pp 53–54; see also submission 3.4.298, pp 2–3, 10–13.


\(30.\) Submission 3.4.120, pp 60–62; submission 3.4.112, pp 13–17; submission 3.4.151, pp 35–39; submission 3.4.168, pp 33; submission 3.4.170, pp 126–128, 132–134; submission 3.4.171, pp 5–6, 12–13; submission 3.4.174, pp 18–21; submission 3.4.199, pp 47; submission 3.4.200, pp 3–4; submission 3.4.204, p 23.

\(31.\) Submission 3.4.134, pp 57–59; submission 3.4.136, pp 7–10; submission 3.4.140, pp 7–10; submission 3.4.156, pp 2–3, 10; submission 3.4.166, pp 3–4; submission 3.4.167, pp 6–7, 9–12, 14–20, 30–31; submission 3.4.175, pp 7, 41; submission 3.4.191, pp 36–38; submission 3.4.199, pp 11–12, 14; submission 3.4.200, pp 3–4; submission 3.4.204, pp 33–39; submission 3.4.230, pp 7–8; submission 3.4.239, pp 38–39.

\(32.\) Submission 3.4.298, pp 1–2, 15–18.
lands, it said that owners had consented to sales of up to 57,000 acres through the Native Land Commission.\textsuperscript{33}

The Crown also acknowledged its duty to pay fair prices but argued that questions of fairness were complex and depended on specific factors such as land quality and the reasons for purchasing. In the Crown’s view, ‘the fact that a private purchaser may have indicated a willingness to pay a higher price does not mean the price paid by the Crown was not fair.’\textsuperscript{34}

The Crown submitted that ‘the ability to alienate land is a fundamental right of ownership’ inherent in the rights conferred by article 3. While individualisation of title had contributed to sales, it was only one of many factors influencing Māori to sell. The Crown submitted that it had attempted to support efficient management of multiply owned land through initiatives such as incorporation and vesting.\textsuperscript{35}

As for its obligation to ensure that Māori retained sufficient land for their present and future needs, the Crown submitted that ‘it is challenging at this distance to identify the particular point at which any Crown intervention should have occurred’. Similarly, the Crown submitted that it was difficult to determine what was ‘sufficient’ at any given time, as the extent and quality of land held by Māori groups in the district was ‘prone to change over time’.\textsuperscript{36}

The Crown urged the Tribunal to consider various factors, including economic circumstances, the extent to which the Crown was buying land for purposes of national development, and the other incomes and lands available to Te Rohe Pōtae Māori, in determining whether it had done enough to ensure that Māori retained sufficient lands.\textsuperscript{37} The claimants, in response, said that the factors the Crown raised were irrelevant to the Treaty compliance of Crown actions and that ‘national development’ in this context actually meant ‘European Settlement’.\textsuperscript{38}

\subsection*{14.2.4 Issues for discussion}

Based on the arguments advanced by claimants and the Crown, previous Tribunal findings, and the statement of issues prepared for this inquiry, we focus on the following questions in this chapter:

- What were the Crown’s purchasing methods, its policies, and the legislation it used to facilitate its acquisition of land in Te Rohe Pōtae? Did it adequately protect the Treaty interests of Te Rohe Pōtae Māori landowners in this regard?
- Did the Crown adequately protect the Treaty interests of Te Rohe Pōtae Māori landowners in respect of the sale of their lands by the Waikato–Maniapoto District Māori Land Board?
- With respect to leasing, how did the Crown and the Waikato–Maniapoto

\begin{itemize}
\item \textsuperscript{33} Submission 3.4.304, pp 2–3.
\item \textsuperscript{34} Submission 3.4.298, pp 2–3.
\item \textsuperscript{35} Submission 3.4.298, pp 1, 8–10.
\item \textsuperscript{36} Submission 3.4.298, pp 2–3, 15–17.
\item \textsuperscript{37} Submission 3.4.298, pp 2–3, 15–17.
\item \textsuperscript{38} Submission 3.4.323, paras 4–7.
\end{itemize}
14.3 Overview of Land Purchasing in Te Rohe Pōtae, 1905–50

14.3.1 Land alienation, 1905–09

Between 1905 and 1909, the Crown purchased 168,699 acres of Te Rohe Pōtae Māori land. During the same period, private purchasers acquired just 6,206 acres.39

The Crown resumed extensive purchasing in the Maniapoto–Tūwharetoa and other Māori land districts again in April 1906, nine months before the Native Land Commission was established. This effectively ended a six-year slow period on new Crown purchasing and signalled a renewed Crown push to make Māori land available for Pākehā settlement.40

The extensive Crown purchasing was a response to settler pressure and occurred without consulting Māori. In June 1906 at a hui in Huntly, Native Minister James Carroll drew on a familiar metaphor when he assured his audience that their lands must be settled and farmed, or else the ‘encroaching tide’ of settler demand would ‘inevitably sweep . . . them away into oblivion’.41

As an initial step towards purchasing, Cabinet instructed the Department of Lands to identify Māori lands suitable for settlement. In the Kāwhia, Awakino, Waitomo, and West Taupō counties, the department identified more than 700,000 acres.42 The Native Department was responsible for negotiating the purchases.43 William (W H) Grace was appointed as land purchasing officer for a large area extending from Mercer in the north to Taumarunui and Īhura in the south. Grace began to negotiate with owners in about October that year.44

Grace’s reports show he targeted land based on its proximity to the railway and its potential for close settlement. He rated the potential of various blocks: the northern part of Rangitoto A would make ‘a splendid farming settlement’. Tokanui was also ‘good pastoral and agricultural land’ and ‘every effort should be made to acquire’ properties there. Other areas were ‘rough’ or ‘pumice country’ and so not worth the Crown’s effort, or worth a lower purchase price. While seeking large areas for new settlement, he also sought to ‘fill up gaps between sections already acquired by the Crown’.45

40. Document A73 (Hearn), pp 87–89. The Native Land Laws Amendment Act 1899 (section 3) had prohibited new Crown purchasing, and the Māori Lands Administration Act 1900 (section 22) had provided that no Māori land could be sold except with the permission of the governor in council. The Māori Land Settlement Act 1905 (section 20) provided that, where a property had fewer than 10 owners, the Crown could buy from them directly, and where a property had 10 or more owners, the Crown could buy from a majority of owners by value. Section 23 authorised the Government to borrow £200,000 ‘from time to time’ for the purpose of buying Māori land.
41. ‘Settling Māori Lands’, New Zealand Herald, 7 June 1906, p 5 (doc A73, p 87); doc A73, pp 88–89.
42. AJHR, 1906, C-1, p 7; doc A73, pp 88–89.
43. AJHR, 1906, C-1, p 7.
44. AJHR, 1907, G-3A, pp 1, 3.
Grace reported that his initial purchase attempts had not met a favourable response. ‘[I]n this district a large section of Natives strenuously opposed selling or dealing in any way with the land,’ he reported. Some were willing to sell land if the Crown allowed private competition, and some were willing to lease (but not sell) through Māori land boards. Under these circumstances, ‘a great deal had to be done to induce [the] Natives to make a start to sell’. By the end of March 1907, some owners were opening up to the Crown’s offers, ‘but they, of course, offer the bad blocks first’.

Part of that ‘great deal’ appears to have been the calling-in of survey debts. In November 1906, the *King Country Chronicle* reported that Grace and a Department of Lands and Survey official had been at the Native Land Court at Ōtorohanga to negotiate with Māori landowners for blocks of land to repay survey liens. Once the transactions were completed, ‘a further large area will be added to the Crown lands, available for settlement in the King Country’. Hearn listed more than 40 properties which the Crown acquired in this way during 1906, with the areas ranging from a few acres to many hundreds. The *King Country Chronicle* reported that Grace also used the opportunity to purchase some blocks outright.

By 31 March 1907, Grace claimed that he had at least begun negotiations in numerous Te Rohe Pōtae blocks, covering an area exceeding 212,000 acres. Much of his effort was targeted in Rangitoto–Tuhua and Rangitoto A blocks, but negotiations were also underway for significant areas of other blocks such as Maraeroa, Taharoa, and Tokanui.

However, the area Grace purchased was much smaller than the area he said he was negotiating. According to the Native Land Commission, by May 1907 the Crown had purchased 3,071 acres and acquired some shares in blocks totalling 62,375 acres. Some land Grace had targeted was never purchased and was eventually vested instead.

The Crown did not heed the commission’s recommendations in June and July 1907 that Crown purchasing should cease, nor its conclusions that Te Rohe Pōtae Māori had less land available for settlement than was commonly supposed, and that ‘[t]he general opinion was hostile to selling’. Rather, Grace continued to buy.

In his May 1908 annual report, Grace claimed there had been a remarkable turnaround in the attitudes of Te Rohe Pōtae Māori towards land sales. Whereas a year earlier most had been implacably opposed, now ‘the general wish’ among Te

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46. AJHR, 1907, G-3A, pp 1, 3–4.
47. AJHR, 1907, G-3A, pp 3–4.
49. ‘District Pars’, *King Country Chronicle*, 30 November 1906, p 2; doc A73, p 98.
50. AJHR, 1907, G-3A, p 5.
51. AJHR, 1907, G-1B, p 4.
52. AJHR, 1907, G-1B, pp 5, 12; AJHR, 1907, G-1C, pp 8–9, 14–16.
Rohe Pōtae Māori was ‘to sell a large portion of their surplus lands, which they do not utilise, and which are of no use to them’.  

In 1907 and 1908, the area of Te Rohe Pōtae land leased privately by Māori landowners also rose dramatically, a response to growing Crown pressure and Pākehā demand for land. By 1907, 108,381 acres of the inquiry district’s Māori land was under private lease, and by September 1909 the total had risen to 209,110 acres.  

Altogether, according to Douglas, Innes, and Mitchell, the Crown completed the purchase of 43,131 acres of Māori land in the inquiry district during 1907. The following year, it purchased a further 111,546 acres. Most acquisitions seem to have been completed before the end of May, after which the Crown’s land purchasing budget ran out. This fact, according to Grace, caused much anxiety among Te Rohe Pōtae Māori, who would have sold more if given the opportunity. In the absence of evidence about specific transactions, it is not known how true that was.

After May 1908, Grace spent much of his time at the Native Land Court having the Crown’s interests partitioned out. Douglas, Innes, and Mitchell recorded only 5,383 acres of sales to the Crown during 1909, and that may have been shares acquired earlier. Nonetheless, the impact of Grace’s 1907–08 purchases was significant. In 1905, Māori had retained ownership of 59 per cent of the inquiry district. By 1910, that had fallen to 50 per cent, almost entirely due to Crown purchasing.

14.3.2 Land alienation, 1910–22

From 1910 to 1922, the Crown acquired 179,709 acres of Māori land in the inquiry district (including the Moerangi 4 block). Combined with private purchases of 270,554 acres, enabled by the Native Land Act 1909, only about 28 per cent of the inquiry district remained in Māori possession at the end of 1922.

The 1909 Act constituted the Native Land Purchase Board under section 361. The board comprised the Native Minister, the Under-Secretary of Crown Lands,
the Under-Secretary of the Native Department, and the valuer-general. Under section 362, it was the board’s duty to undertake, control, and carry out all negotiations for the Crown’s purchase of native land and its performance and completion of all contracts of purchase. Under section 209, it could purchase land interests directly unless there were more than 10 owners. Where that was the case, it would make application to the Māori land boards, continued by section 62 of the 1909 Act, to conduct meetings of assembled owners.

In Te Rohe Pōtae, Crown purchasing was focused on seeking to open land for settlement and, from 1914, providing farms for returned soldiers. The bulk of purchasing was in the east of the district, in Wharepuhunga, Rangitoto A, and Rangitoto–Tuhua. All were large blocks that had not previously been targeted for settlement.  

Typically, the Crown aimed to buy large, contiguous areas – many thousands of acres across several adjacent land blocks, which could be easily roaded and subdivided. It favoured blocks with good agricultural or pastoral land, and also blocks with timber that could be sold to offset the purchase price. Proximity to the railway made land more attractive. So, too, did the attention of private interests whom the Crown regarded as speculators, though this was rarely the main factor motivating purchase.

Alongside its larger purchases, the Crown also acquired many smaller blocks of a few hundred acres or less. Typically, they were adjacent to or surrounded by Crown land, or land the Crown hoped to buy. It pursued these blocks to ‘round off the Crown holding’, making subdivision and road building easier than would have been the case if some of the land had remained in Māori or land board possession.

Crown purchases in two of the largest Te Rohe Pōtae blocks illustrate its approach to purchasing. In Rangitoto A, the Crown had already acquired some 40,000 acres during 1907 and 1908. Between 1910 and 1922, it purchased another 9,000 acres, mostly aimed at joining up previous purchases. Similarly, in the south-eastern corner of Rangitoto–Tuhua, the Crown acquired a handful of blocks before 1910 (either from purchasing or for survey costs), then ‘filled in the gaps’ with numerous purchases (large and small, vested and non-vested) after 1910.

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64. Document A73, pp 346, 378, 449, 451; AJHR, 1907, G-3A, p 4; AJHR, 1908, G-3A, pp 2–3, [13].
67. Under-Secretary, Native Department, to registrar, Waikato–Maniapoto Māori Land Board, 7 December 1916 (doc A73, p 370); doc A73, pp 372, 418, 420, 428, 429, 439, 443, 474, 486, 499, 558.
68. Document A73, pp 355–356; doc A21, annex 7, Rangitoto A.
69. In 1904–05, the Crown acquired Rangitoto–Tuhua 10 (6,070 acres), 46 (1,002 acres) and 48 (4,000 acres) for survey costs. In 1908, it purchased Rangitoto–Tuhua 6A (130 acres) and 37 (2,349 acres): doc A73, pp 396–400; doc A21, annex 7, Rangitoto–Tuhua 6, 10, 37, 46, 48. Between 1910 and 1922, the Crown purchased Rangitoto–Tuhua 6B (97 acres, vested), 9A (12,137 acres, vested), most of 38 (11,735 acres in 21 separate purchases, non-vested) 41 (557 acres, vested), 50 (6,230 acres, vested), 51 (3,000 acres, non-vested), 54A1 (20 acres, non-vested), 66B (2,589 acres), and parts of 76 (1,363 acres in four transactions, non-vested). These blocks were clustered together in the south-east corner of Rangitoto–Tuhua: doc A73, pp 396–400; doc A21, annex 7, Rangitoto–Tuhua 6, 9, 38, 41, 50, 51, 54, 66, and 76.
Through the Native Land Act 1909, the Crown sought to hasten settlement of Māori lands, both by the Crown and private acquisitions. According to the premier, Sir Joseph Ward, the Crown wanted to purchase from Māori ‘as large an area as possible.’ The 1909 Act also lifted restrictions on the private sale of Māori land, opening the way for large-scale alienation by both methods.

The Native Land Amendment Act 1913 further simplified the Crown purchasing provisions, in effect allowing it to buy from anyone – the board, assembled owners, individuals, incorporations, practically anyone entitled to sell – as it wished. These provisions were explicitly intended to enable Crown purchasing in situations where the owners were collectively opposed, but individuals could be pressured to sell.

In practice, the Crown used the full range of methods available under the law to acquire Māori land. Generally, it sought to purchase through meetings of assembled owners if it could, since purchasing individual interests involved time and expense, and left the Crown not knowing whether it might acquire the whole property. But if that did not work, the Crown generally turned to direct purchasing from individuals, using what one land purchase officer (Bowler) described as a ‘policy of attrition.’

As Hearn told the Tribunal, such purchasing could take place over months or years, as the Crown’s purchasing agents – protected by orders prohibiting private alienation – acquired individual interests, applied for those shares to be partitioned, and then repeated the process. Those who did not sell ‘thus had to endure protracted uncertainty, at the same [time] having to accept a growing burden of survey debt with each partition and an inability to use or dispose of their lands.’

Sometimes, the Crown sought to purchase land directly from the board. About one-third of its purchasing during this period was of vested land, mostly bought through meetings of assembled owners. Very often, the Crown protected its

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70. AJHR, 1909, b-6, pxxii (doc A73, p167); Donald M Loveridge, Māori Land Councils and Māori Land Boards: A Historical Overview, 1900–52, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1996), p 86.
73. Document A73, pp170, 174–177, 540–541, 554; doc A73(a) (Hearn document bank), vol 7, p 294; AJHR, 1911, g-9, pp1–3; AJHR, 1912, g-9, pp1–3.
74. Document A73, pp467, 488, 540; see also Waitangi Tribunal, Te Kāhui Maunga, vol 2, p561; Waitangi Tribunal, Te Urewera, vol 3, pp1160–1161; Waitangi Tribunal, He Whiritaunoka, vol 2, p710.
75. Native land purchase officer to Under-Secretary, Native Department, 18 December 1916 (doc A73, pp467–468); see also doc A73, p331. For an example of the Crown turning to individual purchasing immediately after a meeting of assembled owners, see doc A73(a), vol 17, pp 26, 27.
76. Document A73, p561.
purchasing interests – and excluded those it perceived as speculators – by prohibiting private alienation.\textsuperscript{77}

Across the district as a whole, there are some instances of Māori landowners offering land to the Crown (rather than responding to Crown offers).\textsuperscript{78} Most often, these were individuals or small groups acting independently of the majority of owners, and frequently their offers were conditional on the Crown paying well above valuation.\textsuperscript{79} For example, in 1912 some of the owners of Rangitoto A29B offered their shares to the Crown, but when a meeting of assembled owners was called, the owners rejected the Crown’s offer.\textsuperscript{80}

Some offers to sell were made by lawyers or land agents acting on behalf of the owners.\textsuperscript{81} Most of these offers came from Auckland law firm Earl and Kent, which had formed a close working relationship with Kingitanga adviser and member of the House of Representatives Henare Kaihau.\textsuperscript{82} Some of these offers appear to have been honouring the agreements made at Waahi in 1909–10, under which some blocks had been identified for sale.\textsuperscript{83}

Occasionally, owners offered whole blocks directly to the Crown, so long as the price was right. This tended to happen only for blocks held by individuals, families (including the Eketone and Ormsby families), or other small groups who could easily act in concert.\textsuperscript{84}

In most cases, little is known about the circumstances or motives of those who offered land to the Crown. In the Waahi negotiations, the Crown had told owners

\textsuperscript{77} Document A73, pp 330–332.
\textsuperscript{80} Document A73, pp 365–366. Another example was a 1912 offer by Lawrence Grace to sell his children’s shares in Rangitoto A17. Lawrence Grace was the brother of William Grace, and was married to Te Kahui Te Heuheu, daughter of Te Heuheu Tukino IV. In the 1880s, Lawrence Grace had been influential in bringing the Tauponuiatea block before the Native Land Court and had assisted with Crown land purchases in the Tauponuiatea block. The Crown paid far above the government valuation for his children’s shares in the block: doc A73, pp 361–362; see also Waitangi Tribunal, Te Kāhui Maunga, vol 2, pp 359, 365, 368, 372, 381–382, 395; Waitangi Tribunal, He Maunga Rongo, vol 2, pp 467–468, 474–475, 478, 616; ‘Friend to the Māori: Death of Mr L M Grace’, Evening Post, 10 January 1934, p 8.
their land would be taken if it was not offered. Other occasions, owners found sale to the Crown to be the only effective way to achieve a return on the land. This was particularly true of vested lands where the board was either leaving the land idle or failing to collect rent. Other owners were pressed by financial circumstances to sell, like Te Rewatu Hiriako, the owner of Rangitoto–Tuhua 61. He had been farming the block and did not want to sell but fell behind with his mortgage repayments. He eventually offered the block to the Crown after the State Advances Office recalled his mortgage. The Crown acquired half of the block in 1922.

In general, it was far more common for owners, when acting together and in public, to resist sale than to offer land. A significant proportion of the Crown’s purchases were in blocks where owners had sought re-vesting. Where meetings of owners were called, they frequently rejected the Crown’s offers, or lapsed without a quorum. Those that did resolve to sell typically sought more money than the Crown was willing to offer. Where assembled owners accepted the Crown’s offer, there was sometimes formal dissent, and those at the meeting commonly represented only a small minority of the total. In many cases, it was only after the Crown had prohibited private alienation and turned to individual purchasing that resistance gave way and subsequent meetings of owners agreed to sell.

Private leasing continued to be a popular option for Māori landowners throughout this period, though there are no precise figures specific to this inquiry district. However, Waikato–Maniapoto District Māori Land Board returns show almost 605,405 acres of Māori freehold land under private lease by 31 March 1911, growing to 859,912 acres by 1920.

At the same time, private purchasing also became much more significant. In the Waikato region, the Crown was buying land by a wider margin during the 1910s and continued to do so in the next two decades.

85. Document A73, p 222.
86. For example, the four owners of Kinohaku West G1A2 offered the block to the Crown in 1913. This was a vested block, which the board had earmarked for sale. The owners offered the land to the Crown because they preferred a lump-sum payment over 10 years of instalments from a private buyer: doc A73, pp 498–499. There are also examples of owners offering blocks for sale after rent had fallen into arrears. For example, the owners of the 472-acre Rangitoto–Tuhua 35B2 offered the block to the Crown in 1916 after the lessee fell £129 in arrears: doc A73, p 443.
87. Document A73, pp 446.
93. The figures include areas leased under parts XIII and XVII of the Native Land Act 1909. In the year to 31 March 1911, the board’s returns showed 599,685 acres leased under part XIII and 5,720 acres leased under part XVII. By 1920, the areas had grown to 774,327 acres and 85,585 acres respectively: AJHR, 1912, G-9, p 6; AJHR, 1920, G-9, p 6; see also doc A73, p 577.
of this purchasing took place at a time of rapidly rising land prices, which partly reflected growing demand for farm production and other forces. As early as 1912, the Waikato–Maniapoto board was concerned about land speculation yet felt powerless to do anything about it.95

Later in the decade, the speculation became increasingly feverish. The historian Tom Brooking has written that, during the First World War, ‘the scale of speculation was such that it can only be described as gambling’: he referred to estimates that as much as half of New Zealand’s rural land changed hands during 1916 to 1924. The price of farmland, as a result, became ‘grossly inflated’, and ‘new farmers, especially settlers on schemes for returned soldiers, were over-committed to massive mortgage repayments’.96

The Crown evidently contributed to this speculative bubble, first through land purchases for returned soldiers and, secondly, through the easy credit it offered those soldiers and other land-buyers during this period.97 Hearn gave evidence to this inquiry that the Waikato–Maniapoto board also contributed by lending money to settlers who then used it for speculative activities.98

14.3.3 Land alienation, 1923–50

From 1923 onwards, with the rural economy and land prices in decline, Crown and private purchasing continued but at lower levels than in the previous decade, when rural optimism and speculative excesses had fuelled significant Crown demand and unprecedented levels of private purchasing.99

Between 1923 and 1950, the Crown purchased 51,236 acres of Māori land in this inquiry district. Private buyers purchased considerably more: a total of 82,153 acres. By 1950, just 402,253 acres – or 21 per cent of the original area – remained in Māori possession.100

From 1923 to 1929, the Crown purchased 9,804 acres of Māori land in the inquiry district, almost half in Wharepuhunga. From 1930 to 1939, it purchased 18,779 acres, and during the 1940s its purchasing increased further to 22,653 acres. In each decade, private purchasing far exceeded the Crown’s acquisitions.101

During this period, most of its purchasing during the 1920s, and indeed afterwards, sought to complete purchases in blocks where it had already acquired

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98. Document A73, p 675.
shares, or to fill gaps in existing holdings, or both.\textsuperscript{102} In Wharepuhunga, for example, the Crown’s purchases after 1922 were almost all in subdivisions where it had previously acquired individual shares, and in parent blocks where the Crown had already acquired land. In several cases, the shares acquired after 1922 were from owners who had refused to sell during the 1910s.\textsuperscript{103} Similarly, the Crown acquired more than 800 acres of Hauturu East 1 section 2 during the 1920s, complementing previous Crown purchases there.\textsuperscript{104}

At times, the Crown also purchased for other reasons, such as to assist lessees to obtain the freehold, or to resolve difficulties with title. This particularly occurred during the late 1920s and early 1930s, as lessees struggling under the weight of debt agitated for State support.\textsuperscript{105} The largest 1930s purchase, for instance, was of the vested 6,333-acre Rangitoto–Tuhua 77A2B block, which the Crown bought outright in 1930 in response to persistent calls from lessees.\textsuperscript{106} Other purchases generally occurred only when a government department had identified a specific purpose for the land, such as adding to State forests or acquiring land for scenic reserves,\textsuperscript{107} or tidying up errors in titles or boundaries.

The Crown’s purchasing methods remained unchanged during the 1920s, although the Crown was able to use consolidation proceedings to secure blocks it had acquired (see chapters 16 and 17 for detail).\textsuperscript{108} Also, the Crown continued to impose orders in council prohibiting private alienation during the 1920s and beyond. Under the Native Land Act 1931, these restrictions could be imposed without time limit.\textsuperscript{109} Of the 9,804 acres the Crown purchased from 1923 to 1929, a total of 5,553 acres was vested land.\textsuperscript{110}
1930s, a total of 7,851 acres was vested land.\footnote{111} From 1923 onwards, the vast majority of Crown purchasing was from individual owners.

### 14.4 Did the Crown’s Acquisition of Māori Land in Te Rohe Pōtae Adequately Protect Te Rohe Pōtae Landowners?

#### 14.4.1 Crown purchasing methods, 1906–09

Under the Native Land Court Act 1894, the owners of Māori freehold land could not sell privately without the governor’s consent by order in council. Therefore, when the Crown sought to acquire Māori freehold land it effectively faced no direct competition from other buyers.\footnote{112}

In other districts, Tribunals have criticised W H Grace for, among other things, making bonus payments to induce rangatira to sell, and ‘the aggressive targeting of vulnerable individuals.’\footnote{113} In this district, Grace had paid bonuses during the 1890s to acquire shares in Wharepuhunga, and also suggested the same tactic for purchasing Māori land after 1900, and again in 1910.\footnote{114}

<table>
<thead>
<tr>
<th>Years</th>
<th>Crown</th>
<th>Private</th>
<th>Public works</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1905–09</td>
<td>168,699.44</td>
<td>6,206.23</td>
<td>41.96</td>
<td>0.00</td>
<td>174,947.63</td>
</tr>
<tr>
<td>1910–14</td>
<td>39,641.14</td>
<td>130,503.76</td>
<td>562.67</td>
<td>318.91</td>
<td>171,026.48</td>
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<tr>
<td>1915–19</td>
<td>77,376.22</td>
<td>98,580.86</td>
<td>71.61</td>
<td>0.00</td>
<td>176,028.69</td>
</tr>
<tr>
<td>1920–24</td>
<td>44,117.57</td>
<td>55,437.82</td>
<td>110.46</td>
<td>571.12</td>
<td>100,236.97</td>
</tr>
<tr>
<td>1925–29</td>
<td>7,994.19</td>
<td>22,849.04</td>
<td>36.47</td>
<td>49.16</td>
<td>30,928.86</td>
</tr>
<tr>
<td>1930–34</td>
<td>17,808.93</td>
<td>12,623.37</td>
<td>1.05</td>
<td>0.00</td>
<td>30,433.35</td>
</tr>
<tr>
<td>1935–39</td>
<td>970.15</td>
<td>22,232.15</td>
<td>4.34</td>
<td>0.00</td>
<td>23,206.64</td>
</tr>
<tr>
<td>1940–44</td>
<td>21,688.61</td>
<td>4,593.13</td>
<td>0.00</td>
<td>0.00</td>
<td>26,281.74</td>
</tr>
<tr>
<td>1945–49</td>
<td>964.15</td>
<td>5,885.79</td>
<td>2.09</td>
<td>0.00</td>
<td>6,852.03</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>379,260.40</td>
<td>358,912.15</td>
<td>830.65</td>
<td>939.19</td>
<td>739,942.39</td>
</tr>
</tbody>
</table>

Table 14.1: Acquisition of Māori land in the Te Rohe Pōtae inquiry district, 1905–49

Source: Document A21, p 127

\footnote{111} The vested blocks sold to the Crown during the 1930s were: Hurakia b2 (109 acres, 1937); Kinohaku East 2 sec 6B2 (13 acres, 1937) and 4B2B (8 acres, 1937), Maraetaua 2B (571 acres, 1930); Rangitoto–Tuhua 31D (109 acres, 1930), 60B part (26 acres, 1934), 74B4 (351 acres, 1938), 74B5 (331 acres, 1932), and 77A2B (6,333 acres, 1930): doc A21, annex 7, Maraetaua, Rangitoto–Tuhua 31, 60, 74, and 77.

\footnote{112} Native Land Court Act 1894, s117; Native Land Laws Amendment Act 1895, s4.

\footnote{113} Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 616, 623; Waitangi Tribunal, *Te Kāhui Maunga*, vol 2, pp 393, 396–397.

\footnote{114} Document A60 (Berghan), pp 1220–1224.
Grace’s reports, and those of the Native Land Commission, demonstrate that purchasing proceeded much as it had in the 1890s, through a painstaking process of acquiring shares individually until enough had been purchased to justify partition.115 Grace continued the practice of acquiring shares of owners during this period. The intention was to purchase the entire block over time, and, at the same time, attempt to ensure that private dealings in those same blocks were frustrated.116 The Waitomo County Council complained in October 1907 that some private lease negotiations, already well underway, had been brought to a halt by the discovery that the Crown purchase agent had bought up small interests in the blocks being negotiated.117

The 1905 Act did not explicitly authorise the Crown to buy up interests piecemeal, on a cumulative basis, as opposed to waiting until it had secured the owners’ agreement to buy the whole block or a significant portion of it.118 The legal uncertainty was only resolved in August 1907 when amending legislation explicitly authorised the purchase of interests in this way, and did so retrospectively for any such transaction entered into since the 1905 Act was passed.

Piecemeal purchasing certainly happened in Te Rohe Pōtæ before the practice was authorised in August 1907. Hearn noted that earmarking was ‘especially apparent’ in a number of Rangitoto–Tuhua blocks, as well as ‘a great many of the Rangitoto A subdivisions.’119 In May 1907, for instance, Grace reported to the Under-Secretary of Lands that he had bought ‘a good many interests’ in Rangitoto–Tuhua 21 (Ngairo), and referred at several points to ‘buying in’ other land blocks (rather than simply ‘buying’).120 The Native Land Commission reported that, of the Crown’s purchases in the King Country to 20 May 1907, 62,375 acres of the 65,446 acres it had acquired were incomplete purchases, involving only some of the interests in the affected blocks. The remaining 3,071 acres were completed purchases, where all interests in a block or subdivision were acquired.121

Further, many of Grace’s purchases were in blocks that the commission recommended retaining or leasing. Specifically, of the 11 largest blocks recommended for retention in the commission’s June 1907 report, the Crown made purchases

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115. AJHR, 1907, G-18, p 4; AJHR, 1907, G-3A, pp 1, 3–5.
118. Section 20 of the Act allowed the Crown to (1) buy any Māori land owned by 10 owners or fewer; (2) buy land owned by more than 10 owners as long as a ‘majority in value’ of those owners agreed; or (3) buy through a committee of owners of an incorporation. No incorporations were formed in Te Rohe Pōtæ under the 1894 Act.
119. Document A73, p 90.
120. At the end of his report, Grace supplied a list of ‘Purchases and Negotiations’. The accompanying acreages, where less than the registered block area, seem to indicate a pro rata calculation of the amount of land represented by the interests purchased: AJHR, 1907, G-3A, pp 3–5; doc A115, p 48.
121. Document A73, p 91.
in eight, with some of the purchases amounting to several thousand acres. In fairness, Grace had begun purchasing in four of the eight before the commission conducted its hearings, but not in the rest.

Similarly, of the 15 largest blocks recommended for leasing in the commission’s June 1907 report, the Crown made purchases in five during 1907–09. Of the land it did not purchase, most was later vested, and some was later purchased.

14.4.2 Crown purchasing methods, 1910–50
The Crown’s methods of land acquisition after 1910 continued to focus on purchasing from individual owners. The Native Land Act 1909, however, enabled further options: purchasing by the Native Land Purchase Board directly from Māori land boards, purchasing from incorporated owners, and under section 368, purchasing following meetings of owners. This section considers several aspects of the Crown’s approach to purchasing during this period: first, its use of the assembled owner provisions and other purchasing methods; secondly, its statutory consideration of whether its purchases would leave any owners ‘landless’; thirdly, its use of orders in council prohibiting private alienation; and fourthly, the extent of its purchasing in areas that the Native Land Commission had recommended for leasing or retention. These factors were not mutually exclusive but could overlap and operate in tandem. We conclude with a case study of Crown purchasing in several Rangitoto–Tuhua blocks between 1914 and 1922 to illustrate how it approached purchasing on the ground.

14.4.2.1 Meetings of assembled owners
14.4.2.1.1 The statutory provisions
Under section 341(1) of the 1909 Act, Māori land boards were responsible for summing meetings of assembled owners upon application of any owner or ‘person interested’ and following the direction of the Native Minister. Under section 341(2), owners could attend in person or by proxy, and Māori land boards determined where and when these meetings were held. Under section 342(5), a meeting could

122. The commission’s June 1907 report recommended more than 160 blocks be reserved for Māori occupation. Eleven of those (Rangitoto–Tuhua 21, 26F, 33, 60A, 61F, 61O, 72, and 77F1; Aorangi B3 (part); Kinohaku East 3D; and Kinohaku West G1C2) exceeded 2,000 acres. During 1907–09, the Crown made purchases in Rangitoto–Tuhua 21, 26F, 33, 60A, 61F, 61O, 72, and Aorangi B3: AJHR, 1907, G-1B, sch 4; doc A21, annex 7, Rangitoto–Tuhua 21, 26, 33, 60, 61, 72, Aorangi, Kinohaku East, and Kinohaku West G.

123. AJHR, 1907, G-3A, p 5.

124. The commission in June 1907 recommended 15 blocks that exceeded 3,000 acres for lease. Of those, the Crown purchased in Rangitoto A29, Rangitoto–Tuhua 35G, 37, and 77E, and Hauturu West G2 section 2B. The Crown later vested the remainder of Rangitoto A29 and Hauturu West G2 section 2B, along with Rangitoto–Tuhua 9, 74, and 75, Mohakatino–Parininihi 1C West and 1D East, and Maraetaura 9 and 10. Of those, the Crown later made purchases in Rangitoto–Tuhua 9, 74, and 75: AJHR, 1907, G-1B, sch 4; doc A21, annex 7, Rangitoto A, Rangitoto–Tuhua 9, 35, 37, 74, 75, and 77; Mohakatino–Parininihi 1, Maraetaura, and Hauturu West.
resolve to vest land in a Māori land board, sell land to the Crown, sell or lease land privately, or vote to incorporate. The quorum for a meeting was five (regardless of the number of owners) and a majority (by land interests) of those attending could pass any resolution. Under section 348, no resolution was valid until confirmed by the Māori land board. The Māori land boards could confirm a resolution only if the transaction would not leave any of the owners landless.

Under section 344, there was no right to appeal or review a decision made at an owners’ meeting. Even those who did attend, but opposed the resolution to sell, had limited rights. They could sign memorials of dissent. Initially, the board could give them time to apply for partition of their interests before it confirmed the resolution to sell. Section 100 of the Native Land Amendment Act 1913 gave those who objected to a resolution three days to file a memorial of dissent; section 4 of the Native Land Amendment and Native Land Claims Adjustment Act 1915 extended this period to seven days. The 1909 Act and accompanying regulations required the board to give 14 days’ notice of any meeting – and of any proposed resolution – by advertising it in the Gazette and the Kahiti. Under section 347 of the Act, a meeting could not consider a resolution if no advance notice had been given. However, under section 341(3), no meeting or resolution could be declared invalid simply because the owners didn’t see the notice.

14.4.2.1.2 OWNER MEETINGS IN PRACTICE

In other inquiry districts, the Tribunal has heard that the weakness of the notice requirements meant that many owners “simply never heard of advertised meetings . . . of assembled owners” concerning blocks in which they had interests. Sales, or other decisions, could go ahead entirely without their knowledge. In many instances, properties were sold by a small minority of the owners.

In this district, a common outcome was that meetings rejected the Crown’s purchase offers, either by resolving not to sell at all or by resolving to only sell at a much higher price than the Crown was offering. Nonetheless, some meetings did resolve to sell to the Crown.

The Waikato–Maniapoto board did not always keep records of attendance or voting, but those available contain several examples of properties being sold by a minority of owners. For example:

125. Waitangi Tribunal, Te Urewera, vol 3, p 1315.
126. Native Land Act 1909, s 348.
In 1915, the Crown purchased the 445-acre Hauturu West after a meeting attended by just two of the 23 owners. One of those attending was carrying three proxies, which gave the meeting a quorum. That individual, with proxies, was sufficient to carry the resolution to sell.\textsuperscript{133}

In 1917, the Crown purchased the 4,500-acre Wharepuhunga 19 block after a meeting attended by 12 owners, out of a total of 138. The 12 attendees were at least unanimous.\textsuperscript{134}

In 1930, 17 owners with a combined 177 shares of the 1,276-acre Rangitoto–Tuhua 35 voted for sale, and four more owners with a combined 123 shares voted against. In other words, there was a resolution for sale in spite of opposition from those with the greatest individual interests.\textsuperscript{135}

Where large numbers of owners were involved – including (for some blocks) significant numbers of absentees – notifying owners and providing reasonable opportunity for them to attend presented obvious practical difficulties. It is not clear that either the Crown or the board was greatly concerned by such difficulties. On one occasion, the Native Land Purchase Board applied for a meeting of assembled owners to be called even though it ‘was clearly unaware of the location of many of the owners.’\textsuperscript{136}

The provision for voting by proxy was used to manipulate results. The Native Land Act 1909 contained no restrictions on who could hold proxies, nor how proxies could be used. In practice, it was relatively common for the proxies to rival or even outnumber the owners attending\textsuperscript{137} and for Pākehā buyers or agents to attend a meeting holding proxies.\textsuperscript{138} There were also allegations that private speculators sometimes offered ‘sweeteners’ to Māori landowners who were willing to hand over their proxies\textsuperscript{139} which could then be used to favour private sales and defeat sales to the Crown.\textsuperscript{140} In 1911, for example, Walter Bowler, president of the Waikato–Maniapoto District Māori Land Board, reported to the Native Under-Secretary that only four of the 79 owners were present at a meeting of owners in Te Kūiti, but the would-be lessee’s solicitor arrived with proxies for 35 other owners. At that time, there was no need for the proxy forms to indicate which way the signatory wished to vote. The four owners voted against the proposed lease, but the solicitor used the proxies to carry the vote in favour of alienation. Bowler did not preside at that particular meeting, but he did at a later meeting where the 20 owners present persuaded him to disregard the earlier vote. A fresh vote was held and the resolution to alienate was lost. Bowler felt that this indicated that

\textsuperscript{133} Document A73, pp 605–606.
\textsuperscript{134} Document A73, pp 468–470; doc A73(a), vol 26, pp 381, 386–387; doc A73(a), vol 12, pp 99–100, 106.
\textsuperscript{135} Document A73, pp 763–765; doc A21, annex 7, Rangitoto–Tuhua 35.
\textsuperscript{136} Document A73, p 494.
\textsuperscript{137} Document A73, pp 364, 466, 477, 478, 569, 573, 605.
\textsuperscript{139} Document A73, p 586.
\textsuperscript{140} AJHR, 1913, G-9, p 2.
the earlier proxies had been misused and recommended that in future the absent owner’s intention should be written on the proxy form.  

The law was changed in 1913 so that only owners could hold proxies on behalf of others. The following year, regulations required anyone giving a proxy to declare in writing whether he or she was for or against the proposed resolution. Nonetheless, the Crown sometimes used proxies for its own purposes, as in its 1920s purchase of Wharepuhunga. In that case, the owners were so scattered that meetings were being held in Putaruru and Foxton. In preparation, the Native Department sought ‘to obtain proxies in favour of the sale from as many owners as possible.

Lack of notice and physical distance from the venue may explain low attendance at meetings of assembled owners. A third possibility, suggested by Hearn, is that owners knew of meetings but ‘elected to demonstrate by their absence their opposition to sales.’ In support of this view, Hearn noted the large number of meetings that lapsed without a quorum, even for properties that had 30 or more owners.

The low turnout at these meetings contrasts with the very high turnouts sometimes recorded for meetings proposing re-vesting. For example, Hearn recorded that in 1913 some 26 owners attended a meeting to vote on the Crown’s proposed purchase of Wharepuhunga, unanimously rejecting the offer. The following year, 50 owners (carrying 93 proxies) assembled to vote on a proposal for re-vesting of both blocks. That resolution was unanimously supported.

Overall, in Hearn’s assessment, meetings of assembled owners were ‘thinly attended’, and managed in a manner that was ‘far from adequate.’ Such views echo those of Professor Alan Ward, who wrote in 1987 that throughout New Zealand the assembled owner provisions typically resulted in decisions on which consensus was bypassed and ‘the owner group as a whole was not consulted.’

These are not exclusively modern views. Even in 1913, Bowler reported:

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142. Native Land Amendment Act 1913, s 105; see also AJHR, 1913, G-9, p 2.
144. Under-Secretary, Native Department, to W E Goffe, native land purchase officer, 18 February 1924 (doc A73(a), vol 21, p 212); doc A73, p 493.
145. Document A73, pp 345, 537.
146. Document A73, pp 345, 537. For meetings that lapsed without quorums, see doc A73, pp 417, 422, 429, 432, 433, 456, 457, 466, 474, 477.
147. Document A73, p 466.
The procedure by meetings of assembled owners under Part xviii of The Native Land Act 1909 was designed to facilitate dealings with blocks of land owned by a large number of owners, and, while it admittedly does this, it must follow that such a radical method of procedure must in at least a few cases work a hardship upon the maori [sic] owners.150

The ‘hardship’ Bowler was referring to was situations such as that which led to two owners, Matire Omipi and Pare Kerei of Hauturu, petitioning the House of Representatives in 1913. Their petition alleged that information about the meeting of owners for Otorohanga plot 2, section 2, had been posted to incorrect addresses. Not knowing about the meeting as a result, they were unable to use their influence to prevent the alienation of the plot by lease. Nonetheless, in Bowler’s view, little harm had been done because these petitioners’ interests were small, both lived a considerable distance from the plot, and ‘it is doubtful that they would have made any serious attempt to work it’.151 He appeared to believe that so long as land was brought into profitable settlement, such hardships were a small price to pay.

14.4.2.1.3 OWNER MEETINGS AND INDIVIDUAL PURCHASING
The Crown used a combination of purchasing methods: individual purchasing, owner meetings, and purchasing vested lands direct from the board. Between 1910 and 1913, it appears to have selected its purchase method according to legal requirements, notwithstanding some initial uncertainty about the requirements applying to vested land.152 During this period, it was only able to buy land owned by more than 10 owners through owner meetings.153

By 1913, however, Crown officials were expressing frustration that the available options did not always allow it to purchase land it wanted. The Crown was particularly concerned that the assembled owner provisions were not always working to facilitate purchases as they had hoped. Instead of providing a mechanism for simple and quick alienation of Māori land, the provisions sometimes became a mechanism for simple and quick Māori rejection of the Crown’s offers. In 1912, for example, one of the 14 owners of Rangitoto–Tuhua 61E attended a meeting armed with four proxies and voted to reject the Crown’s purchase offer. He then voted to sell at 150 per cent of government capital valuation, which the Crown rejected.154

150. President, Waikato–Maniapoto Māori Land Board, to Under-Secretary, Native Department, 29 October 1913 (doc A73(a), vol 7, p 294); doc A73, p 537.
151. President, Waikato–Maniapoto Māori Land Board, to Under-Secretary, Native Department, 29 October 1913 (doc A73(a), vol 7, pp 284–288.
152. The Native Department initially thought that meetings of assembled owners were required for purchases of vested land from 10 or more owners, whereas the board believed it could sell directly without a meeting. After this initial uncertainty, the Crown from 1911 to 1913 seems to have dealt with the Māori land board as the legal owner of vested lands, though it nonetheless sometimes insisted on the board calling a meeting: doc A73, pp 359–361, 364–365, 432–433, 569; doc A73(a), vol 11, pp 127–129, 135; doc A73(a), vol 20, pp 103, 106, 107, 124; doc A73(a), vol 25, pp 173–178.
The problem, from the Crown’s point of view, was that individuals who might be willing to sell their shares privately were less likely to do so at a public meeting where they could be influenced by communal leaders and others. In 1913, Bowler suggested that, for this very reason, the Crown should be allowed to bypass meetings of assembled owners and purchase directly from individuals. It is not clear why Bowler felt he should be advising the Crown on such policy matters, but his term as president was about to expire and he would soon be appointed as land purchasing officer. Perhaps he knew of his new appointment and was anticipating opportunities to buy under his proposed provision.\footnote{155}

The Native Department told Bowler that the Crown had already considered the issue and the amendment was expected later in the year.\footnote{156} Indeed, some months earlier, the Under-Secretary for Native Affairs had reported: ‘It is . . . desirable, in the larger blocks, where a number of owners are concerned, and a motion to sell has been defeated by a not fully representative meeting, that provision should exist for the Crown to acquire individual interests.’\footnote{157}

The Under-Secretary was apparently unconcerned about the prospect of Māori selling through unrepresentative meetings; his only concern was to stop individuals being influenced by their communities and communal leaders to retain land that the Crown wished to buy.

Once the Native Land Amendment Act 1913 was passed, under section 109 the Crown could buy from whomever it wanted: individuals, the Māori land boards, assembled owners, incorporations, or anyone else with the legal right to sell. The amendment was explicitly intended to advance Crown purchasing, and to give the Crown a market advantage over private buyers, many of whom the Reform Government regarded as speculators.\footnote{158} From then on, the Crown’s approach to purchasing became much more tactical. Correspondence between the Native Department and its land purchase agents was filled with discussions on the best method for purchasing particular blocks. Direct purchasing from the Māori land boards or following a meeting of assembled owners was generally preferred, but the Crown quickly turned to individual purchasing if it needed to overcome communal opposition or could buy more quickly that way.\footnote{159}

Indeed, the Crown soon came to see owner meetings as a way to initiate individual purchasing. The Native Department advised in 1914 that the ‘proper procedure’ for such meetings was for the land purchase officer to present the Crown’s proposals ‘in as favourable a light as possible’. If owners were not swayed, then

\begin{itemize}
  \item \footnote{155. Document A73(a), vol 7, p 282; doc A73, p 406.}
  \item \footnote{156. Document A73(a), vol 7, p 281.}
  \item \footnote{157. AJHR, 1913, G-9, p 2; doc A73, pp 176, 540.}
  \item \footnote{158. Document A73, pp 174–179; Loveridge, Māori Land Councils, pp 126–128. The Native Minister also opposed a proposal that vested lands be sold only through meetings of assembled owners: doc A73, p 328.}
  \item \footnote{159. In 1919, the Native Land Purchase Board indicated its preference for meetings where possible: ‘Even if one subdivision be acquired through a meeting . . . it will save many weeks and months of labour and a considerable amount of expense’: clerk, Native Land Purchase Board, to Under-Secretary, 21 June 1919 (doc A73, p 331). For some examples of discussions between officials, see doc A73, pp 331, 370, 371, 394, 399, 406, 408, 409, 462, 471, 472, 481; doc A73(a), vol 17, p 27.}
\end{itemize}
agents should not waste the opportunity but immediately ascertain ‘what probabilities exist as to fair portions being acquired from owners desiring to sell their individual interests.’ It was not until 1919 that the Native Minister began to insist on meetings being called before sales, and then the directive applied only to vested lands.

The Crown’s purchase of Wharepuhunga 14B9A, 14B10A, and 14B13A illustrates its use of owner meetings and individual purchasing. The Native Land Commission had recommended that ‘[l]arge portions’ of the 10,493-acre Wharepuhunga 14B block be leased, at the discretion of the Waikato–Maniapoto District Māori Land Board, with the rest reserved for Māori occupation. In 1909, the whole block (in 15 partitions) was vested in the land board. The land board then created and leased subdivisions that bore no relation to the legal boundaries, meaning that lessees could not raise finance to develop their properties. In 1921, after ignoring several earlier owner requests for the block to be re-vested, the Crown resolved to purchase any lot that the lessees wanted to buy. Initially, it applied for meetings of owners to be summoned by the land board. These were complicated by the fact that the board’s leasehold lots did not follow legal property boundaries. Wharepuhunga 14B lot 3, for example, comprised 1,171 acres split between three legal subdivisions (Wharepuhunga 14B9, 14B10, and 14B13). In 1924, the owners of 14B10 met in Putararu and agreed to sell, and the owners of 14B13 met in Foxton and declined. When a new (and lower) government valuation was issued in 1926, the Crown, at the request of the lessees, set about acquiring individual shares until it had bought enough for those lessees who wanted the freehold. For all three subdivisions, the Crown purchased less than half of the shares before applying for partition.

In 1916, Native Minister Herries pronounced meetings of assembled owners ‘a successful experiment’, at least from the Crown’s point of view, since they offered ‘a short, easy, and, in the main, a just way of allowing the Natives to sell their land either to the Crown or to the pakeha.’ It is not clear what he meant by ‘in the main’, but it seems that justice was a lesser consideration than efficiency of alienation.

### 14.4.2.2 Applying the landlessness test

The Native Land Purchase Board was the primary body charged with the purchase of native land after 1909. Section 373 of the Native Land Act 1909 required the

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160. Under-Secretary to native land purchase officer, 15 April 1914 (doc A73, p 331).
162. AJHR, 1907, G-1D, p 2.
163. ‘Declaring Land to be Subject to Part I of “The Native Land Settlement Act, 1907”’, 14 December 1909, New Zealand Gazette, no 105, pp 3247–3249; see also doc A60, p 1247.
164. Document A73, p 491; doc A21, annex 7, Wharepuhunga.
168. Herries, 3 August 1916, NZPD, vol 177, p 739; doc A73, pp 536–537.
Native Land Purchase Board, before buying any interest in land, to ensure that the transaction would not leave any owner landless.

Likewise, when meetings of assembled owners resolved to sell, the Māori land boards (continued under sections 347 and 348 of the 1909 Act) had to apply this test before consenting to a sale. Whereas previous legislation had specified the minimum area to be retained by each Māori landowner, the 1909 Act defined a Māori as landless if his or her ‘total beneficial interests in Native freehold land . . . are insufficient for his adequate maintenance.’ As other Tribunals have pointed out, this was an entirely subjective and inadequate test. It appeared to suggest that individuals should retain enough land for their immediate subsistence, but made no provision for community needs, cultural relationships with land, economic development opportunities, nor the needs of future generations.

Even these very limited landlessness provisions were subject to exceptions. Section 373(2) provided that no Crown purchases could be invalidated if the requirements were breached. Further, section 425 allowed the governor in council to waive the requirements, on the recommendation of the Native Land Court or a Māori land board, if any owner who would become landless ‘is able to maintain himself by his own means or labour’.

In other inquiry districts, the Tribunal has found the limited protections against landlessness were generally applied only in a perfunctory and inconsistent manner, and the Crown routinely pursued purchases without duly considering them. The Crown and its agents showed little interest in whether purchases could be justified under the landlessness provisions.

In this district, the Tribunal arrives at similar conclusions. Neither the Native Land Purchase Board, nor the Native Department, nor the Māori land boards concerned themselves too much with the issue of landlessness in Te Rohe Pōtae. The department was content with occasional reminders to purchase agents that they should ensure no owner was left landless, but made no apparent effort to supervise this. On the contrary, even in the case of owners found to have insufficient other lands or who said the purchase would leave them landless, the Crown

169. Māori Land Settlement Act 1905, s 22(1).
173. Correspondence involving Crown officials, purchasing agents, and the Native Land Purchase Board was focused heavily on which lands the Crown wanted, what price it would pay, and how best to achieve the purchase. Landlessness was generally conspicuous by its absence. For example, see doc A73, pp 330, 470, 490, 496.
invariably pressed ahead, hoping its purchase would be subsequently confirmed.\(^{175}\) This happened in Wharepuhunga 14B, which owners had warned contained all of their kāinga, cultivations, and urupā,\(^{176}\) and in Wharepuhunga 18, which the Crown purchased despite knowing that some owners would be without other lands.\(^{177}\) At times, the Crown actively pursued reserves or other properties that had been set aside for owners with little other land, such as the Wharepuhunga Native Reserve at Kahikatea.\(^{178}\)

**14.4.2.3 Orders in council prohibiting private alienation**

While the Native Land Act 1909 lifted restrictions on the private sale of Māori land, it also allowed the governor to selectively prohibit private dealing (including sales, leases, licenses, mortgages, and gifts) whenever any negotiations for Crown purchase were ‘contemplated or in progress’.\(^{179}\) Initially, under section 363(1)–(2), such orders in council could be imposed for 12 months and renewed for a further six; later amendments allowed renewals for 12 months at a time, up to a maximum of three years. According to Hearn: ‘In practice, at the expiry of the term of three years, the Crown simply issued a fresh order.’\(^{180}\) Māori land subject to such orders in council were effectively ‘frozen’, though still liable for rates and for interest on any survey liens and pre-existing mortgages. There was no requirement for the owners to consent or even be consulted. Under section 365 of the Act, any owner breaching an order in council was liable to criminal conviction punishable by a fine or imprisonment.

The Crown, through the Native Land Purchase Board, used such orders in council extensively to prohibit private alienation during this period. These orders were applied to all blocks covered by the Waahi negotiations of 1909 and many others, and sometimes remained in place for years.\(^ {181}\) There is no record of owners being consulted over these orders, or even being informed in advance. According to Hearn, many owners knew nothing of the Crown’s intention to buy their land until such an order in council was imposed.\(^ {182}\)

Mangauika A1 was purchased during the 1920s and 1930s and illustrates the impact of Crown purchasing over a long timeframe, while using orders prohibiting private alienation. In 1920, the Crown decided it wanted to buy property in the Mangauika block at the foot of Mount Pirongia, partly for forestry and partly

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182. Document A73, p 530.
to create a scenic reserve.\textsuperscript{183} Orders in council prohibiting private alienation were imposed on six sections covering 1,473 acres, and these were renewed right through the decade and into the 1930s. It took the Crown until 1927 to make any headway with its purchases. Purchasing then accelerated, but it was not until 1934 that the 710-acre Mangauika A1 block was partitioned out and awarded to the Crown. Further purchasing attempts continued into the 1940s.\textsuperscript{184}

14.4.2.4 Case study: Crown purchasing in Rangitoto–Tuhua, 1914–22

Chapter 13 detailed the circumstances surrounding the Crown’s decision to vest the 12,340-acre Rangitoto–Tuhua 9 (Potakataka) block, located in the south-eastern corner of the inquiry district, in the Waikato–Maniapoto District Māori Land Board against the wishes of many owners who wanted it re-vested in the owners. This section examines the range of purchase methods used by the Crown during this period, as well as some of the factors influencing the owners or the Waikato–Maniapoto District Māori Land Board to sell.

The board decided to sell the entire block in 1909 against the owners’ wishes and the requirement of the 1907 Act that vested lands be evenly divided between portions for sale and for lease.\textsuperscript{185} As a result of the owners’ protest and subsequent disputation, the block lay unused for several years, but the development of a road-ing and subdivision scheme encompassing Rangitoto–Tuhua 9 and several large adjacent blocks of Crown land made purchasing a priority.

By May 1914, further survey work had been carried out, but the land was still not close to being placed on the market. Auckland lawyers Earl and Kent, representing ‘almost all the living owners’, wrote to the board proposing that it license the timber rights for 6,000 acres of the block, and re-vest the remainder.\textsuperscript{186} The Native Department again opposed re-vesting, and the Crown now determined that the simplest way to complete its subdivision plan was to buy the block outright.\textsuperscript{187} Indeed, government officials came to regard Crown purchase as essential, to protect the Crown’s investment in roads that were being built through Rangitoto–Tuhua 9 to the adjacent Crown blocks.\textsuperscript{188}

Its initial attempt to purchase through a meeting of assembled owners was roundly rejected. But in January 1915, following intervention from Earl and Kent, another meeting decided to sell half of the block to the Crown and seek re-vesting of the rest.\textsuperscript{189} Only 80 of the 226 owners attended the second meeting. Those who voted for the sale represented 32 per cent of all owners by number, and 33 per cent by share, yet their decision bound all those who had not attended. A local

\begin{footnotes}
\item[183] Document A75, pp 46–52.
\item[184] Document A75, pp 46–52; doc A21, annex 7, Mangauika.
\item[185] Document A73, p 215; doc A73(a), vol 6, p 205.
\item[186] Earl and Kent to president, Waikato–Maniapoto Māori Land Board, 21 May 1914 (doc A73, p 405).
\item[187] Document A73, pp 405–406.
\item[188] Document A73, pp 404, 410.
\item[189] Document A73, pp 411, 412.
\end{footnotes}
sawmiller reported that most of those who voted for sale were in fact ‘overwhelm-
ingly’ opposed but had been persuaded to vote in favour by Hari Hemara.¹⁹⁰

From the Crown’s point of view, the result was better than it might have
expected. The purchasing officer (Bowler) had consistently counselled against
owner meetings as a method of purchasing, saying that most owners were opposed
and the remainder were easily influenced not to sell. In the lead-up to the January
1915 meeting, he asked the Native Department to let him offer ‘a special price’ to a
few of the most influential owners, to grease the wheels for sale. The department
does not appear to have responded, and there is no specific evidence that special
prices were in fact paid.¹⁹¹

Some owners asked to have their interests partitioned out in order to protect
them for future generations: ‘We have several children, but the lands we hold
are few and will not maintain our descendants.’¹⁹² However, the Crown delayed,
reasoning that its ownership of geographically undefined interests would create
uncertainty, and prevent owners from using the land or attempting to sell pri-
vately. Bowler also relied on owners running out of money and therefore needing
to accept the Crown’s offer.¹⁹³

He managed to buy about one-quarter of the remaining balance fairly quickly,
and then continued to add new signatures over a period of years. In November
1918, the block was partitioned, with the Crown having acquired all but 203 acres
of the original 12,340-acre vested block.¹⁹⁴

In completing this purchase over several years, the Crown benefited from rising
land prices. The original price paid in January 1914 had been 30 shillings per acre,
which was above government capital valuation at the time. When the valuation
was increased in 1916 to 40 shillings per acre, the Crown kept purchasing at the
original price. The result, Bowler reported, was that ‘we are showing a consider-
able profit on this transaction’.¹⁹⁵

The Crown was not content to leave the remaining owners with their 203-acre
remnant. Bowler continued to purchase individual shares, and the Crown also
called meetings in 1919, 1922, and 1923. The last passed a resolution to sell, though
not without opposition. The board, disregarding any dissent, confirmed the reso-
lution. This last remnant became Crown land in July 1923.¹⁹⁶

This was 16 years after Hari Hemara had appeared before the Native Land
Commission, 14 years after vesting, and nine years after the Crown had begun
purchasing. The land, which had originally been offered for lease, had never
returned an income, except through sale to the Crown.

¹⁹⁰. J W Ellis to Kent, 26 January 1915 (doc A73, p 412).
¹⁹¹. Native land purchase officer to Under-Secretary, 22 October 1914 (doc A73, p 408); doc A73,
pp 406, 408, 412.
¹⁹². Teretiu Reupena and 25 others to Native Minister, 10 April 1915 (doc A73(a), vol 14, p 341);
doc A73, pp 414–415.
¹⁹⁵. Native land purchase officer to Under-Secretary, 14 April 1919 (doc A73, p 417).
Immediately to the north of Rangitoto–Tuhua 9 was the 13,239-acre Rangitoto–Tuhua 38.\(^ {197}\) The Native Land Commission had recommended one part of this block for Māori occupation, one part for lease, and 400 acres for sale,\(^ {198}\) but it was never vested. By 1920, the Crown had purchased 21 separate subdivisions of Rangitoto–Tuhua 38A, 38B, and 38C, thereby acquiring almost all of the block.\(^ {199}\)

In Rangitoto–Tuhua 38A and 38B, the Crown’s practice for subdivisions with 10 or more owners was to call a meeting and proceed to individual purchasing if the assembled owners were unwilling to sell. For subdivisions with fewer than 10 owners, the Crown purchased directly from individuals without calling a meeting.\(^ {200}\) By November 1915, the Crown decided to complete its purchasing in Rangitoto–Tuhua 38 by purchasing from individuals,\(^ {201}\) and this is how it acquired several subdivisions of Rangitoto–Tuhua 38C.\(^ {202}\)

In Rangitoto–Tuhua 38A and 38B, three subdivisions were sold through meetings of assembled owners. For another four, meetings were called: two rejected the Crown’s offer and two lapsed for want of quorums. The Crown nonetheless acquired all four by purchasing from individuals.\(^ {203}\)

One of the sales (Rangitoto–Tuhua 38A5) was initiated by the owners, who confirmed their intention through a meeting. The Waikato–Maniapoto District Māori Land Board was initially unwilling to confirm the resolution because it could not be certain that all the owners had sufficient other land for their maintenance. Five of the block’s 28 owners had fewer than 20 acres of other land, all of which were in other Rangitoto–Tuhua 38 blocks which the Crown was targeting for purchase. Nonetheless, the Native Department pressured the board to confirm the resolution, pointing out that its unwillingness to do so was ‘interfering . . . with other Crown Lands purchases in that locality’. The board acquiesced, and the block was proclaimed Crown land in August 1915.\(^ {204}\)

Of the other subdivisions, the owners of Rangitoto–Tuhua 38A1 unanimously declined to sell on grounds that the block was their ancestral kāinga.\(^ {205}\) The owners of Rangitoto–Tuhua 38A6 and 38B2 were willing to sell, but at prices that far exceeded the Crown’s offer. The owners of Rangitoto–Tuhua 38A7B did not attend a meeting, and the Tribunal received no evidence about their attitude to sale. In all these cases, the Crown proceeded to individual purchasing.\(^ {206}\)

At the meeting to consider selling Rangitoto–Tuhua 38A2, six of the 41 owners formally dissented from the resolution to sell, but the Crown acquired their

\(^{197}\) Document A73, p 420.
\(^{198}\) AJHR, 1909, G-1A, p 12.
\(^{199}\) Document A21, annex 7, Rangitoto–Tuhua 38.
\(^{200}\) Document A73(a), vol 18, pp 66, 71, 77; see also doc A73, p 422.
\(^{201}\) Document A73(a), vol 18, pp 58–59.
\(^{202}\) Document A73(a), vol 18, pp 58–59, 86–89.
\(^{203}\) Document A73, pp 420–423.
\(^{204}\) Under-Secretary to president, Waikato–Maniapoto Māori Land Board, 9 July 1915 (doc A73(a), vol 17, p 278); doc A73, pp 420–421.
\(^{205}\) Document A73(a), vol 18, pp 63, 65.
\(^{206}\) Document A73(a), vol 17, pp 296–304, vol 18, pp 56–57, 61, 62, 65; doc A73, p 422.
interests by purchasing from them directly.\textsuperscript{207} One of the 20 owners of Rangitoto–Tuhua 38A4 also dissented but did not formally object and so his interests were sold.\textsuperscript{208} Only with Rangitoto–Tuhua 38A5 was the decision to sell uncontested by the owners.\textsuperscript{209}

The Crown was sometimes prepared to overlook irregular purchasing methods in its haste to acquire individual shares. In 1917, the Crown’s purchasing agent (Bowler) informed his superiors that he had bought shares in Rangitoto–Tuhua 38A1 and 38A6 without using an interpreter. The Native Department expressed disapproval, but the purchases were allowed to stand. In Rangitoto–Tuhua 38A7B, the Crown purchased from a lawyer representing the owner – a soldier who was serving in France – despite doubts about whether the power of attorney entitled the lawyer to sell.\textsuperscript{210}

In Rangitoto–Tuhua 38A and 38B, the Crown does not appear to have made orders prohibiting private alienation. It did, however, prohibit private alienation of 14 subdivisions of Rangitoto–Tuhua 38C, which Walter (W J) Broadfoot and his wife had attempted to buy.\textsuperscript{211} For two of those subdivisions, the final signature was obtained from Mairana Te Kahu of Te Köura, while he was seriously ill.\textsuperscript{212}

Rangitoto–Tuhua 38 was an unusual Crown purchase because of the number of subdivisions involved. Other blocks in the south-eastern corner of Rangitoto–Tuhua were acquired more easily, through either meetings of assembled owners, purchasing from individuals, and purchasing directly from the Waikato–Maniapoto District Māori Land Board. For example, it purchased two smaller blocks – Rangitoto–Tuhua 6B (97 acres) and 41 (557 acres) – directly from the board, apparently without any involvement from the owners. In both cases, the Native Land Purchase Board wanted the land to ‘round off’ existing purchases, and the blocks were of little use to settlers (and therefore the board) since they were surrounded by other Crown acquisitions. In both cases, the Crown initiated the purchase.\textsuperscript{213}

The Crown acquired another neighbouring block, the 2,724-acre Rangitoto–Tuhua 66B, by individual purchasing over the period from early 1917 to early 1920, under cover of a series of orders in council prohibiting private alienation. The block had been leased, and timber cutting rights licensed, providing an income to the owners. The Crown did not regard the land as especially desirable but considered purchase would ‘work in well’ with Crown purchases in neighbouring blocks. Initially, it sought only a few shares, specifically to justify extending

\textsuperscript{207} Document A73(a), vol 17, pp 307–309, vol 18, p 61; doc A73, p 422.
\textsuperscript{209} Document A73, pp 421–422.
\textsuperscript{210} Document A73, pp 422–424; doc A73(a), vol 18, pp 25–48.
\textsuperscript{211} Document A73, pp 426–427.
\textsuperscript{212} Document A73(a), vol 18, p 86; doc A73, p 427.
\textsuperscript{213} Native land purchase officer to Under-Secretary, 24 May 1916 (doc A73, p 418); doc A73, pp 396, 418–420.
the prohibition on private alienation. Most owners were unwilling to sell. In October 1918, however, Bowler was able to report that, ‘[t]he faction opposing the sale gave way’, allowing him to purchase 66 of the block’s 94 shares. Purchasing continued, and in February 1920 the Crown was awarded almost the entire block in a 2,609-acre partition.

The 8,707-acre Rangitoto–Tuhua 76 block followed a similar trajectory to other blocks, with assembled owners rejecting a Crown purchase offer in 1920, and the Crown then buying individual interests. The purchase was protected by an order in council prohibiting private alienation, which was imposed while the owners were negotiating for private sale of timber on the land.

14.4.3 Crown purchase prices

Before 1905, there was no statutory minimum price for Māori land. In the absence of competition, the Crown ‘bought on its own terms’ (as the Native Land Commission put it) from sellers who were often forced by circumstances ‘to accept any price at all’. The injustice of the Crown’s purchasing system was obvious to the commission, and to many other observers, Māori and non-Māori.

The Māori Land Settlement Act 1905 required the Crown to purchase Māori land at no less than the capital value as assessed under the Government Valuation of Land Act 1896. The Native Land Act 1909 contained a similar provision. The Te Urewera Tribunal commented that the 1905 provision ‘was seen as a major step forward, establishing a minimum price for the first time’. In parts of the country where Māori land was in demand, the result was a rapid and noticeable increase in the prices.

According to Native Land Commission data, Te Rohe Pōtae Māori land prices more than doubled as a result of this provision from an average of four shillings per acre in 1892–1905 to an average of 9.9 shillings up to August 1906. Prices paid in Rangitoto–Tuhua bear out this trend. Before the 1905 Act came into force,

215. Document A73, pp.430–432; native land purchase officer to Under-Secretary, 31 October 1918 (doc A73(a), vol 16, p 207).
217. AJHR, 1907, G-18, p 4.
218. For example, see doc A73, pp 70 n, 82, 543–545, 548–549; see also Waitangi Tribunal, Te Urewera, vol 4, pp 1610–1611.
220. Native Land Act 1909, s 372. If no valuation was in force, the Crown was required to request one from the valuer-general. If the Crown failed to pay the required price, its purchase would still be valid, but it would owe any shortfall to the seller.
221. Waitangi Tribunal, Te Urewera, vol 4, p 1610.
prices ranged from three shillings to six shillings per acre; afterwards (and before 20 May 1907), prices ranged from 7.5 shillings to 15 shillings per acre.\textsuperscript{224}

Without doubt, this was a significant step forward in terms of ensuring better value for Māori landowners’ interests. But as other Tribunals have pointed out, it was not, in itself, sufficient to ensure that the prices paid to Māori landowners were fair and equitable. The Government valuation set a \textit{minimum} price, but it did not necessarily set a \textit{market} price.\textsuperscript{225}

To determine the fairness of prices paid in Te Rohe Pōtæ, the following questions must be asked. First, were the valuations fair? That is, did they accurately reflect land values, and was Māori land valued on the same basis as land owned by Pākehā? Secondly, were Māori landowners able to negotiate prices on a fair basis?\textsuperscript{226}

\textbf{14.4.3.1 Were government valuations fair?}

The Government Valuation of Land Act 1896 required the valuer-general and district valuers to prepare land valuations showing the total capital value of each property, the capital value of buildings and other improvements, and the unimproved value (determined by deducting the value of improvements from the total value). None of these terms were defined.\textsuperscript{227}

The Act specified that valuations would be used to calculate rates, land taxes, and how much could be borrowed from State lending departments.\textsuperscript{228} They would also serve as the minimum amounts payable when the Crown took land under the Land for Settlements Act 1894 or the Public Works Act 1894 (provided that, if that sum was not acceptable to the owner, the actual amount payable would be determined by the Compensation Court).\textsuperscript{229}

Member of Parliament Alfred Fraser, a long-time critic of Crown purchasing practices, claimed in 1907 that the valuations prepared under these provisions were inadequate, largely due to the Crown’s ongoing market dominance:

> The Government value the land to suit their own purchase. The market is still limited by the Government’s price . . . and where the market is, as in this case, only one person, what must necessarily be the value of the land? Of course, what that person makes it. Consequently, the price given to the Natives in the last two years – I am not dealing with the unfortunate past previous to 1905 – has certainly not been what the law said it should be, and not been in the direction of justice such as the owners of the land were entitled to.\textsuperscript{230}

\begin{itemize}
\item \textsuperscript{224} Document A73, pp 382, 385.
\item \textsuperscript{225} Waitangi Tribunal, \textit{He Maunga Rongo}, vol 2, pp 703–704, 707; Waitangi Tribunal, \textit{Te Kāhui Maunga}, vol 2, p 567; Waitangi Tribunal, \textit{Te Urewera}, vol 4, pp 1610–1611.
\item \textsuperscript{226} Waitangi Tribunal, \textit{He Maunga Rongo}, vol 2, pp 703–704, 707; Waitangi Tribunal, \textit{Te Kāhui Maunga}, vol 2, p 567; Waitangi Tribunal, \textit{Te Urewera}, vol 4, pp 1610–1611.
\item \textsuperscript{227} Government Valuation of Land Act 1896, s 7.
\item \textsuperscript{228} Government Valuation of Land Act 1896, s 11.
\item \textsuperscript{229} Government Valuation of Land Act 1896, s 12.
\item \textsuperscript{230} Fraser, 22 August 1907, NZPD, vol 140, p 387 (doc A73, pp 544–545).
\end{itemize}
The Tribunal heard very little evidence about how these 1905–09 valuations were prepared, or what criteria were used to determine the values of either land or improvements. It appears that the valuations generally did not include provision for the value of timber, in spite of the fact that some Te Rohe Pōtae blocks contained valuable forests.\textsuperscript{231} From 1912, timber and flax were included in the definitions of ‘land’ under the Valuation of Land Act 1908.\textsuperscript{232} The land purchasing officer William Grace believed the government valuations during 1907–09 were sometimes higher than they ought to be, and sometimes lower. In Tokanui in 1907, for example, he believed he was overpaying at £1 per acre, ‘that being the value put on the land by the Government valuer’. Rangitoto–Tuhua 21 and 51 were ‘cheap’ at 7s 6d per acre, ‘and if the Government put them into the market the timber alone would bring in a splendid profit’. Likewise, Rangitoto A land was ‘worth over £1 an acre’ but ‘[s]o far, the highest price I have paid is 15s per acre’.\textsuperscript{233}

From 1909, valuations were made under the Valuation of Land Act 1908, which required the valuer-general and district valuers to determine unimproved and total capital values for each property. Both were defined in terms of the value the property would be likely to receive if offered for sale on reasonable terms.\textsuperscript{234}

Before 1911, valuers commonly undervalued Māori land by as much as 20 to 25 per cent. This was attributed to the various additional costs involved in purchasing Māori land, such as locating owners, calling meetings, engaging interpreters, and determining what other lands owners possessed.\textsuperscript{235} The valuer-general, Frederick Flanagan, strongly opposed under-valuation and in 1911, vowed to stop it. Thereafter, according to the Te Urewera Tribunal, he ‘repeatedly urged on his valuers that Māori land must not be valued differently from Crown or freehold land’.\textsuperscript{236} In 1913, he issued instructions that all unimproved land in a district must be valued on the same basis, with valuations differing only according to variations in ‘the quality of the soil, situation, accessibility, configuration, or other natural peculiarities of each particular piece of land’. Ownership, in other words, was not to make a difference.\textsuperscript{237}

Although Flanagan opposed discrimination based on ownership, throughout the 1910s he nonetheless kept unimproved land valuations below the ‘speculative or boom values’ that private buyers might be prepared to pay. As he explained to the Valuation of Land Commission in 1915, land valuations were used not only for rating and taxation purposes, but also to determine (i) how much State agencies could lend on a property and (ii) how much the Crown should pay, either to buy

\textsuperscript{231} Document A73, p 548; see also Richard Boast, \textit{Buying the Land, Selling the Land, Governments and Māori Land in the North Island, 1865–1921} (Wellington: Victoria University Press, 2008), p 323.

\textsuperscript{232} Valuation of Land Amendment Act 1912, s 3.

\textsuperscript{233} AJHR, 1907, G–3A, pp 4–5.

\textsuperscript{234} Valuation of Land Act 1908, ss 2, 6.

\textsuperscript{235} Document A73, p 548; doc A61 (Hearn), p 119.

\textsuperscript{236} Waitangi Tribunal, \textit{Te Urewera}, vol 4, p 1610; doc A73, p 548.

\textsuperscript{237} Valuer-general, 13 September 1913, ‘Memorandum Explanatory of the Valuation of Land Act, 1908, and its Amendments’ (AJHR, 1915, B–178, px); Waitangi Tribunal, \textit{Te Urewera}, vol 4, pp 1604, 1610; doc A73, p 548.
Māori land or to take land under the Land for Settlements or Public Works Acts. Under these circumstances, he took the precaution of ‘keeping the values under what may be called the actual market value’.238

His comments came during a period of rapidly increasing land values, which were widely attributed to speculative activity, which did not last into the 1920s. In essence, he appears to have been holding official valuations at levels more consistent with a longer-term view of land prices, rather than the premium prices private buyers were willing to pay in a market bubble.339

14.4.3.2 Were Māori landowners able to negotiate prices on a fair basis?
The Te Urewera Tribunal found that Māori landowners 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’.240 The ‘real problem’, the Tribunal concluded, was the Crown’s purchasing methods. Where it was able to purchase without competition, it denied owners the opportunity to seek market prices. And where it was able to purchase individual interests, it deprived owners of the ability to bargain effectively.241

Before 1910, the bulk of the Crown’s purchases in Te Rohe Pōtae were from individuals. Competition was limited: owners could lease privately with the approval of the Waikato–Maniapoto District Māori Land Board, but they could not sell privately except with the consent of the governor in council.242

As William Grace paid the government capital valuation, he does not appear to have offered more. Rather, he made an offer at the capital valuation, and then waited until want or need of money wore the owners down. As he said of one block where the owners were unwilling to accept the Crown’s offer: ‘No doubt they will sell in the course of a little time; it only makes matters worse to show any great desire to buy.’243

After 1909, when private competition was permitted, the Crown made liberal use of orders prohibiting private alienation.244 As discussed in the preceding sections, the Crown purchased through meetings of assembled owners, from individuals, and occasionally directly from the Waikato–Maniapoto District Māori Land Board. How negotiations were conducted depended on who was involved, and on market conditions. The Crown’s typical approach was to offer government

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238. AJHR, 1915, vol 1, B-17B, p 16; Waitangi Tribunal, Te Urewera, vol 4, pp 1610–1611; doc A73, p 548.
239. Government valuations were rising rapidly in spite of Flanagan’s attempts to keep them below market levels. For example, from July 1912 to March 1916, the government valuation of Wharepuhunga rose by 50 per cent, from 10 shillings per acre to 15 shillings per acre. Similarly, from 1915 and 1921, the unimproved value of Kahuwera more than doubled, from £1,952 to £5,056, before falling back to £2,477 in 1928: doc A73, pp 468–469, 517; see also p 434.
240. Waitangi Tribunal, Te Urewera, vol 4, p 1611; see also pp 1645–1646.
242. Māori Land Settlement Act 1905, s 16; Native Land Settlement Act 1907, ss 7, 10.
243. AJHR, 1907, G-3A, p 5.
valuation, though on rare occasions it offered more if, in its view, the market value was above government valuation.

Many owner meetings failed to attract a quorum. Those that did typically rejected the Crown’s offer, with owners either voting against sale, or voting for sale at a much higher price, sometimes two or three times what the Crown had offered. The Crown’s responses to such rejections varied. Most often, it turned to individual purchasing at the level of its original offer, and gradually obtained enough signatures to acquire the property, or at least a significant proportion of it. Occasionally, it called the owners back to a meeting with a revised offer, based on a new valuation, at which point they sometimes sold but frequently did not.

Sometimes, the Crown walked away from negotiations, at least temporarily. Occasionally, if it was particularly motivated to acquire the land, it revised its offer, and owners (either individually or through meetings) might accept the new price. This was more likely to occur during the 1910s, when land values were rising rapidly and private competition was intense, and when the Crown’s original offer had been based on an outdated valuation. More often, the Crown simply waited.

Where the Crown turned to individual purchasing, this was quite explicitly a tactic to overcome majority opposition. In 1913, for example, the Crown’s land purchasing officer (Bowler) advised that owners would not sell at a meeting, ‘but if they can be dealt with individually it should be possible to acquire a considerable area.’

Some examples of how negotiations commonly progressed include:

- **Rangitoto A29**: in 1912, the Crown offered the owners £1 per acre. This was the government capital valuation, but the Waikato–Maniapoto District Māori Land Board regarded it as low. The owners rejected the Crown’s offer but indicated they would sell for £2. Negotiations continued for several years, with private buyers also making offers. In 1916, a new government valuation was issued at £2 per acre. When the Crown offered this price, a meeting of owners accepted it.

- **Wharepuhunga 15**: in 1913, the Crown offered to buy at government capital valuation. An owner meeting was called but lapsed without a quorum. The owners then applied for the block, which was vested in the Waikato–Maniapoto District Māori Land Board, to be re-vested. In 1917, the Crown issued an order in council prohibiting private alienation. The owners again...
rejected the Crown’s offer to buy at government capital valuation. The Crown turned to individual purchasing at the same price.²⁵⁴

> **Rangitoto–Tuhua 76B**: in 1920, the Crown offered to buy for the government capital valuation, which was a little over £1 per acre. The block was subject to an order prohibiting private alienation. The government valuation had been completed four years earlier, in 1916, and the Crown’s purchasing officer (Bowler) knew it was below market value as prices had risen considerably in the interim. Nonetheless, the owners were called to a meeting. Only three attended, thus failing to produce the quorum necessary for a sale. The Crown then turned to individual purchasing and acquired 31 of 49 shares. After November 1921, the Crown increased its offer to £2 per acre, and finally to 50 shillings, in order to acquire the final shares.²⁵⁵

As the last example suggests, the Crown sometimes made offers based on outdated valuations. In fact, this was common practice during the 1910s when land prices were rising rapidly. In Rangitoto–Tuhua 37B, for example, the Crown made an offer in 1913 based on the 1906 valuation, and it purchased Rangitoto–Tuhua 35B2 in 1917 at the 1913 capital valuation.²⁵⁶ This was exacerbated by the practice of acquiring individual shares over several years, since the purchase officer almost always stuck to the original offer even if the land value had increased considerably.²⁵⁷

When the board sold directly to the Crown, it almost always accepted the government valuation. As discussed previously, most affected properties were surrounded by or adjacent to Crown land, and of limited value to private buyers or lessees. In other words, previous Crown purchasing had reduced their value, and in some cases made them valueless. The board appears to have taken the view – as Māori owners sometimes did – that sale at government valuation was better than nothing.²⁵⁸

Overall, the prices paid by the Crown increased after 1910, reflecting rising land values and the requirement for the Crown to pay at least government valuation. Hearn calculated that, between 1906 and 1909, the Crown paid an average 9.9 shillings per acre for Te Rohe Pōtæ Māori land (a marked increase from pre-1905 prices).²⁵⁹ Between 1915 and 1922, both the Crown and private buyers routinely paid well in excess of £2 per acre.²⁶⁰

As land prices increased, protest decreased. Māori leaders, newspapers, and Members of the House of Representatives had regularly criticised the Crown for buying Māori land at bargain prices. After 1910, such criticisms became far less common.²⁶¹

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14.4.4 Treaty analysis and findings

After the brief cessation from 1900, the Crown carried out extensive purchases of Māori land from 1906, a decision that the Central North Island Tribunal found was ‘not taken in good faith’. As we discussed in chapter 13, this occurred even before the Native Land Commission had completed its audit and findings. Thus, we consider that the Crown’s actions in commencing purchasing in Te Rohe Pōtae were also not taken in good faith.

In subsequent years, the Crown progressively liberalised Māori land laws to allow for easier and quicker purchasing from a minority of owners. Between 1907 and 1909, it could buy interests or shares from individuals, just as it had in the 1890s.

The effect of the Crown’s purchasing methods was to roll back protections and undermine Māori collective control over land. In Te Rohe Pōtae, once the Crown had decided to buy land, it used whatever methods necessary to complete the sale, and paid scant regard to the collective wishes or interests of the owners. We agree with Hearn that its approach, at least in some of the larger blocks, can be characterised as ‘purchasing by attrition’. As noted by other Tribunals, the laws in operation between 1907 and 1909 were an effective return to the much-criticised 1890s practices adopted by the Crown.

From 1907 to 1909, the Crown amended its legislation so that it also had the option of purchasing through meetings of assembled owners or direct from the land boards. In theory, the former would have given Māori landowners greater control over decision-making as alienation required their collective consent. In reality, the assembled owner provisions were yet another means by which Māori landowners could potentially be disenfranchised. The low quorum for these meetings meant that a tiny minority of owners could override the putative wishes of the majority of the owners not represented at the meeting. For this reason, officials viewed owner meetings as a more efficient means of purchasing blocks with large numbers of owners.

Nonetheless, these provisions were, at first, still too onerous for the Crown. It found that, instead of providing a mechanism for simple and quick alienation of Māori land, owner meetings sometimes provided an opportunity for owners to readily reject the Crown’s offers. In response, the Crown simply amended the law in 1913.

After 1905, when the Crown was required to pay capital valuation, the prices paid for land in Te Rohe Pōtae increased sharply. Nonetheless, the Crown continued to promulgate orders in council prohibiting private alienation. When it did so, it protected its own interests while denying owners the opportunity to seek market prices. The Crown’s use of individual purchasing, meanwhile, deprived owners of the ability to negotiate prices effectively as a collective.

263. Document A73, p 539.
The Tribunal has previously found that provisions in the Native Land Act 1909 for ensuring that owners retained sufficient land for present and future needs were wholly inadequate and poorly enforced. In Te Rohe Pōtae, the Crown paid little heed to even these minimal protections against landlessness. Indeed, Crown officials scarcely considered landlessness before they made purchase offers.

Ultimately, the Crown took little account of the wishes or interests of Te Rohe Pōtae Māori landowners as it went about purchasing their land. It purchased extensive areas of vested land directly from the Waikato–Maniapoto District Māori Land Board, without involving owners at all. It purchased beyond the 11,000 acres that the commission had recommended for retention. Even when the commission recommended in June and July 1907 that it should cease purchasing in the district, the Crown continued to buy.

Previous Tribunals have found that the Crown’s land purchasing laws, policies, methods, and tactics, what the Te Urewera Tribunal referred to as ‘the Crown’s purchase machine’, breached the Treaty on numerous occasions throughout the twentieth century. These findings are applicable to Te Rohe Pōtae as the activities and legislative provisions employed by the Crown were also widely used in this district. These activities and legislative provisions undermined collective control of Māori land and allowed the Crown to manipulate the purchasing process, making purchases using the quickest and easiest method while bypassing communal opposition, and escaping the need to compete on the open market for purchases.

Accordingly, we find that the Crown did not adequately protect the Treaty interests of Te Rohe Pōtae Māori landowners. Its actions, policies, and legislation were inconsistent with a number of Treaty principles, namely: the principles of partnership and mutual benefit, its guarantee of Te Rohe Pōtae Māori tino rangatiratanga, and its duty of active protection. It also acted in a manner inconsistent with its duty to act honourably and in good faith. This was achieved as follows:

- by commencing the purchasing of Te Rohe Pōtae land without permitting the Native Land Commission to complete its audit and recommendations;
- by failing to provide a fair and proper system for groups of owners to make collective decisions about their land;
- by purchasing through meetings of assembled owners without first ensuring that a majority of owners were able to attend and allowing purchases to proceed without the consent of those owners;
- by purchasing undivided shares in communally owned land from individuals;
- by purchasing vested land directly from the Waikato–Maniapoto District Māori Land Board without ensuring that owners consented;
- by imposing orders in council prohibiting the private alienation of Māori land;
- by purchasing land that the Native Land Commission had recommended for retention or lease without ensuring that the owners consented to the sale;
- by failing to ensure that Māori landowners were able to negotiate collectively over sale prices; and

by failing to take reasonable steps to ensure that Māori communities retained sufficient land for their present and future needs, and by purchasing without sufficient regard for those needs.

The consequences of these breaches were significant. Having already acquired 933,637 acres of Te Rohe Pōtae land before 1905, the Crown purchased another 168,699 acres between 1905 and 1909, and a further 179,709 acres between 1910 and 1922. With each new phase of purchasing, a significant portion was removed from the tribal estate.

14.5 Did the Crown Ensure that the Waikato–Maniapoto District Māori Land Board Adequately Protected Māori Landowners’ Treaty Interests in Respect of Leasing and Purchasing?

The Native Land Act 1909 and its amendments gave Māori land boards roles in the alienation and administration of Māori land, both vested and non-vested. In respect of some Crown purchases and all private alienations, the boards were responsible for ensuring that owners would not become landless as a result of an alienation (whether by lease or sale). In respect of private alienations, once approved, the boards collected and distributed income. They were also empowered to hold back income and use it to assist private purchasers. This section examines how it exercised each of these duties. As discussed in chapter 13, the land boards were not acting on behalf of, or were not agents for, the Crown in terms of decisions concerning what lands were available for sale or lease. However, in terms of approving alienations, the administration of sale proceeds and lease rentals, and other functions, the Crown was still responsible for monitoring their performance.

The claimants submitted that the Waikato–Maniapoto District Māori Land Board ‘played a key role in the administration of lands owned by Maori’. Its conduct ‘fell below a Treaty compliant standard’ in respect of ‘its performance as trustee for land owners, the distribution of purchase monies and rents to beneficiaries, and the management of money belonging to Maori’. The board, moreover, ignored the requirement to ensure that no Māori be rendered landless by an alienation, ‘with no explanation as to why’. The Crown did not directly respond to the claimants’ concerns about the Waikato–Maniapoto board’s role with respect to non-vested land. It accepted, however, that the board faced resourcing issues, and that inadequate staffing resulted in ‘work falling into arrears owing to the amount of administrative work required’.

This section begins by examining how the board exercised its duties to approve Crown and private alienations. It then evaluates the board’s performance in collecting rents on privately arranged leases, before finishing by considering how the board used owners’ money to facilitate private purchasing.

266. Document A21, p 128.
268. Submission 3.4.112, p 19.
269. Submission 3.4.304, pp 37–38.
14.5.1 Approving alienations
14.5.1.1 Crown purchases
Where the Crown purchased land through meetings of assembled owners, the Waikato–Maniapoto District Māori Land Board had to confirm that the purchase would not render any of the owners landless.\(^{270}\)

In practice, the board conducted only cursory checks to determine whether owners had other lands, either by asking the Crown or by searching its own files. Such checks were based solely on paper records and took no account of the usefulness of any remaining lands. Resolutions were confirmed, for example, when all of the 'other lands' were vested and returning no income, or were targeted for Crown purchase, or both.\(^{271}\) It also appears that the Crown routinely sought to persuade or pressure the board to provide quick confirmation, and to do so on the basis of limited information.\(^{272}\)

One example was the purchase of Rangitoto–Tuhua 38A5, during which the Crown pressured the board to confirm alienation in spite of the board’s uncertainty that the owners had sufficient other lands. The Under-Secretary of the Native Department informed the Waikato–Maniapoto District Māori Land Board that delays in confirmation were ‘interfering . . . with other Crown Lands purchases in that locality’.\(^{273}\)

Likewise in 1916, the Crown purchased the Wharepuhunga Reserve, which had been set aside for the owners after the purchase of Wharepuhunga 1 in 1894; the reserve was then vested in 1909 after the Native Land Commission recommended it be set aside for lease.\(^{274}\) On that occasion, the purchase officer (Walter Bowler) reported that the ‘other land’ requirements would be difficult to overcome, indicating there was no clear evidence that owners had sufficient other lands for their maintenance.\(^{275}\) Nonetheless, Bowler said ‘I intend to suggest that the peculiar circumstances – this being a block handed back to the natives out of the original Crown purchase – warrant the Board in taking a lenient view’.\(^{276}\) It was not clear why, when the block was a reserve and there was doubt about whether the owners had sufficient other lands, the board should take a ‘lenient’ view. The block had more than 370 owners,\(^{277}\) of whom a handful had offered the land for sale so it could be given to Ngāti Raukawa returned soldiers.\(^{278}\) Although many owners

\(^{270}\) Native Land Act 1909, ss 349, 373.


\(^{272}\) For example, see doc A73, pp 186, 420–421, 469–471.

\(^{273}\) Under-Secretary to president, Waikato–Maniapoto Māori Land Board, 9 July 1915 (doc A73, p 421); doc A73, pp 420–421.

\(^{274}\) Document A60, pp 1241–1242, 1256; doc A73, pp 185–188; ‘Declaring Land to be Subject to Part I of “The Native Land Settlement Act, 1907”, 14 December 1909, New Zealand Gazette, no 105, p 3248; AJHR, 1907, G–1D, pp 1–2.

\(^{275}\) Native land purchase officer to Under-Secretary, 25 October 1916 (doc A73(a), vol 17, p 34); doc A73, p 186.

\(^{276}\) Native land purchase officer to Under-Secretary, 25 October 1916 (doc A73(a), vol 17, p 34); doc A73, p 186.

\(^{277}\) Document A73(a), vol 26, p 371; see also doc A73(a), vol 17, p 45.

\(^{278}\) Document A73(a), vol 17, p 47; see also pp 29, 42; AJHR, 1907, G–1D, p 2.
lived on the Kāpiti Coast, the Crown’s purchase offer was put to a meeting at Kihikihi. It is unknown how many owners attended, nor what the vote was, but at least seven dissented.

Again, the Native Department pressured the Waikato–Maniapoto District Māori Land Board to make a quick decision. The board initially delayed, hoping ‘some of those who had dissented might acquiesce in the sale’. Then, when other owners asked that their interests be partitioned out, it refused on grounds that they had not used the correct form. Subsequently, the board confirmed the sale of all interests except the seven dissenters, making no mention of the ‘other land’ provisions. The Crown then purchased the remaining interests from the individuals concerned.

There appears to be ‘no evidence in the files examined to indicate that the Crown sought to establish why the Wharepuhunga Native Reserve had been created originally, whether the reasons for such establishment remained, or whether any of the owners would be rendered landless as a result of the sale.’

As yet another example, in 1917 the Crown applied for confirmation of its purchase of Wharepuhunga 19. The board was initially reluctant, as it knew little about owners’ other lands, and asked the Crown to provide those details. The Native Department tersely informed the board that Bowler was too busy and asked the board to gather the information itself.

Nonetheless, Bowler soon wrote to the board, referring to the Native Land Commission’s 1907 recommendation that the block be sold. The commission had reported that Ngāti Tūwharetoa owners had ‘a sufficiency of other lands of a similar quality in the Taupo District’ and were therefore unlikely to ever use the block. The commission’s report had been published a decade earlier, based on limited consultation with the block’s owners. It cannot have provided reliable information about the land interests of all 138 owners in 1913. Nonetheless, it was enough for the board. A day after receiving Bowler’s letter, it confirmed the resolution for sale.

14.5.1.2 Private sales and leases

The board had a wider range of tests to apply in respect of private sales and leases. Under the Native Land Act 1909, no alienation to a private purchaser, regardless of the number of owners, had any effect until confirmed by a Māori land board.
The board could only confirm an alienation if it was satisfied, among other things, that: the alienation was not ‘contrary to equity or good faith, or to the interests of the Natives alienating’; that no owner would become landless by virtue of the transaction; that the consideration (ie rent or purchase payment) was adequate; and that the alienation was not a breach of any trust. In determining the adequacy of rent or purchase payment, the board was required to refer to the government capital valuation in effect at the time, or it could ask for a special valuation.

These provisions offered only limited protection: ‘landlessness’ was not defined, except by reference to owners retaining sufficient land for their ‘adequate maintenance’ – a phrase that suggested little more than subsistence. No provision was made for development rights, still less for cultural relationships with land or the needs of future generations. Furthermore, under section 220 the board’s decision was not subject to appeal or review and could not be invalidated ‘on the ground of any error or irregularity in the procedure by which it was applied for or granted’. In other words, an alienation would stand even if it later transpired that the board had been supplied with incorrect information or had failed to make proper checks.

As the 1910s progressed, the protections were weakened further. The Native Land Amendment Act 1913 allowed land to be alienated even if an owner would be left landless, if the land being alienated was unlikely to be a ‘material means of support’, and if the owner had a trade or some other means of livelihood.

The Waikato–Maniapoto District Māori Land Board applied these tests in a perfunctory and limited manner, which allowed it to remain on top of its caseload but provided little real protection for the owners. Confirmation of private sales was, in essence, a paper-based exercise, in which the board ticked off the relevant requirements, on the basis of very limited evidence, typically provided by the aspiring buyer or lessee. According to Hearn, ‘so long as the required information was supplied – block, area, valuation, consideration, and other lands – the Board was disposed to approve applications without further inquiry’.

Some attention was given to other lands, and to adequacy of consideration. But it was rare for any genuine inquiry to be undertaken into the equity and good...
faith tests, or whether the alienation was in the owner’s interests. In respect of payment, the board took account of government capital valuation, and imposed that as the minimum sale price. The government valuations were ‘conservative’ and private buyers were frequently willing to pay considerably more. Landlessness was considered, but not in a way that truly protected owners’ interests. Hearn stated:

Confronted after 1909 with a growing flood of applications for confirmation, the Waikato–Maniapoto Maori Land Board devised a procedure intended to simplify and expedite the process: its elements included setting a flexible minimum area of land which each vendor should retain, requiring purchasers to prepare schedules setting out ‘other lands,’ and declarations.

Although it was the purchaser who provided these schedules, there was no evidence that they were checked or audited in any way. Rather, their content was apparently taken at face value, and used to justify (in aggregate) the alienation of hundreds of thousands of acres of land.

The schedules provided information about the amounts of ‘other land’ held by each seller, and whether they lived on the land or not. But other relevant factors such as land quality or tenure were dealt with only if it lent weight to the argument for sale.

An area of about 30 acres was generally considered sufficient ‘other lands’, though this was applied flexibly and, by the 1920s, had fallen to about 20 acres.

By way of comparison, the Māori Land Settlement Act 1905 had defined Māori as landless if they held less than 25 acres of first-class land, or 50 acres of second-class, or 100 acres of third-class land. And as was the case with Crown purchases, the board showed little interest in whether ‘other lands’ could actually contribute to the seller’s livelihood. Vested land was counted even if it was returning no income and was itself likely to be sold. Nor was the board concerned with the number and location of the other lands. Thirty acres spread across five or six blocks could be considered sufficient (as it was for four of the 17 owners of Otorohanga when the board confirmed the sale of that block in 1919). That was the case even if the other blocks were landlocked or of poor quality, and therefore never likely to return an income.

300. Document A73, p 599.
304. Māori Land Settlement Act 1905, s 22.
305. Document A73, pp 597, 600.
Even if owners clearly had very little in the way of other lands, the board would confirm a sale – in accordance with the 1913 amendments\(^\text{307}\) – if they were not living on or otherwise using the land, if it was be useless for cultivation, or if the owner had a job or was married to someone who did.\(^\text{308}\)

We refer to Kakepuku 4C as an example of a non-vested property of 102.25 acres owned by seven people. Five of the owners had only fragments of other land, totalling just a few acres each. But a Pākehā storekeeper declared that two of the five had contracting or labouring work, and the others lived with their grandmother and were ‘well clothed and cared for’, though not yet old enough to earn their own living. This, to the board, was sufficient to justify confirmation of the proposed sale.\(^\text{309}\)

Where land was being leased, the board never appears to have considered whether owners were retaining sufficient land for their ‘adequate maintenance’ or otherwise had adequate means of livelihood.\(^\text{310}\) In one case, the board was unwilling to overturn a lease on Te Karu o Te Whenua B2B8, despite being repeatedly informed that one of the block’s two owners, Te Ahihurahura, was a deaf mute according to her grandson and had signed the lease without understanding it. She – along with her husband and five children – would be left landless if the lease went ahead. The owner’s husband made several written submissions on her behalf, but the board dismissed them because he failed to appear in person at Te Kūiti when summoned to do so.\(^\text{311}\)

### 14.5.2 Collecting rents on private leases

Under the Native Land Act 1909, Māori land boards had no responsibility for collecting rents on privately leased land, or for enforcing terms and covenants. Once a board had confirmed a lease, its duty was done.\(^\text{312}\) However, the Native Land Amendment Act 1913 allowed private lessees to pay their rents (along with a commission) to a Māori land board, leaving it to the board to make payments to the owners.\(^\text{313}\) In practice, the board began to insist, when confirming sales or leases, that any payments exceeding £50 must be made to it. It was a response to instances of buyers or agents falsely claiming to have made payments to owners; one interpreter had been convicted of fraud.\(^\text{314}\) The 1913 Act did not empower boards to sue for and recover rent arrears on land leased through meetings of assembled owners; they only gained such powers in 1920.\(^\text{315}\)

\(^{307}\) The Native Land Amendment Act 1913 (section 91) provided that land could be sold if it was unlikely to be a ‘material means of support’, or if the owner had some other means of livelihood.

\(^{308}\) Document A73, pp 600–601.

\(^{309}\) F J Rothwell, declaration (doc A73, pp 603–604).

\(^{310}\) Document A73, pp 596–597.

\(^{311}\) Document Q13(a) (Wi Repa document bank), pp 67–79; submission 3.4.172, pp 16–17, 22.

\(^{312}\) Document A73, p 578.

\(^{313}\) Native Land Amendment Act 1913, s 103; doc A73, p 623 n

\(^{314}\) Document A73(a), vol 4, pp 265–266.

\(^{315}\) Native Land Amendment and Native Land Claims Adjustment Act 1920, s 5; doc A73, p 578.
In practice, the Waikato–Maniapoto District Māori Land Board appears to have been scarcely more effective at collecting rents for privately leased land than for vested lands. Rent arrears on non-vested lands became a problem during the First World War. By 1916, the board was collecting rents on just over 20 non-vested properties that had been leased through meetings of assembled owners, who were collectively owed almost £2,000 in back-rents. Outstanding rents declined slightly after 1916, following enforcement action, but grew again during the 1920s, reaching £3,950 by September 1927 and £9,206 in November 1932. By that time, arrears had become a far larger problem on private leases than on leases of vested land.

As with vested lands, the board appears to have been reluctant to move against lessees who fell into difficulty, for fear they would abandon the land altogether, and leave the owners out of pocket. Certainly, Hearn found no evidence of ‘systematic and sustained’ attempts to recover rents for either private or vested lands. The board’s reluctance grew in the late 1920s, as some lessees abandoned their lands or fell into bankruptcy – the board’s registrar concluding that ‘where there is no demand for the properties nothing is gained by re-entry’.

### 14.5.3 Using owners’ money to facilitate private sales

One of the Waikato–Maniapoto District Māori Land Board’s more dubious uses of Māori landowners’ money was to lend it to the people buying their land. When proposed sales were brought before it for confirmation, it sometimes decided to assist the buyer by granting a mortgage, funded from the purchase money.

The sellers, instead of receiving the full purchase price, would receive only a down payment, with the rest to be paid off (with interest) over several years. In effect, the board was extending to private sales the principle that already applied to vested lands, under which private buyers were allowed to make a deposit of 10 per cent and pay off the rest over 10 years.

Hearn provided the example of Pukenui 2T3, which was sold in 1919 for £26,765. Without consulting the Ngāti Rōrā owners, the board agreed to leave £18,000 in the property on mortgage for a period of five years, at annual interest of 6 per cent. The board claimed authority for this action under section 92 of...
the Native Land Amendment Act 1913. It allowed the board, when confirming a
sale, to require that the purchase money be paid to it and not the owners. The
board could then invest the money on the owners’ behalf. But it could only do so
if it considered the owners’ interests would not be served by them receiving the
purchase money directly.327

The scheme was devised by lawyers for one of the buyers (John Somerville)
after it was discovered that he did not have sufficient security to complete his
purchase.328 The board simply informed the owners of the arrangement, without
giving them any opportunity to comment.329 During the 1920s, the former owners
protested repeatedly to the board and the Government, not only because they
were missing what was owed to them but because they needed it for other pur-
poses.330 Te Rou Te Rata, for instance, was hoping to have his share to complete
a house; Ereni Ngatai, meanwhile, wanted to improve her 89-acre farm.331 The
board was dismissive, arguing that they were better off with the money invested
in Somerville’s mortgage (which was supposed to earn annual interest of 6 per
cent)332 than investing it themselves.333 The Native Department responded by advis-
ing them to apply for a mortgage from the board or the State Advances Office.334

For the first year or two at least, it appears that Somerville made his payments.
But by 1922 he was falling behind, and by 1924 he was seeking a reduced interest
rate to avoid defaulting entirely. The board was reluctant to act, believing that any
attempt at recovery would force him to default.335 Meanwhile, the former owners
had contacted Māui Pōmare, now a government minister, for support. In April
1924, Pōmare wrote to the Native Minister, urging the release of the money and
saying the former owners wanted to improve and stock their farm. Access to the
money was ‘all the more necessary owing to the fact that they were unable to
obtain a loan from the State Advances Office.’336

The Native Minister was sympathetic, being of the view that ‘the attempt of
these Natives to farm their lands should not become abortive for want of a little
encouragement and financial help which their own moneys could provide.’337 In
June, the board agreed to advance 12 of the owners 80 per cent of what they were
owed. The other six owners got nothing, as the board did not believe they would

327. Native Land Amendment Act 1913, s 92.
332. Document A73, pp 632, 635, 638, 640, 646, 654 n
MacCormick responded that the board had ‘done extremely well by these natives’ (emphasis in ori-
ginal): president to Under-Secretary, 30 September 1922 (doc A73(a), vol 9, pp 224–225); doc A73,
p 636.
336. Pōmare to Native Minister, 1 April 1924 (doc A73, p 637; doc A73(a), vol 9, p 212).
337. Under-Secretary to Judge MacCormick, 15 May 1924 (doc A73, p 637; doc A73(a), vol 9, p 209).
invest profitably. In July 1925, one of the owners complained again, pressing for repayment of the full amount owing: ‘We do not see why we have to get loans for the purpose of making improvements to our farms when we have this money due to us by the Board.’ Furthermore, she said, the money owing to them had been lent out without their knowledge or consent.

After Somerville died in January 1927, the board allowed the trustees for his estate to continue farming. A sum of £1,600 was repaid and distributed to the owners, leaving another £1,600 plus interest outstanding. The trustees then also fell into financial difficulty. By 1930 a sum of £1,630 was still owed to the former Pukenui 2T3 owners. One of them, Atiria Te Rata, wrote in exasperation that she had contacted the board repeatedly, seeking her share, but to no avail. She continued:

I am quite aware that this state of affairs is quite common in the Waikato Land District. (As far as my people are concerned they [the land board] are all powerful) it being quite useless to question their decisions, backed up as they are by ‘Acts’ which were supposed to be in our best interests, but which are really impediments to progress, a brake on the industrious Native and certainly discouraging to those of our race who want to farm their lands in the latest and most up to date methods.

The situation was finally resolved in 1930. The board took over Pukenui 2T3, paying off a private second mortgage on the property and retaining the rest as payment for its original mortgage. The outstanding money was distributed to the owners, more than 13 years after the land was sold, and the property was incorporated into the Te Kūiti Base Farm. The board’s efforts to farm the land itself proved unsuccessful and the Department of Native Affairs took over (formalised under section 4 of the Native Land Amendment Act 1936).

This was far from an isolated case. The board had six other mortgagees facing financial difficulty in 1928, with a combined sum owing of £22,500. Of that, the board had advanced £7,850 to the owners, leaving a further £14,650 (plus interest) to be repaid. As well as Pukenui 2T3, the properties were Rangitoto A47B, Rangitoto–Tuhua 35G2B, Rangitoto–Tuhua 72B2B, Rangitoto–Tuhua 72B3B, Umukaimata 3B2A, and Umukaimata 3B2B.

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338. Document A73, pp 638–639. Receipt of the advances involved expenses for the owners, who traveled from their homes to Te Kūiti every day for a week, looking for the native agent, as the board had required that payment be made in his presence. It had done this to ensure the owners paid the agent his commission and expenses: doc A73(a), vol 9, pp 194–198; doc A73, p 639 n 339. Ereni Ngatai and others to Pōmare, 23 July 1925 (doc A73, p 640; doc A73(a), vol 27, p 178).
342. Atiria Te Rata to Broadfoot, 1 February 1930 (doc A73(a), vol 9, p 154); doc A73, p 644.
The Native Department had been aware of these loans from at least the early 1920s, but advised the Minister that ‘investment of Section 92 moneys is wholly at the discretion of the Board’, and it would therefore be unwise to intervene.\(^{347}\) By the mid-1920s, apparently in response to lobbying by Maui Pōmare,\(^{348}\) the Minister became concerned about these loans and urged the board to call in debts and pay the former owners.\(^{349}\) In 1925, a statutory amendment allowed the Minister to direct Māori land boards to repay section 92 loans.\(^{350}\) Three years later, the Minister used these powers, directing the board to pay out 90 per cent of the outstanding balances owed to the owners of all seven properties, and to retain the rest to pay rates and other costs on their other lands.\(^{351}\)

One of the notable features of these section 92 loans is the extent to which they were used by existing landholders to acquire more land, apparently for speculative purposes. John Somerville and other members of his family had established a land-buying company in 1907, added Pukenui T in 1919, and also owned an ironmongery and properties at Te Kumi and Wairoa. By the time of his death, all were heavily mortgaged.\(^{352}\)

But the Somervilles’ land dealings were far less complex than some others who benefited from the board’s loans. In particular, Hearn referred to ‘the Maungarapa Syndicate’, involving the Te Kūiti solicitors Broadfoot and Findlay, and farmer Robert Were.\(^{353}\) In 1919, the board granted Robert Were a £3,030 mortgage on his acquisition of Rangitoto–Tuhua 72B.\(^{354}\) Two years later, Were received another £4,400 as a second mortgage on two properties in the Maungamangero survey district.\(^{355}\)

Although Were claimed the latter arrangement was intended to fund improvements on the properties, he instead siphoned the money into various speculative land transactions involving William Broadfoot, later mayor of Te Kūiti and the member of Parliament for Waitomo.\(^{356}\) Most of the money was used to pay off a bank loan on a property the syndicate had previously purchased. Having paid off

\(^{347}\) Under-Secretary to Native Minister, 18 February 1922 (doc A73(a), vol 9, p 240); doc A73, pp 633–639.
\(^{348}\) Document A73, pp 637, 639–642.
\(^{349}\) Document A73, p 637; see also doc A73(a), vol 9, pp 204, 209, 210, 212.
\(^{350}\) Native Land Amendment and Native Land Claims Adjustment Act 1925, s 3: ‘Where moneys have been paid to a Board under section ninety-two of the Native Land Amendment Act, 1913, and notwithstanding that the same may have been deposited with the Native Trustee or otherwise invested by the Board, the Native Minister may direct in writing under his hand that the whole or any part of the moneys so paid to a Board shall be paid over to the beneficiaries or any of them, or to any person appointed by any such beneficiary and approved of by the Native Minister, and thereupon the Board shall accordingly pay any amount so directed to be paid out of the funds in the account established by section thirty-five of the Native Land Amendment Act 1913.’
\(^{351}\) Document A73, p 650.
\(^{352}\) Document A73, pp 642 n, 645, 645 n
\(^{353}\) Document A73, p 652; doc A73(a), vol 8, p 388.
\(^{355}\) Document A73(a), vol 27, pp 211–212–217. Hearn referred to this property as Mangaorongo survey district: doc A73, p 635.
\(^{356}\) Document A73, p 648.
Case Study: Kahutopuni Ripeka Ngatai

One of the owners affected by the board’s facilitation of private purchasing was Kahutopuni Ripeka Ngatai, otherwise known as Granny Burgess, about whom a number of witnesses gave evidence during hearings.  

Born in 1885 of French and Māori (Ngāti Raerae) descent, she lived at Ōngarue. There she farmed some of her land with her Pākehā husband, Michael Christian Burgess (usually known as Chris). In 1919, she decided to sell some of her other land interests (including in Pukenui 273 and Rangitoto–Tuhua 72B2), apparently with a view to using part of the proceeds for further development of the farm. The sale yielded her almost £4,136 but the money went to the Waikato–Maniapoto District Māori Land Board, which – according to the 1934 Commission on Native Affairs – invested most of it ‘on securities which proved unsatisfactory’. By the end of 1919, Mrs Burgess had received only £586 19s 1d. Further payments arrived in dribs and drabs over the next few years, but by March 1928 she had still received less than a third of the money owing. Then, in August 1928, the board discharged a mortgage of £1,340 1s to the Māori Trustee, offsetting it against the money owing to her. She also received a cash payment of £1,000 from the board the following month. This was, however, more than nine years after the sale of the land, and the board still held more than £500 that it had not yet paid over.

In August 1931, her husband wrote to the Native Minister. This seems to have triggered an inspection of their farm and a suggestion that it be placed in the Waimiha Development Scheme; in return, the board would pay them the money owed. They declined.

Over the months that followed, Mrs Burgess and her husband made ‘numerous applications’ to both the board and the department for the outstanding money that loan, the syndicate then sold. However, before the transfer was registered, the syndicate appears to have used the freehold property to borrow more from the board.

Of the money that Were did not use in this scheme, he loaned several hundred pounds directly to Broadfoot, who used it in another speculative land transaction.

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1. See, for example, doc L19 (Brown); doc Q6 (Burgess); doc Q30(b) (Rata).
3. AJHR, 1934, G-11, p 156.
4. AJHR, 1934, G-11, p 156.
5. Document L19, p 5; AJHR, 1934, G-11, p 157 (doc L19(b), p [3]).

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to be paid to them. On 22 April 1932, the registrar wrote saying the board had no available funds from which to pay. Mr Burgess then travelled to Wellington, to seek an interview with the Prime Minister. Failing in that objective, he tried to speak to the Native Minister. According to a subsequent statement from Mr Burgess, the Minister said he ‘did not wish to hear anything about it, and . . . proceeded to examine his correspondence’.6

In August 1933, and after a string of further interchanges between the Burgesses, officials, and Ministers, the board forwarded ‘£100, £75 on a/c principal and £25 rents’. There was still money owing and Mr Burgess instructed his solicitor to contact the registrar. The approach was brushed off: the registrar informed him, among other things, that ‘Mrs Burgess was a rangatira and over generous in spending any money she received from the Board’.7

It is pertinent to note here that Granny Burgess was in a rather better financial position than her whanaunga who lived close by. She also liked to maintain a certain style: her granddaughter has commented, for example, that she was known for her high standards of English etiquette. But she was clearly hard-working: in addition to the farm, she kept chickens, she had a big garden and an orchard from which she picked and bottled fruit, she baked, and she wove.8 In the circumstances, if she was generous to others it seems unlikely that it was from extravagance or profligacy. The case of Granny Burgess finally came to the attention of a Commission on Native Affairs. After fully investigating the facts, the commission concluded that it was ‘a striking example of the hardship caused to a Native beneficiary of the Maori Land Board . . . by the inability of the Native Trustee to honour his obligations though they are guaranteed by the State’. They found that ‘Mrs Burgess has just cause for complaint, and that the payment she asks should be made to her without delay’.9 It was now 1934, and 15 years had passed since the original sale of the land.

7. AJHR, 1934, G-11, p 158 (doc L19(b), p [4]).
9. AJHR, 1934, G-11, p 158 (doc L19(b), p [4]).

which later crashed.358 Broadfoot was one of the district’s most vocal advocates for the rights of Pākehā lessees.359 In addition, Were’s son appears to have used a loan from the board to acquire the leases of several Pehitawa properties. Broadfoot arranged this, charging £3 per acre ‘goodwill’. Were’s son repudiated the deal

when he discovered that the seller was a ‘dummy’ acting on behalf of Broadfoot’s brother.360

By 1928, Were and his sons owed the board at least £6,300. With land prices collapsing, they had no way of paying. In 1928, Native Minister Coates, acting on the board’s advice, accepted a deal under which the debt was reduced to £4,000, with no interest for three years.361 Eight years later, the board accepted a further reduction, to £2,500 at 4.5 per cent interest.362

In Hearn’s view, as well as holding back money that rightly belonged to Māori landowners, the board, by making these loans, had contributed to the speculative excesses that led to the difficulties of the 1920s.363

14.5.4 Treaty analysis and findings

The Waikato–Maniapoto District Māori Land Board applied only a cursory, paper-based approach to assessing whether land transactions were in Māori interests. The board’s measurement of ‘landless’, moreover, was easily overshadowed by the Crown’s demands to confirm alienations and the pressures of responding to the demands of private purchasers. By the 1920s, an area of about 20 acres was generally considered sufficient ‘other lands’ to meet the needs of owners, with no or limited recognition given to the needs of future generations. The board was, as we have already found in chapter 13, poorly resourced and qualified to perform its many roles. In short, the protections afforded to Māori landowners by the land board were entirely inadequate, which the Crown exploited to its own advantage in the purchase of Māori land.

The Waikato–Maniapoto District Māori Land Board continued to have a role in administering lands after approving sales and leases, particularly in income distribution. When the board was charged with collecting payments on behalf of owners and paying out to them or investing on their behalf, it was placed in a relationship of trust. It did not adequately discharge its responsibilities created by the relationship. It was neither efficient nor forceful at collecting income on behalf of owners.

Nor was its approach to investment either prudent or consistent. It invested money on owners’ behalf without consulting them and in contravention of their express wishes. It was lax in its investments, lending money out to Pākehā who subsequently used it for speculative purposes. And it resisted requests by Māori landowners for it to call in its loans and pay out what was owed. Some of this imprudent lending led to financial losses which the owners ultimately bore.

We found in chapter 13 that the Crown breached the duty of active protection by failing to adequately oversee the Waikato–Maniapoto District Māori Land Board’s administration of vested lands, in particular by failing to ensure that the board collected income and distributed payments in a timely manner and invested

owners’ funds prudently. This finding applies equally to its administration of non-vested lands.

The Crown pursued a deliberate policy of seeking the rapid transfer of land from Māori to settlers. It did this through its purchasing of land and through the legislative framework it implemented from 1907 to 1909. The Native Land Act 1909, and its amendments, were further intended to encourage land sales, both to the Crown and to private parties, and it did so. The Act played a central role in moving considerable amounts of Māori land into Pākehā hands.364 In all, nearly 740,000 acres of Te Rohe Pōtae Māori land was sold to both the Crown and private parties during the period 1905 to 1950.365

By omission, through failing to adequately monitor and correct the legislative powers of the Waikato–Maniapoto District Māori Land Board, and by deliberate actions whereby it used the board’s processes to its advantage, the Crown acted in a manner inconsistent with the Treaty principles of partnership and mutual benefit, whereby the Crown was given the right to govern in exchange for the guarantee of tino rangatiratanga in article 2. The Treaty envisaged that both would benefit from this exchange and yet what happened during this period was a continuation of the Crown pursuing its own agenda to acquire as much land as possible for Pākehā settlement.

The land boards were not enabled to ensure they performed all their functions (particularly those that might have benefited Māori), including ensuring Te Rohe Pōtae Māori retained sufficient land to meet their needs, and clearly no monitoring in Treaty terms was provided. As a result, Te Rohe Pōtae Māori lost land and the Crown was directly and indirectly responsible through its legislative scheme and its actions. Therefore, we also find that the Crown failed to actively protect Te Rohe Pōtae Māori authority over their lands and to protect the land itself.

14.6 Did the Crown and the Waikato–Maniapoto District Māori Land Board Elevate the Interests of Lessees over those of the Māori Landowners?

Settler farmers who paid inflated prices to purchase or lease land during the late 1910s could carry their debts only so long as markets remained buoyant. The position of many lessees was complemented by the Crown’s legislative regime under the Native Land Act 1909, which granted to lessees of Māori land the limited right to compensation for improvements under sections 263 to 265. Those who negotiated the terms of their leases outside the regime may not have enjoyed the same benefits.

In the 1920s, all the lessees were hit by a series of setbacks. First, markets became volatile, with commodity prices falling in 1921, 1926, and again in 1929, the last of

these heralding the Great Depression. Secondly, many Te Rohe Pōtae farmers discovered that their lands were less fertile and harder to maintain than they had expected. Some were able to ride out this combination of falling prices and limited production. Others struggled, falling behind in rents or mortgage payments and, in some cases, walking off.

Their difficulties tested the Crown. For three decades, settlement of land had been a paramount policy objective. Now that farmers’ livelihoods were threatened, it had to determine whether to assist them, and if so how, and – in the case of lessees – how their demands for aid might be balanced against the rights of the owners.

In the claimants’ view, the Crown consistently favoured settlers over Māori landowners. In the land rush of the 1910s, it failed to protect Māori collective authority over, or possession of, land. And, when the land bubble burst, it protected some Pākehā farmers from their own imprudence by pushing the costs onto Māori landowners. The Crown submitted that its appointment of a commission of inquiry in 1928 was a reasonable response to the lessees’ issues. It further submitted that ‘it is understandable that reduction of lease rentals took place in time of economic difficulty’ and that retaining existing lessees led to fewer losses than ‘obtaining a new lessee when there was probably little demand for land.

### 14.6.1 Lessee pressure and initial Crown responses

Throughout the 1920s, a number of lessees complained that their rents were excessive and that they could not afford to remain on their farms, still less to invest in improving the land. Rising production costs and fluctuating commodity prices were factors in their difficulties, but so too were the very high levels of debt that many private lessees had taken on during the previous decade’s land boom. Some had paid excessive amounts of ‘goodwill’ to buy leases from other Pākehā in the late 1910s, and many had added mortgages to buy stock, burn off bush, build fences, or otherwise improve their farms.

It was furthermore becoming apparent in the 1920s that many of the district’s settlers had overestimated the productive capacity of the district’s land. They were discovering that much of it had limited fertility without expensive fertilisers, and quickly reverted to fern and scrub unless very intensively managed.

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369. Submission 3.4.112, pp 33; submission 3.4.151, pp 49–50.
So long as the world continued to buy high volumes of New Zealand produce at good prices, most of these farmers could manage. But a sudden dip in the early 1920s, followed by another in 1925–26, left them over-exposed. Some walked off their lands, while others threatened to walk off if the Government did not come to their aid. To cope with these developments, the lessees typically sought a combination of three things: reduction in rentals; payment for improvements, even when their leases made no provision for such payments; and Crown assistance to buy the freehold.

During the 1910s and 1920s, the Crown had already shown a willingness to protect mortgagees who were facing difficult circumstances, but only in respect of Crown lands or lands administered by Crown land boards. What the Waikato–Maniapoto settlers were seeking – and what they demanded ever more loudly as they saw the concessions made to their Crown-lease neighbours – was government intervention to amend leases that had been arranged directly with the owners and confirmed as fair and equitable by Māori land boards, and that they had freely and willingly taken on.

While the Crown wanted Pākehā farmers to remain on the land if at all possible, it was not enthusiastic about intervening in private contracts. It reminded lessees that Māori had the same property rights as Pākehā: land could not be unilaterally taken to give lessees the freehold, and nor could contracts be unilaterally varied. As the Native Minister, Gordon Coates, said: ‘it is not possible to deal with the Native interests as if they comprised Crown lands.’

But, as pressure continued, the Crown began to give in. First, it moved to protect the interests of lessees who were facing eviction for failing to complete

378. In 1922, the Crown had enacted legislation allowing lessees to surrender part of the land they were leasing, and for the Māori land board to then offer the surrendered portion to other settlers for lease. However, this could only be done with the owners’ written consent. This was later amended to allow surrender and re-leasing to occur without consent, if the board had notified the owners and received no objection: Native Land Amendment and Native Land Claims Adjustment Act 1922, s17(1); Native Land Amendment and Native Land Claims Adjustment Act 1926, s7; doc A73, p706.
379. Document A73, pp 699, 701, 703–704, 707–709, 720, 724–728. The Crown was wary of purchasing for on-sale to lessees even when the owners were willing to sell, due to the considerable risk that indebted lessees would not fulfil their commitment to buy. It did make occasional attempts to buy with owners’ consent during 1920s. Hearn provided two examples, neither of which resulted in the Crown completing the purchase: doc A73, pp 726–727; see also pp 699, 702–703, 729. In the 1930s, the Crown did purchase on behalf of lessees. In most cases this was done on condition that the lessees immediately purchase from the Crown, and in most cases the lessees failed to do so: doc A73, pp763–765, 772–773.
380. Native Minister to secretary, Chamber of Commerce, Te Kūiti, 11 July 1928 (doc A73, pp731).
the improvements required by their leases. Under the Property Law Amendment Act 1928, such lessees could apply to a court for relief, and the court – if it saw fit – could grant a new lease. The law applied to leases that had already expired, as well as to those that were due to.\(^{382}\)

This was a response to the experience of a Te Rohe Pōtæe lessee, William Gadsby. In 1927, he had been refused renewal of his lease of Tapuiwahine 1c1 and 2, on grounds that he had failed to comply with covenants requiring him to pay rates, fence the property, and eradicate noxious weeds. Gadsby claimed that he had substantially complied and the owners were trying to get hold of his substantial improvements (seven houses and various other buildings) without payment. The Supreme Court granted him a new lease.\(^{383}\)

### 14.6.2 The Royal Commission of Inquiry into Native Land Leases

#### 14.6.2.1 The commission’s hearings

The Crown’s next step was to appoint the Royal Commission of Inquiry into Native Land Leases in 1928 to inquire into leases of Māori land (vested and non-vested) in the Waikato–Maniapoto district (as discussed in chapter 13). It was charged with inquiring into the laws applying to leases of Māori lands, and their effects on lessors and lessees. More specifically, the inquiry was to focus on rents, compensation for improvements, timber rights, and access to capital for land development.\(^{384}\)

Tame Kawe and other Ngāti Maniapoto landowners wrote to the Native Minister objecting to the commission, arguing that none of the commissioners were impartial: chairman Judge MacCormick was also president of the board, and two other commissioners were farmers who had interests in Māori land:  

> We say that none of these people will consider the interests of the Maori owners. It seems to us that no benefit can accrue from this commission because we insist on the terms of the leases arranged between us and the lessees which leases were confirmed by the Waikato–Maniapoto Board. We respectfully request that no special legislation be enacted to modify or cancel the conditions and terms of those leases . . .\(^{385}\)

In all, the commission considered 66 leases, of which almost all were in the inquiry district. Some were on vested lands but most were not, and much of the evidence concerned issues that were specific to private leases.\(^{386}\)

The chief concerns of those lessees who appeared before the commission included rents, compensation for improvements, access to capital, and general difficulties associated with farming land that was either infested with blackberry and

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382. Property Law Amendment Act 1928, s 2; doc A73, pp 718–719. The descriptive note on the side of section 2 of the 1928 Act said the section was for ‘Relief of lessee against inequitable refusal of lessor to grant renewal’. However, the section itself did not require that the court find the refusal inequitable.


385. Tama Kaawe Short and others to Native Minister, received 18 June 1928 (doc A73(a), vol 10, p 146); doc A73, p 732.

rabbits or reverting to fern and scrub.\textsuperscript{387} Some lessees asked for rent reductions or remissions. Those whose leases did not compensate them for improvements argued that they had no incentive to invest in or develop the land and asked for compensation clauses to be added. Many sought opportunities to obtain the freehold. If the leases were not changed, several said, they would abandon the land.\textsuperscript{388}

It was widely acknowledged – by the judge, independent witnesses, landowners, and lessees themselves – that the lessees’ difficulties were at least to some degree self-inflicted. Although economic conditions were very difficult, many of those in serious trouble had acquired their leases privately from other Pākehā at excessive prices,\textsuperscript{389} and many had overestimated the carrying capacity of the land and underestimated the costs involved.\textsuperscript{390}

Tuwhakaririka Patene (also known as Tuwhakaririka Potatau, and as Peter Barton) told the commission about Rangitoto A2A and A52A, which had a combined area of 3,000 acres. A Pākehā farmer had paid £1 an acre in ‘goodwill’ to acquire the lease from the previous tenant. The rent was one shilling per acre rising over the term of the lease to 1s 9d. When the new lessee arrived, he burned off all of the fern and then sowed the land in grass without ploughing first. ‘I told this farmer that he was wasting his time,’ Tuwhakaririka said, but ‘he would not listen to me.’ The lessee soon went bankrupt and abandoned the land, leaving rents and rates unpaid.\textsuperscript{391}

Meanwhile, the lessee of a 377-acre vested block (Mangarongo survey district block IX section 25) told the commission he had paid another Pākehā £5 per acre in goodwill to take over the lease and had also taken on the previous lessee’s debts. The land was now valued at just £1 2s 6d per acre, owing to an infestation of ragwort and rabbits which the lessee blamed on neighbouring Māori. The lessee was paying rent of 2s 3d per acre (equivalent to a capital value of £2 5s per acre). Though neighbouring lessees had already abandoned their blocks, he wanted to stay, and sought a rent reduction to help him do so.\textsuperscript{392} By December 1932, he owed some £211 to the board in rent arrears.\textsuperscript{393}

Some lessees, according to a Dalgety & Co stock and station agent, were deliberately neglecting their land as the leases came up for renewal, in the hope of obtaining the freehold at reduced prices. While some lessees were struggling, the agent said, the general state of farming in the district was reasonably healthy.\textsuperscript{394}

\begin{footnotesize}
\begin{enumerate}
\setcounter{enumi}{387}
\item Document A73(a), vol 10, pp 273–326; doc A73(a), vol 9, pp 389–404; doc A73, pp 736–737.
\item Document A73, pp 736–737; doc A73(a), vol 9, pp 389–404; doc A73(a), vol 10, pp 280–281, 290–293, 305.
\item Tuwhakaririki Patene evidence to Waikato–Maniapoto Native Land Lease Tenures Commission, May 1929, p 45 (doc A73(a), vol 10, pp 289–290); ‘Death of Māori Chief’, Press, 10 July 1935, p 3.
\item Document A73(a), vol 10, pp 308, 310, 315–316.
\item Document A73(a), vol 8, p 184.
\item Document A73, p 740; doc A73(a), vol 10, pp 297–300.
\end{enumerate}
\end{footnotesize}
Other evidence suggests that perhaps as many as 15 to 25 per cent of farmers found it difficult to make ends meet during this period, but up to 75 per cent or more were able to weather the repeated recessions.\textsuperscript{395}

Ngāti Maniapoto leaders repeatedly told the commission that they should not have to pay for the mistakes of others, either through reduced rents or increased liabilities for land improvements. Tuwhakaririka, speaking on behalf of all owners who were present, said Ngāti Maniapoto had ‘one object’: they did not want the lease terms or conditions altered. ‘We have signed these leases, and the Board has confirmed them, and we want them left as they are.’\textsuperscript{396} In this, he had the clear support of other owners who appeared. If the lessees were to be granted relief, Pei Jones said, it ‘should not be at the expense of the . . . owners.’\textsuperscript{397} If leases were to be amended, he suggested, it should be through direct negotiation between owners and lessees.\textsuperscript{398}

Judge MacCormick explicitly acknowledged that many lessees’ difficulties were due to the poor bargains they had made when they took up the land.\textsuperscript{399} But he regarded their mistakes as ‘spilt milk’ which could not now be unspilled. The question for the commission, in his view, was how to address the difficulties the lessees now faced, so that they would remain on and develop the land, rather than walking off and leaving it to ‘go to rack and ruin.’\textsuperscript{400}

In his dealings with lessees, the judge consistently gave assurances that relief would be forthcoming. The difficult question, he said, was: who should pay?\textsuperscript{401} To one lessee, he was even blunter: ‘You have made a bad bargain, and it is a question of who is to bear the brunt of that bargain.’\textsuperscript{402} In his exchanges with the Ngāti Maniapoto delegation, he gave his answer:

\begin{quote}
We do not propose to make the natives suffer anything more than we think will ultimately be for their good. If we decide to recommend relief it will be in such a form that we think the natives will not ultimately lose by it, but they may have to put up with some loss on paper at the present time.\textsuperscript{403}
\end{quote}

In other words, the commission would recommend that relief be provided to lessees, at Māori expense, justifying this course of action on the basis that owners would be better off in the longer run if their lands were occupied and improved by the current lessees. This, the judge continued, was ‘the best way out of the

\textsuperscript{396} Document A73(a), vol 10, pp 289–290.
\textsuperscript{397} Document A73(a), vol 10, p 292.
\textsuperscript{398} Document A73, p 739.
\textsuperscript{399} Document A73(a), vol 9, pp 390–391, 398; doc A73(a), vol 10, pp 289–293, 304; doc A73, p 736.
\textsuperscript{400} Document A73(a), vol 10, pp 290–292.
\textsuperscript{402} Document A73(a), vol 10, p 304.
\textsuperscript{403} Document A73(a), vol 10, p 292.
difficulty’ for Māori landowners: ‘I believe he [Tuwhakaririka] agrees with me in his heart, though he will not say so’.404

In response, Ngāti Maniapoto leaders – Tuwhakaririka, Tame Kawe, Pei Jones, and others – could not have been clearer. They did not approve of any change to the leases, irrespective of the result. If the lessees walked off and left them with undeveloped land, that was far preferable to being forced to pay for improvements that had not been covered by the original leases.405

14.6.2.2 The commission’s recommendations
The commission made two key recommendations. First, the Crown should enable lessees to obtain the freehold. Secondly, rents should be adjusted to 5 per cent of unimproved land value. Of these two solutions, freeholding was considered more significant.406

In the commission’s view, it was the only practical means by which lessees would see a return on any investment they made in the land. Although some leases provided compensation for improvements, the reality was that the board had never set any money aside, either for vested lands or other lands it was responsible for collecting rent on, and it was therefore difficult to see how lessees might be paid. In other cases, of course, the leases made no provision for improvements. If nothing was done, the lessees would not invest and the land would revert to its unimproved state.407

The commission noted that existing laws did not provide for freeholding of vested lands, except through Crown purchase. Freeholding of privately leased land was allowed, with the consent of the owners, but finance was often a barrier. In practice, the Crown sometimes bought the freehold and on-sold to lessees, but this was not a method the lessees could rely on. The commission therefore recommended that the law be amended to give lessees a right to acquire the freehold by paying it off over several years, using finance provided either by the Crown or Māori land boards.408

These recommendations assumed that Māori landowners would be willing to sell. But the commission also invited the Crown to consider subjecting Māori land to the Lands for Settlements Act 1925, which provided for compulsory purchase for settlement. Compulsory purchasing, the commission hastened to add, should be at a fair price, and should provide land for ‘both Native and European settlement without distinction’.409

In respect of rents, the commission’s view was that many lessees ‘cannot carry on under the burden of arbitrarily increased rents’ that did not reflect current land values. These difficulties had been entirely outside Māori control, arising, as they did, from lessees’ over-optimistic assessments about future farming prospects, and

405. Document A73(a), vol 10, pp 290–293, 302; see also p 289; doc A73, pp 737–740.
409. AJHR, 1929, G-7, pp 6–7; doc A73, p 745.
from unforeseen market volatility and increases in the costs of production. The commission nonetheless argued that Māori owners should bear the costs:

While recognizing the difficulty of interfering with the terms of a contract, we think it should be earnestly considered whether some power to review should not be given, even if the lessors do not consent. We go to this length because we are convinced that if some relief be not given much of the leased land will be abandoned, and none of it will be farmed to the best advantage. And improvements will go. In many cases they are already going. Such a position will certainly not be to the advantage of the Natives, still less to that of the State.  

The commission's report made no mention of the Ngāti Maniapoto consensus that the leases should not be amended, and that – if lessees walked off – the land should be returned to its owners. Rather, it recommended immediate rent reductions, with regular reviews. This recommendation appeared to apply to all lands, in spite of the fact that vested lands were not subject to arbitrary rent increases and had been acknowledged by the commission as fair to all parties.

14.6.2.3 The Crown’s responses to the royal commission
The Native Department had serious misgivings about the commission’s recommendations, both on fiscal grounds and for reasons of equity and consent.

With respect to compensation for improvements, the commission had recommended either varying the contract or enabling lessees to buy the freehold. The Native Department believed that the first option could not happen with owners’ consent, and if forced on them would bring a complete halt to voluntary leasing by Māori landowners. The second option, though already provided for under the law, would cost the Crown about £100,000.

The department was opposed to any changes in rents without the owners’ consent:

the Native is bound by his contract no matter how much the value of the land increases and where Europeans have entered into contracts with their eyes open, it is hardly equitable to permit them to break it by legislation. Of course, there would be no objection to applying fair rental provisions to Maoris if it were considered it should be applicable to all tenancies.

The department therefore recommended that the law be amended to allow the board with the owners’ consent to amend leases by changing rents or providing compensation. It also suggested that the Crown might consider buying the land for on-lease (rather than on-sale) to lessees, while warning that lessees mainly wanted

410. AJHR, 1929, G-7, p 5; doc A73, pp 742–744.
412. AJHR, 1929, G-7, p 5; doc A73, pp 742–744.
413. Under-Secretary to Native Minister, 31 July 1929 (doc A73(a), vol 10, p 134).
the Crown as a landlord because that would make it easier to extract concessions. Finally, the department recommended that the law be amended to allow owners of vested lands to reach agreements directly with the lessees.\footnote{414}

The Crown ignored much of this advice. Instead, in November 1929 the Native Land Amendment and Land Claims Adjustment Act provided for rents to be adjusted and compensation imposed without the owners’ consent, and it also provided assistance for lessees who wanted to acquire the freehold.

Section 30 of the Act provided:

The Waikato–Maniapoto District Maori Land Board shall have power, after inquiry in each case, to make such variation of the covenants and conditions, including the extension of the term, of any lease heretofore granted of Native land situated within the Waikato–Maniapoto Maori Land District as in the circumstances of the particular case shall seem to the Board to be just and expedient:

Provided that no such variation shall become effective unless and until the terms thereof have been approved by the Native Minister.\footnote{415}

This was an extraordinarily broad provision, empowering the Waikato–Maniapoto board – subject to the approval of the Native Minister – with a great degree of freedom in how Māori land was privately leased in the district. Although the Crown had previously assisted mortgagors and Crown lessees and would subsequently provide for rent and interest reductions on Māori and general land, no other provision gave such wide-ranging powers. Nor was any other provision focused so exclusively on Māori lands within the Waikato–Maniapoto district. Even in the context of Depression-era market interventions, Te Rohe Pōtae Māori were being treated as a special case. They were, furthermore, being singled out in spite of the Native Department’s explicit advice that any attempt to break Māori landowners’ contracts against their wishes would be inequitable.

Section 30 was subsequently re-enacted as section 78 of the Native Purposes Act 1931. That Act also empowered all Māori land boards to reduce, remit, or extend time for payment of any rents on both vested and non-vested Māori lands, though the Minister’s consent was required in respect of the latter. These provisions applied to rent already owing, as well as to future rents. The concessions would only apply until 11 November 1935, at which time the statutory provisions would also expire.\footnote{416}

Similar provisions were subsequently extended to mortgagors and lessees with Pākehā landlords. Of particular relevance is the Mortgagees and Tenants Relief Act 1932, which from 31 March of that year allowed lessees on any land to apply to a court for rent reductions and/or remissions. The court was required to consider, among other things, whether the existing lease conditions caused hardship to the

\footnote{414. Under-Secretary to Native Minister, 31 July 1929 (doc A73(a), vol 10, pp 134–135); see also doc A75, p108.}

\footnote{415. Document A73, pp 748–749.}

\footnote{416. Native Purposes Act 1931, ss 78, 115; doc A73, pp 755–756.}
lessee, whether any default was due to prevailing economic conditions, and the overall effects on both lessor and lessee. It also set out a process aimed at encouraging voluntary agreements between the lessors and lessees where possible. No such safeguards were provided in the Waikato–Maniapoto provision.  

Soon afterwards, on 10 May 1932, the National Expenditure Adjustment Act was passed, providing for standard reductions (of 20 per cent in most cases) in rents and interest rates throughout New Zealand, provided that rents did not fall below 5 per cent of unimproved land value. The reduced rents were to remain in place until 1 April 1935.

These overlapping provisions raised the prospect of lessees applying to the Waikato–Maniapoto District Māori Land Board for rent reduction and/or remission, and then also taking advantage of the general provisions. This occurred on a handful of occasions in the Waikato–Maniapoto district.

Judge MacCormick (in his role as president of the board) objected to the fact that lessees could apply to two separate bodies for rent reduction and recommended that the provisions applying only to Māori land be repealed. It was ‘quite unsatisfactory’, he informed the Native Department, that ‘native lessors should be under a double procedure, to which pakehas are not subject.’ He appears to have had no difficulty with the fact that, from 1929 to 1932, the law provided for rent reductions on Māori land but contained no comparable provision for land owned by Pākehā.

The Crown’s response, after some debate among officials, was to repeal section 78 of the Native Purposes Act 1931, which had allowed the Waikato–Maniapoto District Māori Land board to vary lease conditions. Section 115, which had empowered all Māori land boards to reduce and remit rents, was left to expire in 1935.

14.6.2.4 Rent reductions and other concessions

In 1930, the board began to apply the new statutory provisions. It initially asked lessees to negotiate directly with owners before applying for any rent reductions. Some meetings did occur, but the outcomes are unknown. It is known that in October 1930 the board considered 11 leases and recommended changes to nine of them. In all of those cases, it recommended immediate rent reductions. For five of the 12, it required owners to forego the last seven years’ rental as compensation for

417. Mortgagors and Tenants Relief Act 1932, ss 2, 6; Mortgagors Relief Act 1931, ss 5–8; Mortgagors and Tenants Further Relief Act 1932, ss 9–12. Applications for relief went either to the Supreme Court or a Magistrate’s Court, depending on the amount of money involved. In practice, most cases were referred to the newly established Mortgagees Liabilities Adjustment Commission, which was established to encourage voluntary agreements where possible. It investigated applications from lessees and either recorded any voluntary agreement or reported its findings to the court for a decision: Mortgagors Relief Amendment Act 1931, ss 9–12.


420. Judge MacCormick to Under-Secretary, 9 November 1933 (doc A73(a), vol 10, p 213).

improvements. In one other case the owners and lessees agreed on the amount of compensation to be paid.422

During the 1930 land board hearings, lessees argued that conditions had changed since the leases were first agreed and claimed that they would be forced to abandon the land if rents were not reduced and compensation was not paid for improvements. As they had at the commission of inquiry, the owners (in all but one case) refused to vary the leases and, in many cases, instead sought the return of their land.423

Judge MacCormick was generally dismissive of the owners’ views. He informed the hearing that the Government had been disturbed by the amount of formerly leased land that had been abandoned, and did not want to see the situation get any worse: ‘The aim of the Government is to prevent more land from becoming idle, and consequently unproductive, and to see that the lessees are kept on their holdings and to prevent them from becoming abandoned.’424

The judge added that the Government was beginning to involve itself in development schemes using Māori land at Waimihia and Mahoenui, and there was ‘not much use [in] the Government bringing down these schemes . . . if other already occupied blocks are going to be allowed to become idle.’425

The implication was clear. The Government’s goal of keeping lessees on their farms was to override the wishes of Māori owners who preferred the return of their land. In response to owners who took their land back in preference to varying the leases, Judge MacCormick said: ‘The question is whether that would be any good to them [the owners] or to the community.’426

As Hearn noted, Judge MacCormick’s responses ignored the fact that the leases had been freely negotiated, and the extent to which lessees had created their own difficulties by paying too much in goodwill or borrowing too heavily. The judge blamed rising production costs, coupled with fluctuating prices for farm products. The judge also made no mention of the difficulties that Māori farmers encountered in accessing capital to develop land for themselves. The implicit assumption was that farming was an activity for Pākehā.427

While he was happy to reduce rents, Judge MacCormick did express some concern about the potential impact on owners of requiring them to pay compensation when the leases expired:

While there are merits in the lessees’ claims, the fact remains that to vary the contract . . . by granting compensation to lessees for their improvements would entail a heavy and unexpected burden on the native lessors who, in practically every case, have no means of discharging their liability.428

422. Document A73, pp 750–754.
424. King Country Chronicle, 7 October 1930 (doc A73, p 751).
425. King Country Chronicle, 7 October 1930 (doc A73, p 751).
426. King Country Chronicle, 7 October 1930 (doc A73, p 751).
428. King Country Chronicle, 7 October 1930 (doc A73, p 753).
It appears that this was the reason for requiring that the final seven years’ rent on each lease go towards improvements, as distinct from requiring the owners to make cash payments on expiry of the lease.

The Native Minister, Āpirana Ngata, approved all of these recommendations.\(^{429}\)

During 1931 and 1932, the board considered numerous other applications from lessees, and recommended changes – rent reductions, compensation for improvements, or both – in many, though not all, cases. Ngata sometimes sought amendments but approved the vast majority.\(^{430}\)

The Tribunal does not have a complete list of the affected properties. Hearn provided details of rent reductions for 23 properties, made under section 30 of the Native Land Amendment and Native Claims Adjustment Act 1929 and section 78 of the Native Purposes Act 1931. These are set out in table 14.2.

Separately, Hearn recorded that, according to a September 1933 return prepared by the board, the Crown approved rent reductions or other concessions (or both) for 39 properties under the provisions of the Native Purposes Act 1931, and the Mortgagors Liabilities Adjustment Commission approved rent reductions or concessions for a further three vested properties under the provisions of the Mortgagors and Tenants Relief Act 1932.\(^{431}\) Some lessees attempted to double-dip by applying to both the board and the court, though with limited success.\(^{432}\)

As shown in table 14.2, rents were reduced by amounts ranging from about 20 per cent in some cases to 80 per cent or more in others. The most extreme example was the 891-acre Rangitoto–Tuhua 5203 block, where annual rent was reduced by 85 per cent, from £200 to £30 per year.\(^{433}\)

In 1936, the board president reported that a typical case involved reduction of rent during the first term of a lease, with rent set at 5 per cent of unimproved value for the second term. First-term rent reductions appear to have been back-dated, applying from 1927 or 1928.\(^{434}\)

### 14.6.3 Treaty analysis and findings

Faced with considerable economic challenges during the 1920s and 1930s, the Crown had a legitimate interest in considering the needs of lessees of land. That was its right in terms of the kāwanatanga power it held and its ability to make laws, as granted in article 1 of the Treaty of Waitangi. However, where the land leased was Māori land, the Treaty required in such circumstances that the Crown act in a manner consistent with the remaining principles of the Treaty, including the principle of equity. This principle required the Crown to pursue policies that were fair and evenhanded, as between the lessees and Māori landowners. This meant that the Crown could not elevate lessee interests above those of Māori.

Contrary to this, during the 1920s, the Crown first moved to protect the interests of lessees who were facing eviction for failing to complete the improvements

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\(^{429}\) Document A73, p 753.
\(^{430}\) Document A73, pp 755–762.
\(^{431}\) Document A73, p 761.
\(^{432}\) Document A73(a), vol 8, pp 236, 244, 249–250; doc A73(a), vol 10, p 213; doc A73, p 761.
\(^{433}\) Document A73, tbl 17.2, p 758.
\(^{434}\) Document A73(a), vol 10, pp 208–209.
required by their leases. As noted in section 14.6.1, under the Property Law Amendment Act 1928 such lessees could apply to a court for relief, and the court – if it saw fit – could grant a new lease. The law applied to leases that had already expired, as well as to those that were due to run out.

Following this, it set up the royal commission in 1928 dominated by Pākehā farming interests, including the chairman of the Waikato–Maniapoto District Māori Land Board. The commission was told repeatedly by Ngāti Maniapoto leaders that they should not have to pay for the mistakes of others, either through

<table>
<thead>
<tr>
<th>Block</th>
<th>Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hauturu East C2B1</td>
<td>Annual rent held at initial levels – scheduled increases cancelled.</td>
</tr>
<tr>
<td>Kinohaku East 1B4B5B1</td>
<td>Annual rent reduced from £49 to £37 for six years.</td>
</tr>
<tr>
<td>Kinohaku East 2 sec 2</td>
<td>Annual rent reduced from £67 to £11 for seven years.</td>
</tr>
<tr>
<td>Kinohaku West 1D2</td>
<td>Annual rent reduced to 5 per cent of unimproved value.</td>
</tr>
<tr>
<td>Te Kumi 1D2B3B2A3</td>
<td>Annual rent reduced from £71 to £50 for 10 years.</td>
</tr>
<tr>
<td>Mahoenui 3B4B</td>
<td>Annual rent reduced to 5 per cent of unimproved value.</td>
</tr>
<tr>
<td>Mangauika B1A sec 1</td>
<td>Annual rent reduced from £81 to £25 for seven years.</td>
</tr>
<tr>
<td>Maraetaua 2B3</td>
<td>Annual rent reduced from £13 to £3 for five years.</td>
</tr>
<tr>
<td>Mohakatino Parinininhi 1C West 1B</td>
<td>Annual rent reduced from £250 to £200 for three years.</td>
</tr>
<tr>
<td>Pehitawa 2B5G</td>
<td>Annual rent reduced from £67 to £33 for seven years. Owners and lessees agreed compensation for improvements.</td>
</tr>
<tr>
<td>Pehitawa 2B4C1</td>
<td>Annual rent reduced from £9 to £4 for eight years. Owners required to pay 7 years’ rent for improvements.</td>
</tr>
<tr>
<td>Pehitawa 2B4C2</td>
<td>Annual rent unchanged at £9. Owners required to pay 7 years’ rent for improvements.</td>
</tr>
<tr>
<td>Rangitoto A4B2C</td>
<td>Annual rent reduced from £270 to £60 for five years. Owners required to pay seven years’ rent for improvements.</td>
</tr>
<tr>
<td>Rangitoto Tuhua 36A2B</td>
<td>Annual rent reduced from £333 to £91 for three years.</td>
</tr>
<tr>
<td>Rangitoto Tuhua 36B3B2</td>
<td>Annual rent reduced from £68 to £50 for two years.</td>
</tr>
<tr>
<td>Rangitoto Tuhua 52B2A</td>
<td>Annual rent reduced from £72 to £15 pa for seven years.</td>
</tr>
<tr>
<td>Rangitoto Tuhua 52B5</td>
<td>Annual rent reduced from £48 to £15 pa for seven years.</td>
</tr>
<tr>
<td>Rangitoto Tuhua 52D3</td>
<td>Annual rent reduced from £200 to £30 for seven years.</td>
</tr>
<tr>
<td>Rangitoto Tuhua 61I2A2</td>
<td>Annual rent reduced to 5 per cent of unimproved value.</td>
</tr>
<tr>
<td>Rangitoto Tuhua 61I2B2B</td>
<td>Annual rent reduced to 5 per cent of unimproved value.</td>
</tr>
<tr>
<td>Rangitoto Tuhua 70B2A</td>
<td>No rent for one year. Future annual rent set at 5 per cent of unimproved value. Owners required to pay seven years’ rent for improvements.</td>
</tr>
<tr>
<td>Rangitoto Tuhua 72B3D</td>
<td>Annual reduced from £157 to £30 for four years. Owners required to pay seven years’ rent for improvements.</td>
</tr>
<tr>
<td>Rangitoto Tuhua 74B6 lot 1</td>
<td>Annual reduced from £157 to £47 for seven years.</td>
</tr>
<tr>
<td>Rangitoto Tuhua 74B6 lot 2</td>
<td>Annual reduced from £463 to £90 for seven years.</td>
</tr>
</tbody>
</table>

Table 14.2: Incomplete list of rent reductions and concessions on Te Rohe Pōtae leases, 1930–32
Sources: Document A73 (Hearn), tables 17.1 and 17.2; doc A73(a) (Hearn document bank), vol 10, pp 18–201. All currency figures are rounded to the nearest pound.
reduced rents or increased liabilities for land improvements and that they did not want their lease terms or conditions altered. Their submissions fell on deaf ears. The royal commission recommended a position contrary to their pleas and the Crown moved to enact legislation, ignoring the Te Rohe Pōtæ Māori position.

The Native Department advised the Native Minister that the Native Land Amendment and Land Claims Adjustment Bill 1929 was inequitable. Nonetheless, it was enacted and implemented with the result that Māori landowners’ incomes fell and their liabilities increased. Furthermore, this was done despite the contribution the lessees had made to their own difficulties and in spite of the Crown’s own role in contributing to the speculative excesses of the 1910s. The lessees could not be held responsible for global economic volatility, but they could be held responsible for their own actions. It is not clear to us why the costs should have fallen so harshly on Māori landowners, who had made no contribution to their problems.

The Native Land Amendment and Land Claims Adjustment Act 1929 provided the Waikato–Maniapoto District Māori Land Board with the power to adjust terms and conditions of the leases without the owners’ consent, and it also provided assistance for lessees who wanted to acquire the freehold. Section 30 only applied with respect to the Waikato–Maniapoto District Māori Land Board. The board could reduce or remit rents, compensate lessees for improvements, or make any other change it regarded as fair. These provisions were specifically targeted at Māori land under lease in the Waikato–Maniapoto district.

Then in 1931, section 30 was subsequently re-enacted as section 78 of the Native Purposes Act 1931 and a new section 115 applied to all other Māori land boards, providing boards with discretion to reduce or remit rents. This new enactment also applied to the Waikato–Maniapoto district. That provision must be compared to the Mortgagees and Tenants Relief Act 1932, which allowed lessees on any land to apply to a court for rent reductions and/or remissions. The court was required to consider, among other things, the overall effects on both lessor and lessee. It also set out a process aimed at encouraging voluntary agreements between the lessors and lessees where possible. No such safeguards were provided in section 78 of the Native Purposes Act 1931.

We note the National Expenditure Adjustment Act 1932 was passed, which allowed standard reductions (of 20 per cent in most cases) in rents and interest rates throughout New Zealand, provided that rents did not fall below 5 per cent of unimproved land value. The reduced rents were to remain in place until 1 April 1935. However, we are concerned that lessees could apply to two separate bodies (the courts or the Māori land board) for rent reduction. This resulted in Māori landowners in Te Rohe Pōtæ, not Pākehā, being potentially subjected to a double procedure.

These overlapping provisions raised the prospect of lessees applying to the Waikato–Maniapoto District Māori Land Board for rent reduction and/or remission, and then also taking advantage of the general provisions applying to all New Zealanders. This occurred on a handful of occasions in the Waikato–Maniapoto district.
Thus, from 1929 to 1932, the law provided for rent reductions on Māori land in Te Rohe Pōtae, but contained no comparable provision for land owned by Pākehā. Then when such a requirement was imposed, Māori landowners in this district were subjected to a dual process until the repeal of section 78 in 1933. Section 115, which had empowered all Māori land boards to reduce and remit rents was, however, left to expire in 1935. Therefore, Māori landowners were forced to accept reduced rents from 1929 to 1935.

Accordingly, we find that the Crown did elevate the interests of lessees above those of Te Rohe Pōtae Māori. It did so by omitting to monitor the Waikato–Maniapoto District Māori Land Board with respect to its leasing activities and by failing to take measures to ensure that the board acted in a manner that was consistent with the principles of the Treaty of Waitangi.

For these reasons and several others, the Crown acted in a manner inconsistent with the principles of the Treaty of Waitangi. By constituting the royal commission in the manner it did, by following aspects of its recommendations despite the submissions made by Te Rohe Pōtæ leaders, and by empowering the Waikato–Maniapoto District Māori Land Board to unilaterally amend private leases in the Waikato–Maniapoto district, the Crown acted in a manner inconsistent with the principles of partnership and mutual benefit derived from article 2, the principle of equity derived from article 3, and the guarantee of rangatiratanga in article 2 of the Treaty. The Crown’s policies and the manner in which they were implemented through the land board were demonstrably inconsistent with the Crown’s duty of active protection.

14.7 Prejudice

The scale of Crown and private purchasing between 1905 and 1950 had a significant effect on the amount of land Te Rohe Pōtae Māori retained by the end of this period. At the beginning of the twentieth century, they retained possession of 1,142,196 acres of land in the inquiry district; that had dwindled to just 402,253 acres by 1950. Crown purchases during this period totalled 379,260 acres, more than half of all that was sold. Private purchases accounted for another 358,912 acres.

The Crown’s own purchasing, as well as its encouragement of private purchasing, contributed significantly to the transfer of wealth and resources from Māori to Pākehā in this district. As a result, Te Rohe Pōtae Māori landowners lost traditional relationships with, and control over, their land. The Crown – both through its legislation and its own purchasing methods – disempowered Te Rohe Pōtæ Māori communities and diminished their authority over their land, as the Crown conceded. When land was permanently alienated, Te Rohe Pōtæ Māori lost opportunities to live on, develop, or raise incomes from their land.

435. Document A21, pp 37, 127, 129. An additional 1,770 acres was alienated for public works and ‘other’ purposes (including gifts, exchanges, and status changes).
The Waikato–Maniapoto District Māori Land Board’s poor administration of leased land, particularly its collection and distribution of rental income, also prejudiced Te Rohe Pōtae Māori. They had long expressed a preference for leasing over selling, but all too often failed to see the expected benefits from leasing, principally a consistent revenue stream. The board was under-resourced and, as demonstrated in chapter 13, it made irresponsible investments with the owners’ capital, even sometimes directing it to unrelated purposes. Owners thus received income owing to them late, or not at all. In other cases, the board used owners’ money to facilitate private purchasing, without any reference to their wishes. When these deals went bad, it was often the owners who suffered financially. In the troubled period of the 1920s and 1930s, the Crown empowered the board to reduce rents and alter lease conditions to the benefit of lessees and the financial detriment of Māori landowners, who were themselves suffering from the poor economic conditions, on the basis that for the short term such measures were necessary. However, the Crown failed to monitor the board and amend its legislative regime to revise the jurisdiction of the board, thereby contributing to the further loss of Te Rohe Pōtae Māori control over their lands.

Thus, as the 1940s drew to a close, the Te Ōhākī Tapu agreements and the mana whakahaere sought by Te Rohe Pōtae Māori over their lands could not have been further from the Crown’s mind. Rather, Te Rohe Pōtae leaders were forced nearly every decade from 1907 to 1950 into defending or maintaining the remnants of their tribal lands, now governed by a Crown-imposed individualised title system. This system facilitated the alienation of Māori lands and introduced a land administration system that benefited the Crown during its era of active land purchasing for Pākehā settlement, and one heavily weighted in favour of Pākehā lessees where Te Rohe Pōtae Māori were lucky if they retained their land.

14.8 Summary of Findings
Our key conclusions and findings in this chapter have been:

- After a five-year period where it did not attempt to buy Māori land (other than to complete purchases already under negotiation), the Crown began extensive purchasing in Te Rohe Pōtae in 1906. Over the period until 1950, it purchased an additional 379,260 acres of Te Rohe Pōtae Māori land, with most of its purchases concentrated in the years before 1923.
- During the same period, the Crown also progressively loosened restrictions on the private alienation of Māori land, first by direct lease and then, after 1909, by sale. As a result, the amount of Te Rohe Pōtae Māori land alienated to private parties increased. In all, private purchasers bought 358,912 acres over the period until 1950.
- The Crown’s purchasing during this period was highly tactical. It had a range of methods available to it, and it used the method or combination of methods most likely to succeed, with scant regard to owners’ wishes or interests. Although it was now required to pay at least government valuation for Māori land, its use of orders prohibiting private alienations and individual

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purchasing denied Māori owners the opportunity of seeking market prices and of negotiating prices collectively. The intent and effect of the Crown’s purchasing methods was to undermine Māori collective control over land.

- Te Rohe Pōtae Māori landowners were poorly protected by the Crown’s legislative regime in respect of land alienations. The provisions to ensure landowners were not rendered landless were weak and only loosely applied by the Crown and board. The quorum for meetings of assembled owners was extremely low, allowing minorities of owners to alienate the interests of the majority.

- The Waikato–Maniapoto District Māori Land Board, charged with collecting and distributing income from private alienations, was poorly resourced and ineffective at performing its duties. Moreover, the board was empowered to lend owners’ money to the buyers of their land. Its approach to these investments was neither prudent nor consistent with its fiduciary duties. The Crown, while aware of these problems, did not monitor the situation adequately, nor provide a legislative response.

- The Crown was faced with considerable economic challenges during the 1920s and 1930s. But its response to the difficulties experienced by lessees during this period was not equitable. In 1929, it gave the Waikato–Maniapoto District Māori Land Board wide powers to adjust private leases as it saw fit. This provision applied only to Māori-owned land in the Waikato–Maniapoto Māori land district. Later provisions were applied to other districts and, eventually, to all land, but these were not nearly so broad.

- We found that in all these respects the Crown acted in a manner inconsistent with the principles of the Treaty of Waitangi.

- Te Rohe Pōtae Māori were prejudiced by these breaches, particularly through the loss of control and ownership of their land. In 1905, they retained possession of 59 per cent of land in the inquiry district; by 1953, they retained approximately 21 per cent.
CHAPTER 15

NGĀ PAPATĀONE MĀORI: NATIVE TOWNSHIPS

If the Crown acquires interests in the original Native blocks I am afraid that we may be commencing a tangle which will afterwards take a good deal of unravelling . . .

—Native land purchase officer Walter Harry Bowler

15.1 INTRODUCTION

In 1895, the Crown introduced a scheme to establish what it called ‘native townships’ by enacting the Native Townships Act 1895. Between 1896 and 1907, 18 native townships were established in the North Island. Despite their name, native townships were intended to encourage Pākehā settlement on Māori-owned land in locations of strategic or economic importance. Initially, the plan was to vest the land in the Crown and then lease most of it to settlers, with the residue being reserved for use and occupation by the original owners. Later, a second native townships regime was introduced, allowing Māori land councils, which originally had significant Māori representation, to establish and administer townships instead.

Five native townships were established or brought under the native township regime in Te Rohe Pōtae between 1900 and 1903. Located on the Kāwhia Harbour on sites of strategic importance, three of these townships – Parawai–Te Maika, Te Puru, and Kārewa – were specifically created to accommodate this new mode of settlement. The other two – Ōtorohanga and Te Kūiti – were longstanding Te Rohe Pōtae Māori settlements the Crown chose to proclaim as native townships under the Native and Māori Land Laws Amendment Act 1902. The decision to turn some of these established centres into native townships also reflected the economic and strategic potential of their locations in the centre of the district along the newly constructed North Island Main Trunk Railway.

1. This quote is from correspondence between the Under-Secretary of the Native Department and the native land purchase officer, Walter Harry Bowler, in 1915. The latter expressed concern over the Native Land Purchase Board’s instructions about purchasing Ōtorohanga township sections which did not follow the individual Native Land Court block boundaries and purchasing individual interests in these sections: doc A62 (Bassett and Kay), p201.

15.1.1 The purpose of this chapter
This chapter continues the examination of the Crown’s twentieth-century land regime in relation to Te Rohe Pōtae Māori expectations that they would exercise mana whakahaere over their lands in accordance with the Ōhākī Tapu agreements. Chapter 12 considered the Māori councils established in 1900 (renamed boards after 1905). Chapter 13 closely examined the vesting of Māori land in the land boards constituted under the Crown’s legislation from 1905, while chapter 14 focused on leasing and purchasing.

As we have found with respect to leasing in chapters 13 and 14, there were difficulties with the manner in which the land councils and boards operated, a matter for which the Crown was responsible. We also found that the Crown acted inconsistently with the principles of the Treaty of Waitangi when it did not adequately monitor the Waikato–Maniapoto District Māori Land Board and take action to correct its procedures where these elevated the rights of lessees. Instead the Crown sought to accommodate the lessees.

Relatively speaking, the native townships had a small footprint in the inquiry district. In total, the five townships occupied about 1,000 acres, but their small size belies the fact that at least three of these townships held strategic and economic significance for Te Rohe Pōtae Māori. The purpose of this chapter is to investigate the impacts of the native townships on Te Rohe Pōtae Māori and to determine whether the Crown’s policies, legislation, and actions, as well as those of the Waikato–Maniapoto District Māori Land Board with respect to the townships, were Treaty-compliant.

15.1.2 How this chapter is structured
The chapter begins by examining what previous Tribunal inquiries have said about the native township regime, followed by the submissions of the claimants and the Crown to arrive at a distillation of the issues. It then provides a broad overview of the native townships regime, from 1895 to 1919, as well as the later history of legislation and policy affecting township lands, especially those subject to perpetually renewable leases. The main body of the chapter then undertakes case studies of the native townships established in Te Rohe Pōtae, with a Treaty analysis and findings section following discussion on each of the townships.

15.2 Issues
15.2.1 What other Tribunals have said
The Whanganui Land Tribunal was the first to make detailed findings on the legislation that created native townships. It found that the 1895 and 1910 native township legislation brought significant changes to the ownership and management of Māori land, yet the Crown did not ‘adequately or sufficiently discuss the legislation with Māori.’ It further found that the Crown had ‘acted inconsistently
with its guarantee of te tino rangatiratanga and its duty of active protection, and
did not fulfil the obligations of a good Treaty partner.'4 Addressing the regime
in general, that Tribunal described native townships as ‘typical of Māori experi-
cences of land development at the end of the nineteenth century, when the Crown
wanted the cooperation of Māori to develop land, but took a very heavy-handed
approach.’5 It added that for Māori, the regime ‘left a legacy of disempowerment,
missed opportunities, and land loss.’6

The Whanganui Tribunal studied and made findings on the two native town-
ships in its district: Pīpīriki, situated on the Whanganui River (the first native
township to be established, in August 1896) and Taumarunui, established in 1903.
In respect to these townships, the Tribunal found that while neither was ‘imposed
outright on the owners’, the negotiations surrounding their creation ‘left much to
be desired’, and, in the case of Pīpīriki, involved an ‘element of compulsion.’7 Once
established, the Tribunal found that the Crown’s actions in regard to township
administration had ‘contributed to the failure of the towns to provide a good rental
income for owners: the regime was too favourable to settlers’ interests, and the
Crown did not try to solve problems that threatened the viability of the scheme for
owners as they emerged.’8

The Porirua ki Manawatū Tribunal considered the Hōkio native township,
established at Hōkio Beach, west of Levin, in 1902–03. In this inquiry, the Crown
accepted that the township’s establishment failed to meet aspects of the native
township legislation. The Tribunal found that ‘[t]he vesting in the Crown of con
control and legal ownership of the land in the Hōkio native township should have
been viewed by the Crown as a matter of great importance to Muaūpoko. Yet it
made little effort to consult with the owners.’9 In this failure to consult with Māori,
the Tribunal found that the Crown breached the Treaty guarantee of tino ranga-
tiratanga and acted inconsistently with the principles of partnership and the duty
doing active protection.’10

The Central North Island Tribunal considered the earlier 1880 Fenton agree-
ment and the Thermal Springs Districts Act 1881, both of which bear some
similarity to native townships. Under Fenton’s agreement with Ngāti Whakaue,
the Crown was to manage leasing in Rotorua on behalf of the Māori owners who
were to retain direct ownership of their land. The Act then provided for the model
to be extended more widely. However, ‘the Crown failed to negotiate further
Fenton-style agreements, or indeed any of the kind of agreements that the Act
had anticipated’. Moreover, the Crown ‘did not actually act protectively of Maori
interests or their land’. The Tribunal concluded, therefore, that the Act ‘was a lost

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5. Waitangi Tribunal, He Whiritaunoka, vol 2, p 813.
10. Waitangi Tribunal, Horowhenua, p 404.
opportunity for the Crown to have acted in partnership with Māori communities, to have respected their tino rangatiratanga, and to have carried out the process of colonisation more genuinely in the interests of both peoples.\textsuperscript{11}

\subsection{15.2.2 Crown concessions}
The Crown made no concessions in respect of native townships. While it ‘accepts that the outcomes of the regime were sometimes unsatisfactory for Māori owners’, it does not accept that this involved any Treaty breach on the part of the Crown.\textsuperscript{12}

\subsection{15.2.3 Claimant and Crown arguments}
More than 25 claims in this inquiry contain grievances related to native townships.\textsuperscript{13} At hearing, Crown counsel agreed that the Crown had a responsibility to monitor the effectiveness of ‘Crown promoted legislation’.\textsuperscript{14} The claimants argued that the Crown’s responsibility is not limited to legislation and that the Tribunal also needs to take account of orders, proclamations, regulations, and the like.\textsuperscript{15} They also pointed to the fact that the Treaty of Waitangi Act 1975, at section 6(1)(d), refers to acts or omissions committed ‘by or on behalf of’ the Crown’ (emphasis added). The native townships regime, they said, was a Crown creation and thus the acts of the land councils and boards were on behalf of the Crown: they ‘were carrying out the legislation introduced by the Crown and/or applying and implementing Crown policy’.\textsuperscript{16} They further said that the Wellington Tenths Tribunal’s emphasis on the ‘control’ test is not appropriate in this instance because that Tribunal was focusing on the level of ministerial control, whereas in the case of native townships, the Crown had a much wider level of control which it used to implement its various policy changes.\textsuperscript{17} One consequence of this stance is that the claimants rejected the Crown’s assertion that it was responsible for the management of townships created under the 1895 Act only until the point where those townships were handed over to the land board. In the claimants’ submission, the Crown’s liability remained throughout.\textsuperscript{18}

As to the purpose of native townships, the claimants said that the scheme was first and foremost intended to give settlers access to Māori land, and that any benefit to Māori was secondary. They contended that native township was a

\textsuperscript{11} Waitangi Tribunal, \textit{He Maunga Rongo: Report on Central North Island Claims, Stage One}, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, p 301.
\textsuperscript{12} Submission 3.4.291, p 1.
\textsuperscript{13} Wai 457 (submission 3.4.238); Wai 472, Wai 993, Wai 1015, Wai 1058, Wai 1095, Wai 1115, Wai 1586, Wai 1608, Wai 1695, Wai 2335 (submission 3.4.140); Wai 1360 (submission 3.4.150(a)); Wai 1599 (submission 3.4.153); Wai 1824 (submission 3.4.181); Wai 556, Wai 616, Wai 1377, Wai 1820 (submission 3.4.279); Wai 614 (submission 3.4.142(a)); Wai 1112, Wai 1113, Wai 1439, Wai 2351, Wai 2353 (submission 3.4.226); Wai 1588, Wai 1589, Wai 1590, Wai 1591 (submission 3.4.143); Wai 426 (submission 3.4.146).
\textsuperscript{14} Transcript 4.1.23, p 1057 (Crown counsel, hearing week 16, Waitomo Cultural and Arts Centre, 11 December 2014).
\textsuperscript{15} Submission 3.4.389, pp 1–2.
\textsuperscript{16} Submission 3.4.389, pp 2–4.
\textsuperscript{17} Submission 3.4.389, pp 4–5.
\textsuperscript{18} Submission 3.4.389, pp 3–4.
misnomer: the scheme’s true purpose was to create settler towns on native lands, in areas where there was Māori resistance to selling.\(^{19}\) There was no idea of a true partnership.\(^{20}\) By contrast, the Crown submitted that in establishing the native townships regime, it was trying to provide for settlement and development on Māori land in a way that would benefit Māori. Had it merely wished to establish townships, it said, it could have done so on other land it had already acquired in the district.\(^{21}\)

In relation to the initial establishment of the native townships scheme, the claimants pointed to the Treaty, which guaranteed that Māori would have exclusive and undisturbed possession of their land unless and until they chose otherwise. They argued that the Crown should, therefore, have sought the informed consent of Māori to the scheme, including consent to the details of its execution. Merely consulting them was not enough.\(^{22}\) The Crown, for its part, did not address the issue of consent to the scheme. It also rejected the notion of an ‘absolute and formless need to consult’, saying: ‘It is an error to apply today’s consultation standards and expectations to a radically different period in history.’ Rather, it said that the Treaty imposes on it ‘an obligation to make informed decisions on matters affecting the interests of Māori.’\(^{23}\) It did, though, assert that Te Rohe Pōtai Māori agreed to the establishment of individual townships.\(^{24}\)

The Crown agreed with the claimants that the Native Townships Act 1895 did not provide for Māori involvement in the management and control of the townships set up under that Act. It also agreed that Māori representation on the Māori land councils (later boards) dwindled and was then eliminated. It said, however, that irrespective of the nature of the controlling body, the township lands were always held on trust with a requirement that they be administered in the best interests of the beneficiaries.\(^{25}\) The claimants’ response was that the Crown ‘was an active participant in the townships and should be held to account accordingly.’\(^{26}\)

In the claimants’ submission, the Māori landowners paid ‘for the establishment of the townships yet were least likely to receive any benefit’ from them.\(^{27}\) They pointed to the cost of survey and laying out the towns; compulsory takings for roads, with no compensation; land taken for municipal purposes (again often without compensation); perpetually renewable leases; the loss of land through sales; and overall poor financial returns.\(^{28}\) The Crown agreed that the townships ‘ultimately did not deliver all the expected benefits for Rohe Pōtai Māori’ but said that this was the result of a variety of factors, many of which were beyond

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21. Submission 3.4.291, pp 1, 10, 13; submission 3.4.310(c), para 119.
27. Submission 3.4.125, pp 21, 38.
the control of the Crown. It maintained that its approach to the establishment of the townships was ‘fair and reasonable in the context of the time’\textsuperscript{29} The claimants rejected this and said that the Crown has focused on problems with the uptake of leases, whereas there were other factors that were more important. They also asserted that solutions proposed or supported by the Crown benefited settlers rather than Māori beneficial owners.\textsuperscript{30}

The claimants submitted that the 1895 Act ‘neither required nor prohibited’ perpetual leases. In their submission, the Crown had therefore acted ‘negligently at least’ by allowing perpetual leases to be created over the township allotments under the 1895 Act and its associated regulations.\textsuperscript{31} The Crown submitted that the language surrounding lease terms was initially unclear, and maintained that it was only later, by dint of legislative amendments, that interpretation settled in favour of perpetually renewable leases.\textsuperscript{32} There are, also, some general points to be noted. The Crown said that while the legislation was initially unclear on whether they were permitted, amendments were gradually made that settled the point in favour of such a practice. The Crown submitted that these leases ‘guaranteed more secure and ongoing rental income’ and promoted land development by giving lessees more security.\textsuperscript{33} The claimants, though, said that the perpetual leasing regime represented an effective alienation of land that ‘circumvent[s] the consent required for permanent alienation’.\textsuperscript{34} They also pointed to the low returns that resulted, and said that despite the legislation passed in 1997 to bring perpetual leases in line with market rentals, owners did not receive proper compensation for financial losses that occurred prior to 1997. They noted that in 2002 there was a Deed of Settlement for Past Rental Losses, but said that it would not apply to Māori owners who were not party to that settlement.\textsuperscript{35}

As to the permanent loss of township land, the claimants alleged that the native townships regime created ‘the perfect conditions to encourage alienation’. These included removing the beneficial owners from any involvement in control or management of their lands and encumbering a high percentage of the lands with perpetual leases. In their submission such circumstances added to the low financial returns and made owners much more likely to sell their interests. In some instances, the Crown itself was a purchaser; in others, the purchasers were private. In the latter case, said the claimants, ‘standards and thresholds [for alienation] . . . were set very low’. As to purchases by the Crown, they alleged that these breached not only the Treaty, but also the fiduciary duties of the Crown to act in the best interests of the Māori owners. Moreover, they said, the Crown had a clear conflict of interest in that despite its fiduciary duties, it was also (among other things) ‘the promoter and benefactor of “closer settlement”’, it ‘dictated the managers

\textsuperscript{29} Submission 3.4.291, p 48.
\textsuperscript{30} Submission 3.4.389, pp 5–6.
\textsuperscript{31} Submission 3.4.125, pp 23–24.
\textsuperscript{32} Submission 3.4.291, pp 32–33.
\textsuperscript{33} Submission 3.4.291, pp 32–33.
\textsuperscript{34} Submission 3.4.125, p 30.
\textsuperscript{35} Claim 1.5.13, p 15; submission 3.3.608, pp 6–8; submission 3.4.125, pp 26–30.
and management of the native townships, and it profited from its position ‘to the significant detriment of Māori’\textsuperscript{36} The Crown, for its part, implied from the figures it set out that permanent alienations were, for most townships in Te Rohe Pōtae, quite small.\textsuperscript{37} It also said that ‘[i]n most cases, the lands were purchased in response to the owners’ requests’. It additionally noted that for the townships created under the 1895 Act, permanent alienation was not possible before 1910.\textsuperscript{38} In response, the claimants provided additional figures, aiming to show that the Crown’s alienation figures were misleading because the land actually remaining with the beneficial owners was, for various reasons, less than might be inferred from simply deducting sales from the original land area.\textsuperscript{39}

Also, in connection with alienation, the claimants said that although there were some safeguards against landlessness, all the emphasis was on the owners as individuals; there was no provision for considering matters from a tribal perspective.\textsuperscript{40}

Submissions relating to individual townships will be summarised in the section dealing with the township concerned.

\subsection*{15.2.4 Issues for discussion}

Based on the arguments advanced by claimants and the Crown, and the statement of issues prepared for this inquiry, we focus on the following questions in this chapter:

\begin{itemize}
  \item What was the Crown trying to achieve in establishing the native townships regime? Did it adequately consult with Māori and gain their consent to the regime in general, and to the establishment of individual townships?
  \item What were the practical and ongoing impacts of the scheme? To what extent did Te Rohe Pōtae Māori benefit from the native townships established in the inquiry district?
  \item To what extent were native townships established, managed, and administered in a Treaty-compliant way, and what provision was there for Māori to be involved?
  \item Did the regime actively protect Māori land from permanent alienation?
\end{itemize}

\section*{15.3 The Native Townships Legislative Regime}

\subsection*{15.3.1 The extent of consultation with Te Rohe Pōtae Māori}

In 1895, the Liberal Government introduced the concept of ‘native townships’ on Māori land. Shortly afterwards, on 29 June 1900, Parawai native township was established on Kāwhia Harbour under the the Native Townships Act 1895. Two more townships were subsequently established on Kāwhia Harbour under the 1895 Act: Te Puru in 1901 and Kārewa in 1902. The native township regime was largely

\begin{itemize}
  \item 36. Submission 3.4.125, pp 30–33.
  \item 37. Submission 3.4.291, p 40.
  \item 38. Submission 3.4.291, p 43.
  \item 39. Submission 3.4.389, pp 17–18.
  \item 40. Submission 3.4.125, p 49.
\end{itemize}
a result of frustration with perceived slowness in acquiring Māori land in locations considered economically significant in largely Māori-held districts such as Te Rohe Pōtae.

15.3.1.1 What was the extent of consultation with Māori over the establishment of the 1895 Act?
The Minister for Lands, John McKenzie, introduced the Native Townships Bill to Parliament in 1895, arguing that it was intended to overcome the inability of Pākehā to acquire legal title to lands where they already were building stores and dwelling places on native land. While McKenzie had been a strong supporter of purchasing Māori land outright, in this instance the scheme drawn up was based on leasehold. In debate in the House, the Pākehā members who spoke focused largely on the benefits for tourism and the economy. McKenzie also emphasised that there would be full compensation for any land taken, consultation over the creation of reserves for affected Māori, and provision for them to lodge objections. The Māori members were absent from the House at the time, but McKenzie commented that the committee process would allow for Māori input.

When the committee stage was reached, the Māori members were indeed present, but it is unclear whether other Māori were able to give input via submissions. Hone Heke apparently expressed doubt about how successful the proposed townships would be from a Māori point of view, pointing to the failure of a similar scheme at Rotorua. Nothing else is known of what was said, however, other than that there was a failed attempt to prevent ‘any Native burying-ground, or any Native pa’ from being included in areas proclaimed for townships.

During the Bill’s third reading Heke drew attention to the preamble’s statement that the purpose of the legislation was to promote the ‘opening up of the interior of the North Island’. Heke said his understanding was that Māori were not at all unwilling for their land to be used for settlement. ‘The problem was, rather, what he called ‘class legislation, affecting Natives alone’: current legislation, he said, ‘deprived them of all the rights enjoyed by their European friends in reference to their own property’. He was also suspicious of the Crown’s intentions, citing examples of existing Crown practice and commenting:

Honourable members would find that whenever the prosperity of a township was assured the Crown stepped in and sent their agents amongst the Native owners and asked them whether they desired to dispose of their interests to the Crown. . . . The Natives should be guarded against the Crown purchasing.

41. Document A55 (Marr), pp 70, 135, 137.
45. ‘Native Townships Bill’, 5 July 1895, 16 July 1895, NZPD, vol 87, pp 409, 595.
Carroll responded that the Crown ‘did not necessarily’ want to buy. Instead, the plan was for the Government to act as trustee for the owners, who were, moreover, assured of receiving reserves in the townships, including any buildings currently under their use and ownership and, as far as possible, all their cultivations. He did not see that as being harmful to Māori interests: ‘What injury could possibly accrue to the Native owners under these conditions?’ All the Government wanted, he said, was that ‘there should be townships formed in districts where settlement had been growing apace and population increasing’. Unfortunately, all too often, Māori simply took ‘a negative position . . . no matter what the project might be’. This Bill, however, would empower the Government to create a township wherever it was ‘considered in the interests of the Natives and . . . of the general public’ to do so.  

Debate in the Legislative Council again stressed the scheme’s importance for the tourist trade which, according to Sir Patrick Buckley, was ‘increasing to an enormous extent’. Other members, however, were critical of the scheme, describing it as ‘high-handed’ and querying how much Māori support there was for the Bill. One member particularly pointed to the clause saying Māori could express views about the location of allotments to be set aside for them in the proposed townships, but the surveyor-general would have the power to ignore their wishes. Māori members of the Legislative Council like Hori Taiaroa, of Ngāi Tahu, took issue with the fact that land was to be ‘taken entirely . . . from the Natives, and considered Crown land’. He did not see how this could be done in any way that was fair. He was particularly concerned about the possibility of permanent land loss. He also complained – along with his colleague Major Ropata Wahawaha of Ngāti Porou – about the lack of information on how many townships the Crown had in mind and where it might want to site them. The Act, nevertheless, became law on 30 August 1895.

**15.3.1.2 The Native Townships Act 1895**

The Native Townships Act 1895 empowered the Crown to establish townships on Māori land. The Crown’s intentions were explicit in the legislation’s preamble which, as noted by Hone Heke in debate, stated that it was essential to establish townships at various centres, to promote ‘the settlement and opening-up of the interior of the North Island’. The preamble then went on to identify a problem which the Act was intended to solve: ‘in many cases the Native title cannot at present be extinguished in the ordinary way of purchase by the Crown, and other difficulties exist by reason whereof the progress of settlement is impeded’. From the preceding parliamentary debate, the perceived ‘difficulties’ included Māori resistance to giving up direct control of their land, and settler anxiety about their
lack of legal title. As such, the Crown wanted a quick solution to take advantage of economic opportunity and was not prepared to wait for the slow process of purchasing and fixing title.

To resolve the problem, section 3 of the Act allowed the governor to proclaim ‘any parcel of Native land’ up to 500 acres as the site for a native township, provided it was not within 10 miles of another native township. The governor was also required to name the township. Following proclamation, the Crown was able to survey the township area and draw up a plan allocating streets, sections, and reserves. Up to one-fifth of the total area of the township – that is, including the land taken up by public amenities such as streets – could be set aside for native allotments. Then came the provision criticised in the Legislative Council: in deciding the size and location of such allotments, the surveyor-general was to take into account the wishes of the native owners, but only to the extent that they did not interfere with the plan he had in mind for the town’s layout. As noted earlier, the allotments were definitely to include ‘every Native burying-ground, and every building actually occupied by a Native’ at the time the proclamation was gazetted. Upon completion, the plan was to be exhibited for two months, allowing for any objections to be made and then considered by the chief judge of the Native Land Court. Once any resultant changes had been made to the plan, the surveyor-general was to certify it as correct. From this moment, the township was regarded as having been duly constituted.

The Act, and its associated regulations, afforded Māori only limited input into the establishment of native townships. There was no provision, for instance, for Māori to object to the creation of a township in their area, to its location, or to the name selected by the governor. Māori were given more of a say in the location of native allotments, though this input was also constrained. The surveyor-general was required to consult affected Māori owners as to the locations of native allotments. However, if he thought their chosen areas would interfere with the survey, ‘or the direction, situation, and size of the streets, allotments, or reserves’, he could ignore their wishes. Only once a plan was exhibited could Māori owners file objections about ‘the sufficiency, size, or situation’ of the plots allocated to them. These objections were to be heard and determined by the chief judge of the Native Land Court, who had the power to alter the allocation of reserves as he saw fit.

Under the 1895 Act, the land within the township was vested in the Crown. Streets and public reserves were vested in fee-simple, while the remaining land – the general and native allotments – was vested in trust.

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53. Native Townships Act 1895, s 5.
54. Native Townships Act 1895, ss 6, 7.
55. Native Townships Act 1895, ss 8, 9.
56. Native Townships Act 1895, s 10.
57. Native Townships Act 1895, ss 6, 7.
58. Native Townships Act 1895, ss 8–9.
59. Native Townships Act 1895, s 12.
In addition, despite McKenzie’s statement to the contrary when introducing the Bill, no compensation was payable to the owners for the land set aside for roads or public reserves; the Crown acquired these areas for free.

The commissioner of crown lands was charged with leasing and managing the townships. There was no formal provision in the 1895 Act for any Māori involvement in the management of native townships. Leases of general allotments were initially to be for a maximum of 21 years, but with the discretion for renewals ‘from time to time for a period not exceeding twenty-one years’. Rents were to be ‘the best obtainable’ on the open market, and to that end leases were to be by public auction or public tender.

Any income from the land was to be paid into a dedicated account in the Public Account. The cost of survey and any other costs associated with setting up the township were to be paid from this income. Compensation might also be chargeable against the account, if it had not been made the responsibility of the incoming lessee. Any residue was to be paid to the beneficial owners of the land, in proportion to their relative interests. A financial report, certified as correct by the controller and auditor-general, was to be presented to Parliament every six months.

In general, native allotments could not be alienated by lease or sale. However, the Crown had a limited right to purchase Māori interests that were already subject to a proclamation of Crown pre-emption and were not otherwise proclaimed as a native allotment.

Regulations were issued on 4 February 1896 to cover the finer details of the scheme, including the objection process, leasing procedure, and a sample lease agreement. There were very precise rules about what the lessee could and could not do. For example, the lessee had to keep the allotment, and any buildings on it, tidy and in good repair, and could not carry out ‘any noisy, noxious, or offensive trade or manufacture’ there. The lessee was also responsible for providing and maintaining sanitation to the standard demanded by law and local authority regulations.

If at any point the lessee defaulted on rent, failed to keep any of the lease conditions, or was found not to be using the land, the commissioner of crown lands, as lessor, had right of re-entry. Where the lessee elected not to renew a lease, the incoming lessor was responsible for paying for any improvements via the intermediary of the commissioner. If there was no new lessee, however, the outgoing lessee could make no call on the Crown to recoup such costs.

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60. Native Townships Act 1895, s15(3).
61. Native Townships Act 1895, s15.
63. Native Townships Act 1895, s18.
15.3.2 The Native and Māori Land Laws Amendment Act 1902 and amendments

The Native and Māori Land Laws Amendment Act 1902, as well as further amendments to this Act and the introduction of new legislation in the following years, built on the establishment and operation of native townships. The Native and Māori Land Laws Amendment Act 1902 specified at section 8 that the governor could now declare that land was to be vested in and used by the Māori land councils as a site for a native township without any direct reference to the owners or, indeed, the local Māori land council. Land did not need to be vested in the council by the owners before being proclaimed as a native township. As will be seen, however, in practice – at least in this inquiry district – it appears that the governor proclaimed townships after requests from owners or the land council.

Two existing Te Rohe Pōtae townships, Ōtorohanga and Te Kūiti, were proclaimed under this Act.

When townships were proclaimed, the Act gave the land councils significant control over their establishment and management. Once a township plan was formally deposited, a certificate of title was issued to the council. At that point, the council could begin the process of laying out the township, allocating reserves, and leasing sections. In a departure from the regime established under the 1895 Act, the land council could alienate township land by sale, not just lease.66

Terms relating to the alienation of land were however subject to regulation: under section 11, the governor could ‘make, alter, or amend regulations’ for the administration of the townships, including ‘in what mode or under what terms or conditions allotments in such townships may be leased, sold, or exchanged, or otherwise dealt with’. When regulations were issued a few months later, in February 1903, they also gave the council considerable latitude to sort out a range of township matters, including disputes about ‘the situation or occupation of streets, allotments or reserves’, and to ‘adopt its own procedure’ in doing so.67

A new provision, not available under the 1895 regime, empowered the council to grant occupation licences to beneficial owners for any allotment, though such licences could be terminated on six months’ notice. Moreover, unlike the earlier regime, there was no limit on the number of sections that could be set aside as reservations for the owners.68 Regulations also stated that any streets or public reserves ‘may’ be vested in the Crown, but it does not seem to have been compulsory, unlike the 1895 regime.69

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67. ‘Regulations Prescribing Terms under which Allotments in Native Townships under the “Māori Lands Administration Act, 1900” and its Amendments may be Disposed of’, 13 February 1903 (doc A62(a), vol 4, pp 473–475).
68. Native and Māori Land Laws Amendment Act 1902, s10(d); ‘Regulations Prescribing Terms under which Allotments in Native Townships under the “Māori Lands Administration Act, 1900” and its Amendments may be Disposed of’, 13 February 1903, cl 1 (doc A62(a), vol 4, p 473).
69. ‘Regulations Prescribing Terms under which Allotments in Native Townships under the “Māori Lands Administration Act, 1900” and its Amendments may be Disposed of’, 13 February 1903, cl 6 (doc A62(a), vol 4, p 473).
In 1904, the regulations governing the new regime were amended. Improvements could now be paid for by instalments, rather than immediately on taking up the lease. Further, where sections were not let at auction or by tender on the advertised date, there was now the possibility of someone being able to take up the lease at any time over the next six months, but still at the advertised lowest rental. Both of these amendments had been lobbied for by the Maniapoto–Tuwharetoa Māori Land Council. The regulations were tweaked again in October 1904 to allow the council, if the allotments were still not taken up during the six-month extension, to lease them for periods of up to five years on whatever conditions it saw fit.

On 27 October 1905, the Government enacted the Native Townships Local Government Act. Section 2 of the Act specified that the governor could, by order in council, authorise the inhabitants of any native township (constituted under either the 1895 or the 1902 legislation) to become a body corporate. Under section 3, the residents could then elect a town council of five members which would be responsible for such things as levying rates, and ‘[m]aking and maintaining streets, drains, waterworks, and electric-lighting works, and generally executing any public work for the benefit of the township’. Rates were not to be levied, however, on any sections that were not leased or occupied, unless the governor specifically directed otherwise by notice in the Gazette (section 12). Notably, for the first town councils elected under these provisions, the governor was to nominate one Māori member for the first two-year term. After the first term, however, there was no explicit provision for Māori representation on these councils.

Three days after passing this legislation, the Government also passed the Māori Land Settlement Act 1905 under which Māori land councils were replaced by Māori land boards. The boards took over all the former councils’ responsibilities, including for native townships created under the 1902 legislation. Those townships were now held in trust by bodies comprising just three Crown-appointed members, only one of whom had to be Māori. This minimal representation was entirely abolished in 1913, when the land boards were effectively amalgamated with the Native Land Court to comprise solely the judge and registrar of the local district.

### 15.3.3 The Native Townships Act 1910

The controversy concerning tenure came to a head with the introduction of a new Native Townships Bill in 1910. The legislation, which passed into law on 25

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70. ‘Amending Regulations Prescribing Terms under which Allotments in Native Townships under “The Māori Lands Administration Act, 1900, and its Amendments may be disposed of’, 8 February 1904, New Zealand Gazette, 1904, no. 11, p. 470.
72. ‘Amending Regulations Prescribing Terms under which Allotments in Native Townships under “The Māori Lands Administration Act, 1900”, and its Amendments may be Disposed of’, 17 October 1904, New Zealand Gazette, 1904, no. 84, p. 2431.
73. Native Townships Local Government Act 1905, s. 10.
75. Māori Land Settlement Act 1905, s. 2.
October 1910, was initially intended to bring all native townships under the land boards, ensure that all new or renewed leases were perpetually renewable and that the Crown had a right of purchase. In the end, the Act provided not only for a Crown right of purchase, but also a private right of purchase.

The introduction of the Bill was itself controversial due to the Crown’s apparent failure to consult with Māori as to its terms. Kaihau (member for Western Māori) opposed it for this reason and said that, as a result, affected Māori were unaware of its provisions. Te Rangi Hīroa (Northern Māori) likewise charged that ‘any attempt to alter the condition of things without the Maoris agreeing to it is distinctly a breach of faith.’ Kaihau also disagreed with the Bill on principle: Māori, he said, should not only be able to retain control of their own lands, but also have the right to administer them. They should be able to ‘manage [their] affairs under the united authority of the King and the Maoris.’ Appealing to the Treaty, he said these were ‘the rights and privileges which were assured to us by Her late Majesty Queen Victoria.’ Despite this opposition, political pressure for freehold, or at least perpetual lease renewal, was intense. By the time of the Act’s passage, sections 19 and 21 had been amended to allow sales to private individuals as well as the Crown.

The Act completed the merger of what had previously been two different native township regimes. This meant that from now on, the land boards were responsible not only for management of the townships created under the 1895 Act but also became owners-in-trust of the lands involved (except for roads and public reserves).

The Act preserved the terms of existing leases, but otherwise gave the board the powers of a leasing authority ‘within the meaning of the Public Bodies’ Leases Act, 1908.’ This included the ability to issue leases with an overt perpetual right of renewal written into them from the outset. Leasing of native allotments required either the precedent consent of the beneficial owners or their approval at a meeting of owners. The provisions allowing perpetual leases were so successful that, by 1919, Judge MacCormick, president of the Waikato–Maniapoto District Māori Land Board, was writing as if perpetually renewable leases were the norm.

As indicated above, the Act also empowered Māori land boards to sell township land to either the Crown or private individuals. In each instance, however, the sale had to have either the beneficial owners’ precedent consent in writing (unlike

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76. ‘Native Townships Bill,’ 2 September 1910, NZPD, vol 151, p 273.
82. Native Townships Act 1910, ss 12, 13.
83. Public Bodies’ Leases Act 1908, s 5(e).
84. Native Townships Act 1910, s 15.
the Native Land Act 1909 which, in certain circumstances, allowed alienation by precedent consent of the board alone, without reference to the owners) or the agreement, by resolution, of a meeting of assembled owners. Section 22 specified that the governor could, by order in council, issue regulations on the subsequent disposal of any township land acquired by the Crown. The quorum set for meetings of owners was very low, being just five owners present in person or by proxy (irrespective of the total number of owners). If land was alienated under this provision, though, the board did have a responsibility to ensure that an adequate price was paid and that the owners retained sufficient other lands for their ‘adequate maintenance.’

15.3.4 The Native Townships Amendment Act 1919 and the regulations for purchasing leased land

In the decades following the passage of the Native Townships Act 1910, several amendments to the parent legislation further facilitated the purchase of township land.

In 1919, the provisions concerning the valuation of township land being bought by the Crown were amended. Under the existing provisions, the valuer-general could be called upon in certain circumstances to make a special valuation of interests the Crown proposed to purchase. The Crown could not then buy the interests for less. In cases where land prices were booming, this could raise the purchase price considerably – a situation that the Crown encountered in Ōtorohanga in 1916 (see section 15.4.3). The Native Townships Amendment Act 1919 therefore decreed that if the assembled owners had already accepted a price, and it was based on a valuation not more than a year old, the land board could not ask for a new valuation to be carried out. The same Act clarified that the Crown could dispose of any township land it had purchased, ‘by way of sale, lease, or otherwise’, according to regulations issued under section 22 of the 1910 Act.

In December 1920, the governor in council issued new regulations to allow lessees to effectively trigger a Crown purchase of their leased land, for onsite to them. This procedure was introduced in response to ‘agitation from the lessees in the Maori townships of Te Kuiti, Taumarunui and Otorohanga, and largely mirrored a process suggested by the mayor of Te Kūiti the year before (see section 15.4.4). The method was set down as follows:

1. Not less than half of the total number of lessees in a township, or alternatively within any particular subdivision in that township, would request a special valuation of township land they were leasing.

86. Native Land Act 1909, s 209.
90. Native Townships Amendment Act 1919, s 3.
91. Native Townships Amendment Act 1919, s 2.
92. Registrar, Auckland, to Under-Secretary, 21 April 1950 (doc A62(a), vol 5, p 589).
2. Once the valuation had been carried out, those same lessees had three months to enter into an agreement to purchase the land they were leasing 'in the event of [its] acquisition by the Crown'.

3. As and when the Crown did purchase, the commissioner of crown lands notified the lessees, who then had six months to surrender their leases and complete the purchase of the freehold.

4. Where a lessee could not pay cash, he or she was given the opportunity of deferred payment, by annual instalments over a period of 20 years. Pending completion of the full payment, a licence to occupy was issued in place of the lease.93

At no point did the regulations refer to the rights of the beneficial owners, although under the Native Townships Act 1910, they did still have to agree to any Crown purchase.94

In May 1922, regulations extended the period for concluding the agreement under step 2 above to three years, provided that the Crown had, in the meantime, gone ahead with acquiring the land. A further clause also introduced a deferred payment option for any land acquired by the Crown prior to the 1921 provisions.95

For these earlier purchases, a 1923 amendment subsequently set a cut-off date of 31 December 1926.96 In 1925, this same cut-off date was applied to land purchased using the valuation trigger in step 2.97 Further amendments extended the deadline in both instances, first to 31 December 1929 and then to 31 December 1932.98 In short, the regulations increasingly served to make it easier for private individuals to purchase township land using the Crown as an intermediary.

15.3.5 The native townships and Māori Trustee administration

When the Māori land boards were abolished in 1952, their rights, duties, and assets, including land held in trust, were transferred to the Māori Trustee, who had already controlled all other Māori reserved land since 1910.


94. Native Townships Act 1910, s19.


96. ‘Regulations regarding the Disposal of Lands Acquired by the Crown under the Native Townships Act, 1910, and its Amendments’, 14 November 1923, New Zealand Gazette, 1923, no 80, p 2801.


In the following decades, the powers of the Māori Trustee to deal with township land were amended. The Māori Reserved Land Act 1955, for instance, allowed the Trustee to negotiate new leases on whatever terms or conditions he saw fit. This included the use of ‘prescribed’ leases as set out in the second schedule to the Act (the first form of which was for urban land).\(^9\) Initially for 21 years, lessees with a prescribed lease had a right of renewal for a further term of 21 years provided they complied with all the terms and conditions of the lease. The renewal would be on the same terms and conditions, including in regard to renewal. Prescribed leases thus still provided for perpetual renewal.\(^10\) Existing leases could also be converted to prescribed leases.\(^11\) The rentals on such leases were to be fixed on the basis of a government valuation.\(^12\) There was no reference to market value or opening the lease up to auction. In return, lessees were bound to the usual requirements about maintenance and upkeep of the property and about paying rental money on time.\(^13\) Lastly, the ‘terms, covenants and conditions’ of any prescribed lease (with the exception of the rental amount) could be modified by agreement between the Trustee and the lessor.\(^14\) No mention was made of any need to consult the beneficial owners. As to sales of township land, the Trustee could still sell to the Crown or to private individuals.\(^15\) In addition, though, if the Minister of Māori Affairs decided that any township land (other than roads or public reserves) was no longer required for township purposes, he could trigger a process to enable the land court to return it to the beneficial owners.\(^16\)

In 1967, the Māori Affairs Amendment Act was passed, affecting a number of earlier Acts that had a bearing on township land; it also expanded the powers of the Māori Trustee to alienate township land. The Trustee, for instance, could now sell any township land over which a prescribed lease had been granted. In conjunction with that, another new clause enabled him ‘at his absolute discretion’ to offer an existing lessee the chance to purchase instead of converting his lease to a prescribed lease.\(^17\) The new Act also provided for the establishment and use of a Reserved and Vested Land Purchase Fund, from which the Trustee was empowered to compulsorily purchase ‘uneconomic interests’ in reserved land and vested land, including in native townships.\(^18\)

15.3.6 Developments since 1973 addressing the future of native township lands

Following the amendments of native township legislation in the first half of the twentieth century, it became apparent that there remained lingering issues

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99. Māori Reserved Land Act 1955, ss 2, 26, sch 2, form A.
regarding Māori land used in native township regimes. The status of Māori land tied up in perpetual leases and reserves became a political issue by the 1970s as part of Māori pressure over the continuing alienation of land. Because of this, native township lands were included in a series of inquiries established with the goal of recommending how to remedy the situation so that issues with the land could be more fairly addressed and resolved.

15.3.6.1 The Sheehan commission
In December 1973, the governor-general appointed a three-person panel, chaired by retired Māori Land Court judge Bartholomew Sheehan, to inquire into the administration of reserved land, including native township land. The commission was tasked with considering whether the administration of such land should remain with the Māori Trustee or be transferred to the beneficial owners. It was also to consider whether the existing alienation provisions were ‘warranted or satisfactory’, and whether current leasing provisions were likewise ‘satisfactory’. Kārewa, Ōtorohanga, and Te Kūiti were among the lands that came within its terms of reference. Between March and September 1974, the commission held 14 hearings at venues around the country, including at Hamilton and Taumarunui.

The commission reported in 1975. Its general view was that the Crown was ultimately responsible for the deficiencies of the regime in place, especially in respect of leasing. Owners of township land, the commission noted, ‘play no part in the administration of these lands and they are neither informed nor consulted in the mechanical processes attending these trusts’. The Māori Trustee, meanwhile, was simply ‘the instrument or agent’ of Parliament, which passed the legislation, and he could ‘protect the interests of the beneficiaries only insofar as the Act permits’. In reality, leases were not made between the Māori Trustee and lessees, but the Crown and lessees. The commission noted that ‘Parliament has been under continual pressure from the lessees in the matter of security of tenure, the rights of renewal, the mode of determining rents, and the right to freehold the land.’

The commission was particularly critical of perpetually renewable leases. The commission noted that such leases had been abolished in the United Kingdom as early as 1922. It also observed that lands subject to perpetually renewable leases were ‘forever removed from the control, use, or occupancy of the beneficial owners’, thus destroying the owners’ ‘concept of the land being regarded as ancestral lands’. To make matters worse, the leases had been ‘arbitrarily imposed by legislation without the consent of the beneficial owners’.

112. AJHR, 1975, H-3, p 12.
117. AJHR, 1975, H-3, p 68.
Where land was under perpetually renewable lease, the only right remaining to the beneficial owners (via the Māori Trustee as lessor) was to receive an annual rent. This made it even more important that the rent should be a just one. On this count, the commission was damning. Rents were based on conservative government valuations, rather than market value. The typical 21-year period between rent reviews, meanwhile, left lessors vulnerable to the effects of inflation over the lease term. To illustrate the point, the commission noted the changing value of an imaginary dollar, based on the Department of Statistics’ consumer price index records. It discovered that a 1910 dollar would have been worth only 64.3 cents by 1931; 21 years later, in 1952, that 1931 dollar would then have diminished in worth to only 53.7 cents; and after a further 21 years, in 1973, the 1952 dollar would itself have reduced in value to only 42.8 cents. In the case of Māori reserved land, this depreciation in the value of money received for rent was borne solely by the lessor. The lessee was entirely protected from it. Normally, the lessor could reap the value of any improvements at the end of the term in compensation for these losses, but this did not apply in the case of perpetually renewable leases. The lessor was also responsible for paying land tax, though since 1954 this had at least been capped so that it could not exceed 10 per cent of any revenue from the land.

On top of all that, lessees had the opportunity to seek the freehold of the land they were leasing. The commission was condemnatory:

on numerous occasions the Legislature has unilaterally altered the contract in the lessee’s favour even when it was not demanded by equity. The most recent instance is the Maori Affairs Amendment Act 1967 which gave the lessees the ‘opportunity to freehold’ without consulting the Māori beneficial owners or the Māori Trustee. Beside such a radical and destructive act the writing of more frequent rent reviews into the contract is almost a minor matter.

Among the commission’s 66 recommendations for reform of the regime was that the freeholding provision be repealed. Other important recommendations were that the beneficial owners be allowed to become more involved, for example through the use of trusts, incorporations, or advisory trustees selected from amongst their number; that the body or person leasing on behalf of the owners be allowed to determine rents according to the procedures laid down in the Public Bodies Leases Act 1969; and that there be provision for more frequent rent reviews.

However, the only action the Crown appears to have taken was to move towards encouraging a greater use of trusts and incorporations. For the rest there was, as

118. AJHR, 1975, H-3, pp 63, 76.
120. AJHR, 1975, H-3, pp 83–84.
121. AJHR, 1975, H-3, p 82.
122. AJHR, 1975, H-3, p 92.
123. AJHR, 1975, H-3, p 84.
the Tribunal’s report *Taranaki Māori, Dairy Industry Changes, and the Crown* put it, a ‘wilful turning of a blind eye to what had been very deliberate injustices’.

### 15.3.6.2 The Māori Reserved Land Amendment Act 1997

It was not until the 1990s that the Crown finally moved to remedy the issues with reserved lands. In 1991, the Ngāi Tahu Tribunal strongly criticised the leasing regime under the Māori Reserved Land Act 1955 and the Crown’s ongoing failure to implement the Sheehan commission’s recommendations. A series of government-sponsored investigations and panels subsequently considered the matter. These included a 1991 review that led to what became known as the Marshall report, and the establishment in 1993 of a Reserved Lands Panel, under Judge Trapski. The Marshall report (released in April 1993) found that the ‘serious inequities’ of the reserved lands regime were ‘a direct result of lease terms established by Parliament’. Likewise, the Reserved Lands Panel called for ‘immediate action to dismantle and abolish the system of perpetually renewable leases’, saying it was not only ‘inequitable’ but ‘unjust’. The panel found that the Crown was ‘the perpetrator of the original injustice and it has allowed that unjust situation to continue over many decades by its inattention to the calls for action made by successive inquiries and commissions’.

In 1995, the Government indicated it was considering legislation to amend the Māori Reserved Land Act 1955 and set up a consultative working group that included representatives from both lessee and owner organisations. It also called for interested parties to make submissions on the proposed legislation via the select committee process. Alongside that, it established an independent review committee to advise the Minister of Māori Affairs about possible compensation for both lessors and lessees.

The result of all this activity was the Māori Reserved Land Amendment Act 1997, which came into force on 1 January 1998. It provided for:

- the introduction, over time, of more frequent rent reviews and fairer annual rents;
- compensation to lessors for the delay in introducing these changes;
- compensation to lessees for the change to more frequent rent reviews and fairer annual rents;

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‘solatium’ payments to both lessors and lessees, to recognise ‘the justifiable but unquantifiable transactions costs’ that would be incurred because of changes introduced under the Act;\textsuperscript{130} 
a right of first refusal for lessors to purchase in cases where a lease became available for uptake by a third party, or for existing lessees where the lessor wished to sell; 
the establishment of funding assistance to help lessors to buy out lessees as and when the opportunity arose.\textsuperscript{131}

Rents were to move to market rates, rather than being a percentage of unimproved value, and there were to be rent reviews every seven years. There was, however, to be a three-year grace period before these changes were introduced, and even then, the move to market rates was to be phased in over four years.\textsuperscript{132}

The compensation payouts to the lessors were in recognition of the financial cost associated with these delays; they were not compensation for the losses sustained prior to 1997. They also related only to sections that were still subject to lease under the 1955 Act. There were no payments in the case of sections that had been sold, or already revested in the owners, prior to December 1997.\textsuperscript{133}

In schedule 5, the Crown conceded the unfairness of the rental situation for Māori township lands, and it promised to rectify the issue. That schedule states:

The present Government recognises that Māori for a number of years have not been obtaining fair market rents for their land. This is an issue that has to be addressed by the present Government in the future. It is an issue that will be dealt with by the present Government as part of its consideration of historical grievances.

According to the Act, lessors and lessees could either choose to accept the amount of compensation offered to them or seek a determination from the Valuation Tribunal. In effect, however, the costs of appealing to the tribunal exceeded the compensation on offer in all but 22 cases throughout the whole country. For most people, therefore, taking what was offered was the only viable option.\textsuperscript{134}

Even so, for the beneficial owners, receiving payment was not straightforward. Because the compensation was to make up for low rentals, the Māori Trustee decided it should be treated as rental income and made subject to a 5 per cent commission. It was also to be retained – along with any money given to assist with buying out the lessees – pending consultation with the owners. As to the solatium payments (defined in the \textit{Oxford English Dictionary} as ‘a thing given for compensation or consolation’), the Trustee was of the view that they would be needed to

\textsuperscript{130} A ‘solatium’ is defined in the \textit{Oxford English Dictionary} as ‘a thing given for compensation or consolation’.

\textsuperscript{131} Māori Reserved Land Amendment Act 1997, s 3.

\textsuperscript{132} Document A62, pp 316–317.

\textsuperscript{133} Document A62, p 323.

\textsuperscript{134} Document A62, p 322.
cover the cost of the meetings of owners and to offset the cost of the first market rent review.135

The Trustee also instructed his district offices to ask owners whether they wished the Trustee to hold on to funds to assist with buying out any leases that might be surrendered.136 Where a lease came up for purchase, the Trustee had only 20 days to accept or reject the offer. This gave little time to call a meeting of owners, so effectively meant that they had to have already given instruction in principle on what to do in such an event. If the owners had indicated that they wanted to purchase as and when the opportunity arose, the Trustee then had to consider whether there were sufficient funds credited to the account of that particular section. There was no facility for him to provide loan finance.137 In addition, where owners wanted to buy back the land, the regional solicitor advised the formation of an ahu whenua trust. The sum total of all these requirements meant that in many cases owners simply put the matter in the ‘too hard basket’, preferring to have the funds distributed and the land left with the Trustee.138

Where beneficial owners did want to set up an ahu whenua trust to take over their township land, they then had to decide how they wanted that to operate. The options were either for the Māori Trustee to act as responsible trustee assisted by advisory trustees appointed from among the owners; or to act as custodial trustee, or agent for private trustees.139

15.3.6.3 The 2002 settlement

In 1999, the Federation of Māori Authorities took up the matter of compensation for low rentals prior to 1997. Its efforts to seek a pay-out for those affected eventually led to a deed of settlement signed in 2002. A press release issued in May of that year said that the $47.5 million payment ‘to Māori leasehold landowners’ was ‘in recognition of the losses they sustained through their inability to maintain market rents’.140 Under the Māori Reserved Land Amendment Act 1997, though, any compensation was to be paid to the lessor and that was generally the Māori Trustee.141

The deed stated that the payment represented a final settlement by the Crown. Each ‘Owner’ was to use ‘all possible endeavours’ to ensure that the beneficial owners of the land did not commence rental-loss proceedings ‘in any court, judicial body or tribunal (including the Waitangi Tribunal)’.142 From the evidence

142. Document A62, p 334. We did not receive a copy of the 2002 settlement deed in evidence. Claimant counsel noted that schedule 1 listed the Māori Trustee as the owner for ‘Auckland/Others’, as well as ‘Rapana-Robin (Otorohanga)’ and ‘Te Ata-i-Rangi Kahu (Kawhia Properties Trust)’: see submission 3.3.608, pp7–8.
presented, however, it seems that the money paid out did not cover losses sustained on reserved land that was no longer under lease as at December 1997 – even though the owners of those sections would also have suffered the effects of low rentals (albeit for a slightly shorter period).  

The deed of settlement explicitly states that the compensation paid is an 'ex gratia payment'. The deed of settlement was negotiated in accordance with schedule 5 of the Māori Reserved Land Amendment Act 1997. This schedule did not specify a time-period that was being covered. Importantly, section 1.3.2 of the deed stated that the deed and the ex gratia payment were not negotiated as part of the Crown’s process of settling claims arising from the Crown’s historical breaches of the Treaty of Waitangi and its principles. Clearly, the 2002 settlement does not restrict the Tribunal from making Treaty findings concerning native townships.

Having completed a general overview of legislation concerning native townships, reserved lands, and the 2002 deed of settlement, the next section considers the more contentious aspects of the native township legislation.

**15.3.7 Contentious aspects of the native township regime**

There are a number of general issues that applied to all the townships established in Te Rohe Pōtae. In this section, the general issues that were created by the native township legislative regime from 1895 to 1919 and the repercussions for Te Rohe Pōtae Māori that flowed from this regime are listed. However, details on the impact of the legislation concerning the five townships in this inquiry district are discussed in the final sections of this chapter.

**15.3.7.1 Consultation and consent for individual townships in Te Rohe Pōtae**

The legislation did not require that the owners be consulted before an area was proclaimed as a native township, or consent to that proclamation. In the case of Parawai/Te Maika there seems to have been some limited owner involvement: there, at best, the Crown directly consulted a few of the several hundred owners of the Taharoa A block. Te Puru and Kārewa, by contrast, were both proclaimed as townships on the request of a somewhat larger proportion of the owners. That said, in the case of Kārewa, not all owners wanted the township, and those who did had requested an administrative arrangement quite different from what was provided for under the 1895 Act. The township was nonetheless proclaimed under that Act.

As to Ōtorohanga and Te Kūiti, Māori protest was sufficient to stop the Crown proclaiming townships there under the 1895 Act, both in 1896 and again in 1900. Only after that did the premier advise direct consultation with the owners, commenting (as noted earlier) that a neglect to do so was likely to cause ill-feeling which ‘ultimately militates against expedition in obtaining the townships’.

The Crown was then able to proclaim Ōtorohanga and Te Kūiti as native townships after being asked to do so by local Māori and the Māori land council. However, the
consent of Māori in these instances was conditional on Māori representation on the relevant land council and then the board charged with administering the townships. The Crown, however, did not maintain provision for such representation.

15.3.7.2 Township planning and the provision for Māori involvement

Under the 1895 regime, Māori could only have up to 20 per cent of the total township area set aside as native reserves. In Te Rohe Pōtae, the native reserves three townships established under the 1895 regime ranged from just 2.5 per cent in the case of Parawai to 13 per cent in the case of Kārewa. By contrast, over one-third of the area of each township was set aside for roads and public reserves. These areas were vested in the Crown, with no compensation paid to the owners. Certainly, roading and public reserves were needed, and Māori inhabitants of the township would benefit, but so would Pākehā inhabitants. Importantly, though, the Crown laid all the cost on Māori.

Another problem with the 1895 Act was the limited basis on which Māori could object. There was no provision for Māori to object to the creation of a township in their area, to its location, or to the name selected by the governor. The only permitted grounds for Māori to object were in regard to ‘the sufficiency, size, or situation’ of the plots allocated to them. Even then, their objections could be ignored by the surveyor-general if he thought their wishes would interfere with the survey, ‘or the direction, situation, and size of the streets, allotments, or reserves’. Objections could also be overruled by the land court judge.\(^{145}\)

The second township regime provided more flexibility to the Māori land council in planning the townships. In respect of both Ōtorohanga and Te Kūiti, the local Māori land council was proactive during the planning stage. It is not known how many sections were ultimately set aside for the Māori owners in Ōtorohanga or Te Kūiti. However, the evidence does reveal that the council adopted a fair and even-handed process for dealing with applications for owner reserves in the two townships. It is also notable that the council did not set aside public reserves in either township; instead, land for public purposes was acquired either by sale or public works – and with compensation paid. Still, around one-quarter of each township was set aside for roads without compensation to the owners.

15.3.7.3 Adequacy of administration, and survey costs

The commissioner of crown lands was responsible for administering the townships established under the 1895 regime until their transfer to the land board in 1908. The commissioner’s administration during this period was generally lacking. Although many lessees were quickly in arrears, the commissioner took

\(^{145}\) Native Townships Act 1895, ss 7, 9.
no action to enforce the lease conditions. Rents were minimal and took a long time to distribute, if they were distributed at all – the situation being exacerbated by the requirement to pay survey and other establishment costs (in addition to administration costs) out of any income received. By failing to assume some of the expenses involved in establishing the towns, the Crown reduced the likelihood that they would be economically viable for Māori.

A further problem was the lack of government support provided to land councils and boards, which were responsible not only for native townships but for a raft of other matters including vested lands more generally. This issue has already been addressed in chapters 12–14.

15.3.7.4 Māori involvement in township affairs
The ability of Māori to influence matters in Te Rohe Pōtae native townships established under the 1895 Act was limited to the point of it being negligible. In Parawai/Te Maika, for example, the owners proposed that the Crown drain the swampy areas of the township to improve the prospects of leasing the remaining sections. Officials, however, thought that there would be a better chance of success if the proposal came from the lessees rather than the owners.

Māori did have more influence in native townships established under the 1902 regime, but only initially: that influence declined after the 1905 and 1913 amendments first lessened and then completely removed Māori representation from the Māori land boards.

Also in 1905, the Native Townships Local Government Act provided for the inhabitants of any native township to become a body corporate with a five-member council of whom, for the first term only, one was to be a Māori nominated by the governor. Opportunity under the Act for Māori representation and influence in township affairs was thus minimal. From the evidence, only Te Kūiti became subject to its provisions – and the town’s residents anyway declined to form a council, preferring instead to seek borough status (with no statutory requirement for a Māori councillor).

15.3.7.5 Permanent land alienation
Although the townships were conceived on a leasehold basis, the provisions of the 1910 Act facilitated alienation through meetings of assembled owners. The legislation enabled lessees to acquire the land. This was followed by the 1920s scheme to allow Crown acquisition so that lessees could more easily purchase either outright or on deferred terms. By the 1930s, significant portions of several townships had been permanently alienated.

Moreover, while the amounts of land involved were relatively small in terms of permanent land alienation in the district as a whole, it is evident that the native township regimes played a significant role in the alienation of urban holdings and a transfer of power from Māori to Pākehā in the district’s largest settlements. We
have seen no evidence of any Crown monitoring of these impacts (other than a more general concern about landless Māori becoming a burden on the State).

15.3.7.6 Lease renewals and perpetual leases
The nature of the leases granted to native township lessees had significant impacts on the ability of Māori to exercise their ownership rights, or to benefit financially from the leasing of their land. This was particularly so when leases were perpetually renewable.

The claimants to this inquiry submitted that the 1895 Act ‘neither required nor prohibited’ perpetual leases. In their submission, the Crown had acted ‘negligently at least’ by allowing perpetual leases to be created over the township allotments under the 1895 Act and its associated regulations. The Crown submitted that the language surrounding lease terms was initially unclear, and maintained that it was only later, by dint of legislative amendments, that interpretation settled in favour of perpetually renewable leases.

Under the 1895 Act, the initial maximum lease term for general allotments was 21 years, but with discretion for renewals ‘from time to time for a period not exceeding twenty-one years.’ The sample lease included in the April 1896 regulations stipulated, meanwhile, that subject to the lessee satisfactorily fulfilling the conditions of the lease, he or she would ‘have the right to a renewal’ (emphasis added). The regulations issued in 1903 for the second township regime contained the same language.

As the Crown pointed out in submissions, the wording of the 1895 Act is somewhat ambiguous: it is not entirely clear whether the intention was to allow renewals up to 21 years each, or whether they should not exceed 21 years in total. The implication of the sample lease in the 1896 regulations was that the same conditions of lease would be used for the renewal, thus entitling the lessee to a further term beyond that, and so on without limit. In 1922, the Solicitor-General’s legal opinion was that the intention had been for a 21-year lease with one renewal of 21 years maximum, but he added that an agreement for perpetual renewal was to be enforced ‘if it clearly appears to have been within the intention of the parties.’ Notices for early lease auctions for Te Rohe Pōtae townships established under the 1895 regime simply repeated the language contained in the sample lease.

146. Submission 3.4.125, pp 23–24.
147. Submission 3.4.291, pp 32–33.
148. Native Townships Act 1895, s15(3).
150. Document A62, p 96; transcript 4.1.13, p 477 (Heather Bassett, hearing week 8, Te Kotahitanga Marae, 6 November 2012); ‘Regulations Prescribing Terms under which Allotments in Native Townships under the “Māori Lands Administration Act, 1900” and its Amendments may be Disposed of’, 13 February 1903, cl 11 (doc A62(a), vol 4, pp 474–475).
151. Submission 3.4.291, p 32.
152. Solicitor-General to Under-Secretary, Native Land Department, 16 November 1922 (Wai 900 R01, doc A21(b) (Bassett and Kay document bank), p 388); doc A62, p 169.
As to townships established under the 1902 regime, officials at the time seem to have interpreted the 1903 regulations as allowing for perpetually renewable leases. In September 1903, for instance, a senior Crown official asserted that clause 9(7) of the 1903 regulations ‘really provides for perpetual lease’. Of interest here, though, is that the 1903 regulations largely carried over the language from the 1895 Act and its associated 1896 regulations. This suggests that perpetually renewable terms had been deemed possible from the start. Certainly, an auction advertisement for Te Kūiti in November 1903 explicitly stated that leases were to have ‘right of renewal for further terms’ of 21 years.

Either way, subsequent amendments did allow for leases of native township sections to be perpetually renewable. Regulations issued in 1904, for instance, explicitly clarified that leases under the second regime were intended to be perpetually renewable. Instead of the lessee having ‘the right to a renewal of the lease’, the wording was now that for ‘the original and every renewed term’ there would be ‘a recurrent right of renewal of the lease’ (emphasis added). Following pressure from lessees and politicians, a new Native Townships Act in 1910 extended the provision for perpetually renewable leases to all native townships, including those established under the 1895 regime.

The evidence demonstrates that perpetually renewable leases were detrimental to owners in several ways. In particular, such leases depressed the income returnable to owners and they ‘forever removed [the affected land] from the control, use, or occupancy of the beneficial owners’. Perpetually renewable leases became a particular problem in Kārewa and Ōtorohanga. A further aspect of the issue is that the leases had been ‘arbitrarily imposed by legislation without the consent of the beneficial owners’.

In the case of the 1895 legislation, the problem stemmed from poor drafting in that the Act could be, and often was, read as providing for the possibility of perpetual leases. Kārewa was established under this regime. Townships established under the second regime seem to have been subject to perpetual leases from the beginning.

15.3.7.7 Pressure to extend freehold
Although the native townships regime was intended to provide security of tenure, township lessees were unhappy with their lease conditions from an early stage. They quickly began pressuring the Crown for the ability to freehold their sections. Two years after the passing of the Native Townships Local Government Act 1905, for instance, A Hulbert and 84 others (apparently from the Rangitikei area and

156. AJHR, 1975, H-3, p 62.
157. AJHR, 1975, H-3, p 68.
all Pākehā petitioned the Government to pass legislation that would ‘admit of the purchase of Native townships for the purpose of their conversion into Crown lands with the option of the freehold’. The Native Affairs Committee (having heard the petitioners) declined to make a recommendation on the issue on the grounds that it concerned a matter of policy.\textsuperscript{158}

The petitioners’ plea nevertheless generated considerable debate in the House. Several members urged the need for lessees to be able to obtain the freehold of their land if the townships were to thrive. William Massey, Leader of the Opposition, pointed particularly to Te Kūiti and Ōtorohanga as examples of places that were being ‘seriously handicapped and crippled’ by the nature of the tenure. Carroll reminded the House that under the 1895 Act, there was already provision for the Crown to purchase township land, while the 1902 Act allowed Māori land councils, with the governor’s authorisation, to ‘sell, lease, exchange, or otherwise [deal]’ in township land. He agreed that the legislation ‘required amending in the direction of giving wider scope and power to the tenants in these townships’, so that they could ‘carry out their responsibilities as citizens’. Āpirana Ngata thought ‘Glasgow leases’ (which were perpetually renewable) better than outright alienation, but Tame Parata (Southern Māori) was more guarded: ‘if there was right of renewal, there should be a thorough assessment of value justly and fairly carried out’.\textsuperscript{159}

\textit{15.3.8 Treaty analysis and findings}

We note that there were two redeeming aspects to the native townships regime created under the 1895 Act: these lands would be leased rather than sold and Māori would be entitled to reserves within the townships.

However, other aspects as listed above were not at all in line with the preferences expressed on numerous occasions, over many years, by Te Rohe Pōtae Māori in regard to maintaining their mana whakahaere over their lands. There was no legal requirement for the Crown to consult, or to gain the consent of, the Māori owners before proclaiming a particular township over their land. After a township had been proclaimed, the owners were given a role in selecting where they wanted reserves, but their wishes could be overridden by the surveyor-general. The regime also required the owners to accept that legal ownership of the entire township would transfer to the Crown – including the reserves set aside for their own use and occupation. Once the survey plan was confirmed and deposited, the owners had no further control over township affairs. In short, the entire scheme removed them from decision-making affecting their land.

The regime established under the 1902 Act was, initially at least, a distinct improvement over the 1895 regime in a number of respects. It offered Māori land councils the lead role in establishing and managing native townships. It also gave them considerable latitude in how they went about dealing with objections and applications for reserves. This was significant because, at the time the Act was

\textsuperscript{158} AJHR, 1907, I-3, p 18; ‘Native Townships’, 24 October 1907, NZPD, vol 142, pp 170–179.

\textsuperscript{159} ‘Native Townships’, 24 October 1907, NZPD, vol 142, pp 170–179.
passed, the Māori land councils still had a substantial degree of Māori representation – indeed, in Te Rohe Pōtae, the local land council was largely Māori. Further benefits were that the second regime did not place a limit on the number of sections that could be reserved for the owners, nor did it oblige the council to vest roads or public reserves in the Crown (although from the evidence it seems that in Te Rohe Pōtae they generally were). On the other hand, while the 1895 Act had prohibited sale and did not explicitly authorise perpetual leases, the second township Act allowed both from the outset.

The enactment of legislation in 1905 and 1907 replacing the Māori land councils with land boards and then the gradual reduction of specific Māori representation on the boards was problematic for Te Rohe Pōtae Māori once the native townships were vested in the boards, as their ability to influence the township’s governance decreased.

Then the Native Township Act of 1910 and its 1919 amendment undermined further their management of their lands, by giving the boards the power to issue new leases with perpetual rights of renewal written into them from the outset, despite requiring the consent of the beneficial owners or their approval at a meeting of owners. Effectively this meant that only a minority of owners needed to provide consent. The legislation also authorised the boards to sell township land to either the Crown or private individuals. As with the perpetual leases only a small minority of owners could approve sale, the only restriction being that there were sufficient other lands for the owners’ ‘adequate maintenance’. The 1919 legislation also imposed on owners the need to accept valuations even though out of date, if less than 12 months old. The December 1920 regulations allowed lessees to effectively trigger a Crown purchase of their leased land, for on-sale to them.

The transfer of lands to the Māori Trustee after the boards were dissolved was a lost opportunity to return the control of their lands to Te Rohe Pōtae landowners. This omission was aggravated by the enactment of the Māori Reserved Land Act 1955, authorising the Māori Trustee to negotiate new leases (up to 42 years) on whatever terms or conditions he saw fit. The powers he had were strengthened by the Māori Affairs Amendment Act 1967, which authorised him to sell any township land over which a prescribed lease had been granted. He was also able to offer an existing lessee the chance to purchase instead of converting his lease to a prescribed lease. It further empowered him to compulsorily purchase ‘uneconomic interests’ in reserved land and vested land, including in native townships. Even after the growing concerns from Māori during the early 1970s, the only recommendation that emerged from the 1973 Sheehan commission which was accepted by the Crown was to encourage owners to use the land trust and incorporation models for management of their lands, a matter not rectified until the enactment of the Māori Reserved Land Amendment Act 1997.

Therefore, we find that the Crown, in failing to consult with Te Rohe Pōtae Māori on the substantive nature of the native townships legislation, undermined the mana whakahaere of Te Rohe Pōtae Māori. We also find it adopted policies and legislation designed yet again to open Māori land up for further Pākehā settlement coupled with the elevation of the rights of lessees. In doing so, we find that the
Crown acted in a manner inconsistent with the Treaty principles of partnership, reciprocity, and mutual benefit, the guarantee of tino rangatiratanga, its duty to act honourably and in good faith, and its duty of active protection of Te Rohe Pōtae Māori tino rangatiratanga over their lands and of those lands – all of which are derived from articles 1 and 2 of the Treaty of Waitangi. Until at least the 1990s, the Crown also acted in a manner inconsistent with the principle of equity, as derived from article 3 of the Treaty.

Finally, we received evidence that the 2002 settlement has benefited some of the owners of at least two of the native township lands in Te Rohe Pōtae and we discuss that further below.

15.4 The Native Townships in Te Rohe Pōtae

15.4.1 Parawai/Te Maika

Parawai, also known as Te Maika, is located on the southern side of Kāwhia Harbour and was established on 29 June 1900 under the Native Townships Act 1895. The area – covering 485 acres across three separate portions – was selected for its proximity to a deep-water port, a location which was considered of great strategic and economic importance. The township, however, failed to prosper in the way expected by the Crown. In the mid-1920s, ownership of the township land was transferred to the Māori King. Nevertheless, the legacy of the area’s period as a native township remains. Today, Parawai/Te Maika is isolated: lacking road access, it is still largely accessible only by water. Also, a number of baches are located on legal but unformed roads, rather than on proper sections.

Claimants alleged that the Crown, having failed to acquire the area by purchase, used the native township legislation to take the land by proclamation. At the time, the ownership of the township lands had still not been formally determined by the Native Land Court. The taking was done without prior notification to or consultation with those Māori whose lands were affected. Furthermore, they said, the Crown took more land than it needed or ever used. It then failed to provide the former owners with sufficient reserves for their own use and denied them any input on the management of the township. By the time it agreed to hand most of the township area over to the Māori King, the land was in a state that was ‘unsuitable and unprofitable’. Some land was retained by the Crown for roads, without compensation.

The Crown, on the other hand, said that the claimants provided no examples where specific Māori objections to the township’s formation were ignored by the Crown. In the Crown’s view, it was going too far to suggest that declaring the area a native township was a ‘backroom’ means of acquiring land from unwilling sellers.

160. Submission 3.4.142(a), p 13.
161. Claim 1.2.100, p 8; claim 1.2.138, p 30; claim 1.5.13, pp 6–7.
162. Submission 3.4.310(c), paras 104–105.
Map 15.1: Native townships in the Te Rohe Pōtae inquiry district

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15.4.1.1 Were Māori consulted over the establishment of a native township at Parawai/Te Maika?

The impetus for establishing Parawai seems to have come more from the Crown than from settlers or Māori. The Crown had long regarded the general area as strategically important as a deep-water port in the inquiry district (see chapter 11), with John Bryce describing Kāwhia Harbour in 1884 as ‘perhaps the best port on the West Coast of the North Island.’

There was already a government settlement at Kāwhia on its northern side, but the Crown wanted to extend that area to include the southern side and so gain greater control of access to the harbour. In early 1900, for example, the chief surveyor noted that the Crown still held ‘only one small piece of land adjoinging Kawhia Harbour – the rest is all native land’ and he was very keen to obtain more, as a ‘township reserve’ including on the south side of the harbour.

The Taharoa block lay at its southern entrance and had strategic importance. On 30 August 1888, the Native Land Court partitioned the block into Taharoa A (being the northern part commanding the harbour-mouth) and Taharoa B (to the south). The boundary line between the blocks was confirmed on 26 May 1893. The 234 awarded owners of Taharoa A (15,669 acres) belonged to Ngāti Mahuta, while 201 Ngāti Maniapoto owners were awarded Taharoa B (7,951 acres).

Political and economic differences affected the willingness of the two groups to sell. In 1895, the Crown was hoping to purchase land in both the Taharoa A and Taharoa B blocks. However, the owners showed little interest in selling. In the case of the Taharoa A block, the 200-plus Ngāti Mahuta owners were not only supporters of the Kingitanga and opposed to selling, but they had also managed to lease part of the area informally to two Pākehā farmers and were earning income from it.

The situation had not changed by the end of January 1900, when the chief surveyor reported that the Crown still held ‘only one small piece of land adjoin-ing the Kawhia Harbour – the rest is all native land’. He believed ‘vigorous steps’ were needed to obtain more, as a ‘township reserve’ was very much wanted on the south side of the harbour. He proposed that the department’s native land purchase officers should keep the idea in mind while conducting their business. Over the next few months, the Crown began to focus on acquiring at least the peninsula at the north-eastern tip of Taharoa A, which commanded the harbour entrance. Moreover, in contrast to other suggested sites, this one had deep water close to shore. Gerhard Mueller, the chief surveyor wrote that it was ‘[t]he very best place for the purpose of convenient landing, and I believe also for a Township Site . . . , and this land should be acquired without delay under the Native Township

163. AJHR, 1884, G-1, p 1 (doc A55, p 18).
164. Chief surveyor to assistant surveyor-general, 29 January 1900 (doc A76(a) (Belgrave et al document bank), pt B, p B108).
167. Chief surveyor, Auckland, to assistant surveyor-general, 26 January 1900 (doc A62(a), vol 2, p 175); doc A76(a), pt B, pp B107, B109.
By 5 April, Patrick Sheridan of the Native Lands Administration Department was already expressing the view that 500 acres in that location should be proclaimed ‘as soon as possible’.  

Mueller visited the area in May in his capacity as commissioner of crown lands. He met with the trustees of the Wesleyan mission and also a private landowner but made no mention in his report of any discussion with Māori. Seddon himself later said that there had been no consultation with native owners ‘in the case of Kawhia’. In response, Mueller asserted that ‘3 or 4 of the six owners interested in

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169. File note to Barron, 5 April 1900 (doc A62(a), vol 2, p 178).
170. Document A62(c) (Bassett and Kay responses to questions of clarification), pp 18–19.
the land were fully aware of the Department’s intention . . . and never demurred to it.¹⁷¹

It is not clear whether by ‘Kawhia’ Seddon and Mueller were referring to Parawai/Te Maika or to the townships on the northern side of the harbour. Bassett and Kay, in their evidence, suggested that they must have been referring to when the Kāwhia government township was laid out in 1882.¹⁷² The Crown disagreed, noting that because the site for Kāwhia was acquired from a Pākehā there would have been no need to consult with Māori. Crown counsel further noted that no moves were made to establish Te Puru and Kārewa until after 1901 and deduced therefore that Seddon and Mueller were probably referring to Parawai.¹⁷³ Even if the Crown’s interpretation is correct, Taharoa A – as noted earlier – in fact had over 200 owners. Mueller’s impression that only six owners were interested in the land being considered for the township is therefore hardly reassuring that there had been any meaningful consultation (not that any was required under the Act).¹⁷⁴

As a result of his May visit, Mueller confirmed his preference for siting a township on the point as it highlighted the strategic importance of the site: with 15 feet of water at low tide and 25 at high tide, it was a good location for constructing a wharf. Indeed, for landing and shipping purposes there was ‘no spot on the harbour’ that would offer better depth.¹⁷⁵ The location also offered the possibility of access by easy graded roads to Kinohaku West and other Crown Lands lying south of Kāwhia.¹⁷⁶

On 29 June 1900, the governor duly proclaimed 485 acres of Taharoa A as the site for a native township which was assigned the name of Parawai.¹⁷⁷ It was the area also known locally as Te Maika. The area comprised a long thin promontory of 360 acres; an additional small area of 49 acres to the east of it, and separated from the promontory by an inlet; and another smaller promontory further east still, of 76 acres.¹⁷⁸

Whether or not they had consented, by September 1900, local Māori had certainly heard a native township had been proclaimed. That month, at a poukai held at Maketū, Ngāti Mahuta discussed ‘the compulsory seizure of the Maika for a township’ and Māori efforts to get the surveying stopped. There was some feeling, however, that the township might be allowed to go ahead if the Māori King were to accept a seat on the Legislative Assembly.¹⁷⁹

¹⁷¹ Seddon to Minister for Lands, 19 September 1900 (doc A62(a), vol 1, p 103); Mueller, file note to Under-Secretary for Lands, 3 January 1901 (doc A62(a), vol 1, p 103).
¹⁷² Document A62, p 41 n; see also doc A55, p 18.
¹⁷³ Submission 3.4.291, p 26.
¹⁷⁵ Commissioner of crown lands to Under-Secretary for Lands, 10 May 1900 (doc A62(a), vol 2, p 182); see also doc A76(a), pt B, p B115.
¹⁷⁶ Chief surveyor to Under-Secretary for Lands, 29 April 1926 (doc A76(a), pt B, p B158).
¹⁷⁷ ‘Land set apart as a Site for a Native Township in the Auckland Land District’, 29 June 1900, New Zealand Gazette, 1900, no 6, p 1342 (doc A76(a), pt B, p B120); doc A62, p 48.
¹⁷⁸ Document A76(a), pt B, pp B116–B120.
By April 1901, according to a local newspaper correspondent, Ngāti Mahuta had determined to hand over to King Mahuta ‘the 400 acres which the Government wished for a township at the Maika’. ‘It is understood’, went on the correspondent, that this would ‘facilitate matters for the immediate settlement of this place as a township’, as the King would then ‘place it in the hands of the government for survey and disposal, under the Act for native townships’. Whatever the owners’ intention in wanting to sign over the land to the King – in terms of how that would impact on the township going ahead, and under what regime – one thing is clear: they had not understood that, the land already being under proclamation, they no longer had power to dispose of it.

Although the 1895 Act required the Crown, when survey and planning the township, to consult with Māori over the location of their reservations, it could ignore those wishes if they interfered with other elements of the plan. In 1901, a surveyor travelled to Parawai and by February 1902, he had surveyed the area, pegged the boundaries and drawn up a survey plan.

Officials identified two problems with this plan. First, the surveyor-general was concerned that the plan did not show adequate information: ‘Should not a scheme of subdivision have been submitted for the approval of the Surveyor General, and also of the Governor?’ The chief draughtsman, for his part, noted that as matters currently stood, it seemed only 99 acres were being subdivided, not the whole 360 acres of the main promontory (still less the full area proclaimed).

The second problem identified by the chief draughtsman was that the plan allocated only 3 per cent of the subdivided area to Māori. He worried that Māori would ‘most probably object’ if the plan was exhibited in its present state. The surveyor-general, writing at the beginning of September, thought that because the present plans for subdivision covered only the northern portion of the township, any shortfall in reserves could be made up when the remaining portion was subdivided. But he nonetheless agreed that Māori were unlikely to accept the plan in its present form. He informed the assistant surveyor-general that he had therefore given instructions for 13 additional sections to be set aside for them and indicated his intention of sending the Native Land Court chief judge an amended plan reflecting this.

At some point before September 1902, ‘a tracing of the township’ was sent to Tūteao Kiwi of Kāwhia. It is not clear which plan this was. Kiwi was of Ngāti Mahuta, and a principal chief of the area. He was asked to ‘consult the hapus

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180. ‘Māori King’s visit to Kawhia’, New Zealand Herald, 3 April 1901, p 7 (doc 019, p 37).
181. Native Townships Act 1895, s 7.
182. Document J28(b) (Balks document bank), p 12; see also doc J28(a) (Balks), p 11; doc J28(b), pp 7, 11.
183. Surveyor-general to assistant surveyor-general, 18 August 1902 (doc A62(a), vol 2, p 189); doc A62, p 52.
184. Document A76(a), pt b, p 8121.
185. Chief draughtsman to surveyor-general, 21 August 1902 (doc A76(a), pt b, p 8121).
186. Document A62, p 52; doc A76(a), pt b, p 8122.
interested’ about what areas they wanted reserved. The document apparently came back with four areas marked on it.  

On 16 September, Charles Pollen, the assistant surveyor-general in Auckland, submitted a report to the surveyor-general describing the township’s layout in detail. He indicated that he was also sending a tracing of ‘the whole Township as proclaimed’ in the Gazette. That description suggests the tracing covered the full 485 acres, in which case it is possibly the plan dated 17 September which is on the same file. If so, it showed that additional land had now been allocated for Māori allotments. Pollen particularly drew attention to the ‘five Native Burial grounds marked.’

Initially, however, only the northern portion of 99 acres 3 roods 35 perches was to be laid out as township. Of this area, 35 acres were taken up by streets (about 35 per cent), 6 acres were set aside for public reserves, and 46 acres were set aside as sections for general lease. Around 12 acres were set aside for Māori allotments. This was less than 25 per cent of the total area set aside for ‘general’ sections and public reserves (and only 2.5 per cent of the total 485 acres proclaimed as township).

Two other plans from 1902 were submitted in evidence to this inquiry. Plan ML 13904A shows the entire proclaimed area but it has no annotations to indicate that it was ever deposited or publicly displayed. For the northern part of the proclaimed area it references another plan, described as ‘Plan of Sections on 3 Chain Scale.’ This would appear to be the second plan, DP 2892, which shows a detailed layout of the township in the northern portion. Kiwi Street can be seen running up the middle of the peninsula, with Pihopa and Tainui Streets branching off from it. Also shown are Whitiora Street in the north-west of the peninsula, and Maika Street running down the eastern shoreline. The land designated for Maika Street was to be the source of many subsequent difficulties.

From this same plan, it can be established that the bulk of sections reserved for Māori lay in the north-west corner of the peninsula, between Whitiora Street and a strip of ‘rocky precipitous coast’. These (sections 23 to 35 of block III) were presumably the 13 sections that had been added to the plan by the surveyor-general. There were, however, another two sections further south (sections 47 and 51 of block III), and two more (sections 4 and 7 of block I) on the eastern side, near the quarry reserve.

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187. Document A62, p 52; assistant surveyor-general, Auckland, to surveyor-general, 3 September 1902 (doc A76(a), pt B, p B123); doc A19 (Boulton), pp 19, 82; see also ‘Utilisation of Waste Lands: Results of Māori Conference’, Auckland Star, 22 June 1910, p 6, where ‘Tuteao Kiwi (Ngati Mahuta)’ was listed as one of a 32-member Waikato committee of chiefs ‘fully representative of the different tribes and districts concerned.’

188. Document A62(a), vol 2, pp 196–197; for the plan, see doc A62(a), vol 2, p 194.


Some of the Māori allotments appear to have been set aside in response to requests from owners. For instance, Pollen noted that Te Puhi, one of the owners, had indicated he wished to have section 4, block 1, and section 47, block 111, reserved for himself and his family. Several other owners also wished to reserve sections, ‘but they want to see the plan before they make application for them’. This suggests that they had not yet seen the detailed enlargement showing the size and location of all the sections.

There is also information about which areas were designated as public reserves. These included a school reserve, a police reserve, and another reserve, marked as being for public buildings and sited in an area marked as swampy lagoon. Pollen’s report drew attention to a reserve near the entrance to the harbour which he described as ‘a small hill about eighty feet in height’ that might be useful for filling in the swamp. This was presumably the area designated on the plan as quarry reserve. Other evidence on our record of inquiry indicates that this site was in fact a culturally important site for tangata whenua, being the site of an important ancient pā and of a tūahu that had been built to mark the anchoring, nearby, of the Tainui waka. Finally, there was also a section marked ‘drain reserve’ at the southern end of the township, adjacent to the other area marked as swamp.

The remaining area was taken up by sections intended for general lease. About 30 of these, however, were entirely or partially in the area marked ‘swamp’, with a dozen of them fronting on to Maika Street. Again, the presumed intention was that these could be made habitable by being filled with soil from the hill and/or drained by means of the drainage reserve.

In February 1903, the chief judge of the Native Land Court advised that a plan of Parawai native township had been ‘duly exhibited as required’. An annotation in te reo on the plan for the enlargement of the northern end of the promontory (DP 2892) indicates that it had definitely been exhibited between October and December 1902. This met the requirement for a township plan to be on display for two months. The inscription appears only on the enlargement, however, suggesting that the plan for the whole proclaimed area (plan 13904A) may not have been made available to view. Many years later, a chief surveyor expressed the view that the larger plan would almost certainly have been ‘exhibited as prescribed’, because the two plans were clearly meant to be considered together. However, the Tribunal received no firm evidence on this point.

193. Assistant surveyor-general, Auckland, to surveyor-general, 16 September 1902 (doc A62(a), vol 2, p 197).
194. Assistant surveyor-general, Auckland, to surveyor-general, 16 September 1902 (doc A62(a), vol 2, p 197).
195. Document J29(a) (Uerata), p 10; doc A76, p 117.
196. DP 2892, 1902 (doc J28(b), p 7).
197. DP 2892, 1902 (doc J28(b), p 7).
198. Chief judge to surveyor-general, 24 February 1903 (doc A62(a), vol 2, p 195).
However, in February 1903 the chief judge advised the surveyor-general that ‘several objections’ had been lodged and would need to be dealt with before the plan could be approved. The objections were set down for hearing in July at Ōtorohanga. From the court minute books it seems that only one objector was present, namely Te Moerua Kiwi (also known as Kiwi Te Moerua), who was represented in court by John Ormsby. He thought that assigning sections to people at this point would not be fair when, because title to the affected land was still to be investigated, it was not yet known who all the owners were. He also objected to the street name of Whitiora which, he said, should be Amaru. The remaining objections were set down for hearing in Te Kūiti the following month but again none of the objectors appeared and so the objections were dismissed. The documents filed on our record of inquiry do not reveal the substance of their complaints.

Following the August court hearing in Te Kūiti, the surveyor-general certified that the plan for the enlargement of the northern portion of the proclaimed area (DP 2892) was correct. Under the provisions of the 1895 Act, this meant that the township of Parawai was now duly constituted. Under section 12 of the Act, all streets shown on the plan were now public roads ‘within the meaning of “The Public Works Act, 1894”’. The surveyor-general’s certification also served as a partition order in favour of the Crown. The plan was deposited with the district land registry on 18 September 1903.

It would transpire much later that the associated plan covering the whole proclaimed area (plan 13904A) was not deposited along with it.

15.4.1.2 Determining the beneficial owners of the township

Before proceeding to examine the leasing and administration of Parawai/Te Maika, it is necessary to briefly look at the process undertaken to determine the ownership of the township land.

The township was proclaimed without the Native Land Court having determined which of the beneficial owners of the parent block, Taharoa A, could be regarded as affected by the taking. By 1904, according to Wilkinson, there was ‘a great deal of disputing amongst certain sections of Taharoa A as to who are (or were) the proper owners of the land taken for the Township’. He thought no action affecting the township should be entered into until the matter had been sorted out. A week later, Sheridan recommended to the surveyor-general that the Native Land Court should ascertain the beneficial owners of the township, and

201. Document A62, p 56; chief judge to surveyor-general, 24 February 1903 (doc A62(a), vol 2, p 195); see also doc A62(a), vol 2, p 201.
203. Section 95 of the Public Works Act 1894 specified that any road-lines surveyed and laid off over Native land were ‘deemed to be a road dedicated to the public’.
their relative shares or interests.\footnote{Document A62, p 60; doc A62(a), vol 2, p 214.} The surveyor-general duly wrote to the chief judge asking him to do so.\footnote{Document A62, p 61; doc A62(a), vol 2, p 218.}

In the end, the matter was not heard for another four years. The evidence does not reveal the reason for the delay. In January 1908, Judge Gilfedder sat at Kāwhia to hear applications for the partition of Taharoa A, including the 485 acres of Parawai township. The principal applicants were, on the one hand, Pepene Eketone (of Ngāti Uekaha and other Ngāti Maniapoto hapū) and Tēnī Tuhakaraira; on the other, John Ormsby (for Ngāti Amaru) and Te Moerua Kiwi.\footnote{Document A62, pp 61–62; doc A62(a), vol 13, p 1593.} Eketone and Tuhakaraira wanted the court to award the ‘useless and sandy’ part of the block to all owners equally so that the balance could be ‘better apportion\[ed]\’. Ormsby and Kiwi objected to this idea.\footnote{Ormsby, ‘Statement of grounds upon which the Applicant relies’, 18 May 1908 (doc A62(a), vol 7, p 947).}

After initial adjournments for out-of-court discussion, Eketone submitted a scheme of partition that proposed giving all owners interests in the 445 acres comprising the township. In Eketone’s view, ‘All should be entitled to participate in the best of the land as well as the worst of it, according to their relative shares in the whole block’.\footnote{(1908) 48 Otorohanga MB 66 (48 WMN 66) (doc A62(a), vol 13, p 1593) ; doc A62, pp 61–62.} Tuhakaraira (originally Eketone’s co-applicant) objected, arguing that those who were not living on the township land should not be given interests there.\footnote{Document A62(a), vol 13, pp 1603–1604; doc A62, pp 62–63.} The court, however, found in favour of Eketone, saying that the fairest solution was to include everyone, ‘otherwise some 5 or 6 who could show best right to that part of the Block would take and monopolise the whole township’. The intention in proclaiming a township, by contrast, was ‘very much the same as declaring and constituting a papakainga wherein all the owners should participate.’\footnote{(1908) 48 Otorohanga MB 85 (48 WMN 85) (doc A62(a), vol 13, p 1604) ; doc A62, p 63.}

The Crown appealed the court’s decision, as did John Ormsby on behalf of Te Moerua Kiwi and others of Ngāti Amaru. The Crown claimed there had been inadequate notification of the hearing, and that poor-quality land had been allocated to ‘certain natives including those who have sold their interests to the Crown.’\footnote{W Grace, native land purchase officer, ‘Taharoa A Block: grounds of appeal by the Crown to subdivision of above Block’, 16 May 1908 (doc A62(a), vol 7, pp 942–943) ; doc A62, pp 63–64. The only Crown purchase in Taharoa A listed in document A95(i) (Parker spreadsheet of Crown purchases) is referenced as Crown purchase deed 5136, dated 1908 (the same year as the partition hearing), but with no other details given.} Ormsby, meanwhile, said that the land awarded to Ngāti Amaru – ‘sand hills at the South-western end of the block’ – did not reflect their traditional interests. Ngāti Amaru’s interests were in the north-eastern part of the block, including where Parawai was located.\footnote{Document A62, p 63; doc A62(a), vol 7, p 947.}
When the Crown’s appeal was heard, the parties present agreed on the location of the Crown’s interests, though the agreement remained subject to the outcome of Kiwi’s appeal. But after hearing extensive evidence of Ngāti Amaru’s traditional interests in Taharoa A, the court concluded that there was no reason to overturn the result of the original partition hearing insofar as the allocation of land was concerned. Thus, all owners of Taharoa A should continue to have interests in Parawai township. Although the judge had concerns about defining the other partitions on the ground, these concerns did not extend to Parawai as its boundaries had already been fixed by the proclamation. The order for Parawai township was therefore able to go ahead.\(^\text{215}\)

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15.4.1.3 Leasing the township sections

From the beginning, leasing of Parawai sections was not especially successful. The first auction of 92 sections was announced for 18 December 1903 in Auckland. Pākehā residents of Kinohaku and the surrounding area complained that holding the auction in Auckland would be 'most inconvenient and [would] preclude their competing.' The Māori owners of the township land, however, supported the auction being held in Auckland, presumably on the basis that this would allow access to a wider market.\(^{216}\)

The auction notice warned that some of the land was not of the best quality and would need drainage before being fit for building. As to transport: there was a weekly steamer from Onehunga to Kāwhia, or alternatively the coach road from Pirongia to Oparau. Either way, the last leg of the journey would be across the Kāwhia Harbour to Parawai by boat.\(^{217}\) Only 15 of the 92 leases were taken up at the Auckland auction – at rentals varying from £2 to £6 a year.\(^{218}\)

On 30 June 1904, a further auction was held, this time in Kāwhia, but again the response was not enthusiastic: only three further sections were leased.\(^{219}\) The remaining sections were mostly under water, and were unlikely to generate interest until they had been drained.\(^{220}\) In 1905, the commissioner of crown lands revealed that the unleased surveyed lots in Parawai were being held under a grazing lease by a Mr Goodfellow.\(^{221}\)

Indeed, demand for grazing land seemed higher than for township lots. The following year, 1906, a Mr Turnbull asked to lease 300 acres in the southern part of the proclaimed area. This was land that had not yet been subdivided into township lots, having been deemed 'beyond present requirements' for the township. The commissioner of crown lands commented that the Act ‘does not seem to anticipate such a case as this’ and said he had ‘no power to deal with the land in the manner proposed’. He thought, though, that if the beneficial owners had no objection, ‘the Land Board might grant a year to year lease under section 116 of the Land Act 1892, as we do in the case of ordinary Crown Land.’ Then again, he wondered, maybe such a course might be possible ‘even without consulting the Natives as there would be great delay and difficulty in getting their views on the subject.’\(^{222}\)

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216. McKardle and others, telegram to Minister of Lands, 12 November 1903 (doc A62(a), vol 2, p 205); doc A62(a), vol 2, pp 203–204, 206; doc A62, p 57.
220. Document A62(a), vol 10, p 1203. From other sources it can be ascertained that Carr was a ‘Land, Shipping, Insurance, and General Commission’ agent in Kāwhia who advertised himself as being, among other things, an agent for land ballots and able to negotiate native leases; see, for example, 'Carr & Co, Kawhia,' Taranaki Herald, 22 September, p 1.
222. Commissioner of crown lands to Under-Secretary for Lands, 7 February 1906 (doc A62(a), vol 2, p 225).
The Under-Secretary for Lands, in response, counselled against trying to lease the land through the land board direct, as it was ‘practically part of a [Crown-administered] Native Township’. Better, he thought, to contact the Māori land council and see if they were agreeable to the idea of the Crown Land Board temporarily leasing the land. If not, maybe the council itself could lease the area to Turnbull, ‘as the Act of 1905 provides’. This was presumably a reference to the Māori Land Settlement Act of that year, which allowed Māori land boards (successors to the Māori land councils) to divide land into bigger, farm-size, allotments for leasing out. It is not known what response was eventually sent to Turnbull.

By 1908, the total number of leased sections taken up in the township was reported to be 18. In addition to formal leasing, though, there seems to have been ad hoc usage of the area by others such as John Wouldes, a sheep farmer at Kiritehere. In October of that year, Wouldes wrote to the commissioner of crown lands saying he had recently landed 240 sheep at Te Maika and left them to graze there under the impression it was ‘a government town ship [sic]’. Returning three days later to round them up and take them on to Kiritehere, he found that local Māori had seized them and were demanding payment of three shillings by way of a grazing fee, which he had refused.

Wouldes stressed the importance of protecting the settlers’ ability to use Te Maika for transit. When they had taken up their land at Kiritehere four years previously, he said, ‘the government represented [Te Maika] as the outlet’. For most of the time it was still their only way of getting sheep in and out, although there was still only a pontoon landing. He asked if it would be possible to fence off a stock paddock for use when landing and shipping stock. It is hardly surprising that the Māori beneficial owners had seized the sheep. Wouldes appears to have had no permission to use the area, let alone a formal lease that might yield the owners some income. Moreover, they were trying to grow vegetables and other crops on some parts of the land.

There is little further evidence regarding the leasing of Te Maika sections until 1919, when Rewi Wetini wrote to Dr Maui Pōmare (member for Western Māori) wanting clarification about a reported deal with ‘a certain Pakeha’, involving Te Maika: ‘Please let us know if that be true’, he said, ‘for if it is we shall suffer dreadfully; it contains our cultivations’. They had themselves tried to get a lease of the

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223. Under-Secretary for Lands to commissioner of crown lands, 13 February 1906 (doc A62(a), vol 2, p 226).
224. Māori Land Settlement Act 1905, s 8(e).
226. Wouldes to commissioner of crown lands, Auckland, 21 October 1908 (doc A62(a), vol 10, pp 1194–1195); doc A62, p 152.
227. The county council did not call for tenders for a proper fixed landing until 1911, see ‘Tenders’, King Country Chronicle, 7 October 1911, p 4.
area, he said, but ‘that was not agreed to’.” 230 Pōmare passed the matter to officials for follow up. The commissioner for crown lands advised that the Māori land board had indeed agreed, on 19 August, to grant grazing rights over the township to a Miss McNeish, at a rental of £35 a year. She had not yet, however, ‘completed her application by the necessary payment’. 231

Some weeks later, Pōmare also received a letter from the Māori King, Te Rata, asking him to ‘stop the proceedings of the Maniapoto Board’ in connection with the lands in both Parawai and Kārewa. The board, he said, would soon be ‘giving away leases’. An annotation on the communication indicates that the board had ‘called for tenders for lease of unoccupied sections’ (emphasis in original) in both townships and that the tender closed on 4 November (1919). There was ‘no reason to interfere’, said the note. 232 This tends to negate the Crown’s contention that there was a bona fide complaints process 233 – or at least, one in which Māori could have confidence.

As to the lease application from Miss McNeish, it is to be presumed that her payment was eventually forthcoming because a Jane McNeish is recorded as having taken a 21-year lease of nine lots in block 11 from 1 January 1921. The total area involved was a little over four acres, at the top end of the township. 234 Other lessees who also entered into 21-year leases from 1 January 1921 were Theodore Gibbons, C F E Barton, and Cyril Morris – the first of these taking 12 lots in block 1 (amounting to a little under four acres and being most of the area near the quarry reserve), and the other two taking two lots each in block 3 (amounting to just under an acre for each lessee). 235

By August 1922, only around one-third of the 90-odd sections available for general lease were leased and all of them were in the top half of the township. As the chief surveyor was to comment in April 1926, leasing in the township had not gone well. Plans for the southern part of the 485-acre proclaimed area had, as a result, been put on hold. ‘The Township’, he summarised, ‘has not been a success’. 236

The only other recorded activity in connection with the general-lease sections after that was when Thomas Goodfellow took out a 21-year lease of four sections in block 11 from 1 July 1926. The area totalled a little over one and a half acres. (This lease subsequently passed to William Goodfellow, as administrator, and then to Jane Gibbons.) 237 In addition, the Kāwhia County Council had at some point leased the quarry reserve to Jane Gibbons, who erected ‘a dwelling, store, and Post

230. Wetini to Pōmare, 20 August 1919 (doc A62(a), vol 2, p 234); doc A62, p 238.
231. Commissioner of crown lands, Auckland, to Under-Secretary for Lands, 19 September 1919 (doc A62(a), vol 2, p 235).
232. Rata Mahuta to Pōmare, 30 October 1919 (doc A62(a), vol 4, pp 545–546); Jordan, note to Native Minister, 4 November 1920 (doc A62(a), vol 4, p 546).
233. Submission 3.4.291, p 35.
236. Document A76(a), pt B, p B152; chief surveyor to Under-Secretary for Lands, 29 April 1926 (doc A76(a), pt B, pp B158–B160).
Office’ there. A list of leases in the 1920s shows that there were in fact no more than a handful of individual lessees, with most of them leasing several sections each.

Although the 1895 Act provided no formal role for Māori in the administration of native townships, some owners did seek to have input on township affairs. One example concerned draining the swamp. On the day of the June 1904 auction in Kāwhia, eight Māori from Taharoa describing themselves as ‘part-owners of the Township known as “Parawai’’ wrote to the commissioner of crown lands in Auckland. They suggested that if a loan could be taken out to cover the cost of draining the swamp ‘and other necessary work’, some of the township’s rental income could be used to pay the interest on that loan. ‘[I]f this work is done’, they said, ‘the sections will become more valuable.’ It was a practical idea and suggests that even if resistant to the initial establishment of the township, those with interests there were continuing to demonstrate a wish to be involved in its management and future direction.

The owners’ letter became the subject of discussion among various departmental officers. The chief draughtsman advised that there was ‘no power to pledge the rentals derived from lease of sections in Native Townships as security for a loan.’ He did come up with several other ideas, including the scheme being funded by a loan from the soon-to-be-constituted Kawhia County Council, or by a drainage board. Alternatively, there was already power under section 24 of the 1895 Act to establish a form of local government in native townships. This option, though, ‘would not be worth while doing . . . in Parawai, as the Township is not yet of sufficient importance’: the gross annual rental of the 15 sections leased was, after all, only £48 12s 6d.

On balance, the chief draughtsman thought it would be best if a request came from the lessees who, with one exception, were all Pākehā. They would all be ratepayers once the county council was constituted and ‘if these lessees take the initiative in the matter of local improvements, and approach the County Council . . . , something might be done.’ In short, the Pākehā lessees were far more likely to be able to influence township affairs than the Māori beneficial owners.

In proposing their solution for funding drainage of the swamp, the owners also pointed out that ‘Parawai’ was the name for the swamp area only. They wanted the name of the township to be changed to ‘Te Maika.’ The chief draughtsman

238. Commissioner for crown lands to Under-Secretary for Lands, 9 October 1929 (doc A62(a), vol 2, p 279). The source reads ‘Mr J E Gibbons’, but it is more likely that the lessee was Jane Elizabeth Gibbons, who leased other areas in the township.


240. Toi Hau Kumete and others to commissioner of crown lands, 30 June 1904 (doc A62(a), vol 2, p 213; doc A76(a), pt B, p B131); doc A62, p 59.

241. Chief draughtsman to surveyor-general, 28 July 1904 (doc A62(a), vol 2, p 215); see also doc A62(a), vol 2, pp 212–213, 216–217.


244. Toi Hau Kumete and others to commissioner of crown lands, 30 June 1904 (doc A62(a), vol 2, p 213; doc A76(a), pt B, p B131); doc A62, p 59.
maintained that the name ‘Te Maika’ could not be found on any map. Moreover, he did not think it wise to change the existing name given that neither the Pākehā tenants nor ‘the majority of the Native owners’ had given any indication they thought it unsatisfactory.\footnote{245} Wilkinson (then government native agent in Ōtorohanga) subsequently confirmed, however, that the area was indeed known as Te Maika by both Māori and Pākehā.\footnote{246} Despite this, the township remained officially known as Parawai.

Although in 1904 15 leased sections had been bringing in less than £50 a year, by 1910 income dwindled to a mere £10.\footnote{247} Moreover, the income that was collected does not appear to have been distributed promptly. When management of Te Maika was transferred from the commissioner of crown lands to the local Māori land board in 1908, the commissioner was apparently holding £158 13s 9d in accumulated rental income on the township.\footnote{248} On 19 January 1909, the Maniapoto–Tuwharetoa District Māori Land Board was informed that £196 3s in accumulated rental income was about to be transferred to its account.\footnote{249} Why this money was being held is not entirely clear. If it was owed in survey charges (a matter which became important later), those charges should have been cleared. If it was \textit{not} needed for administrative costs or survey charges, it should have been distributed to the beneficial owners. One possible mitigating factor in the latter instance, though, is if the Taharoa A partitions and ownership lists had still not been finalised following the appeal court case of the previous year. In that case, it presumably would not have been possible to finalise a list of Parawai owners either.

Even so, distribution of rental income does not seem to have improved much in subsequent years. By August 1922, the land board held £364 in accumulated rental income.\footnote{250} In May 1926, the Treasury Secretary reported that it was ‘not known in Wellington’ what distribution (if any) had been made to the beneficial owners out of the £364 held by the Māori land board in August 1922.\footnote{251} As to any subsequent distribution of funds, it is to be presumed that most of the money was used up a few months later, to pay off survey debt.

\textbf{15.4.1.4 Transferring the township to the Kingitanga and the discovery of administrative oversights pre-1908}

Throughout all this time, Māori of the area remained, for the most part, strong supporters of the Kingitanga. At some point, a proposal was floated – it is not clear by whom – that parts of Taharoa A, including some or all of the township, should

\footnote{245. Chief draughtsman to surveyor-general, 28 July 1904 (doc A62(a), vol 2, pp 215–216); doc A62, p 59.}
\footnote{246. Document A62(a), vol 2, p 214.}
\footnote{247. Document A62(a), vol 7, p 882.}
\footnote{248. Document A62(a), vol 2, p 253.}
\footnote{249. Document A76(a), pt B, p B144.}
\footnote{250. Document A76(a), pt B, p B161.}
\footnote{251. Secretary to the Treasury to Under-Secretary, Lands and Survey Department, 18 May 1926 (doc A76(a), pt B, p B161); doc A62, p 241.}
be transferred to the Māori King 'by way of a gift from the beneficial owners'.
In 1923, a provision of the Native Land Amendment and Native Land Claims
Adjustment Act empowered the Waikato–Maniapoto land board to call a meeting
of assembled owners of Tāharoa A to consider the proposition.252 When that meet-
ing was held on 28 October 1924, a majority of the 80 owners in attendance voted
in favour of the idea. They also requested that the gift should include 'the whole of
the block including the leased portions.'253 A few who did not agree asked for their
interests to be partitioned out before the transfer.254
The partition application came before the Māori Land Court in August 1925
and the court agreed that the proclaimed area (including the southern part of the
peninsula) should be divided into Parawai A and Parawai B. Parawai A (some 10
acres) was to be located in the southern part and go to the 19 owners who did not
support the gifting. It was to be held in trust for them by the Māori land board
and to comprise what had been designated sections 6 and 7 of the southern area.
Parawai B (the remaining area) was to be awarded to all the other owners, who
now numbered 316.255
It was not until 1929, however, that the township was finally vested in the Māori
King. First, on 23 May 1929, 363 acres comprising most of the southern part of
the peninsula was vested in the Waikato–Maniapoto District Māori Land Board.
The transfer also included Parawai A, which the court had said was to be held
in trust for those dissenting from the decision to gift land to the Kīngitanga.256
Ownership of all except Parawai A (which remained with the board) then passed
to the Kīngitanga, along with most of the northern township area, on 15 July 1929.
The certificate of title recorded details of the leases already in place, though it is
not clear how many of those leases were perpetually renewable.257
The following year, the Government also revoked the reserve status of 10 sec-
tions set aside for drainage, public buildings, the police, and a school.258 These
sections were subsequently vested in the Waikato–Maniapoto District Māori Land
Board, and then transferred to the Māori King.259 Not included, though, were the
roads, which are discussed below.
The reason for the long delay in finalising the transfer of Parawai B to the King
was that, in the process, some significant administrative oversights had become
apparent. Many of these oversights had their genesis in the period before 1908
when the township was under direct Crown control. These issues, and the process
by which they were resolved, are addressed below.

253. Minutes of meeting of assembled owners of Tāharoa A part, Kāwhia, 28 October 1924 (doc
A62(a), vol 13, p1512); doc A62, p 239.
257. Document J28(b), pp 4, 42.
258. Native Land Amendment and Native Land Claims Adjustment Act 1929, s 49.
15.4.1.4.1 OUTSTANDING SURVEY COSTS

The first of the oversights related to survey costs: the commissioner of crown lands alerted the Under-Secretary for Lands that he could find no record of payment for the 1902 survey of the southern part of the proclaimed area. The amount outstanding was £157 3s 4d, not including interest. The Under-Secretary responded that the Crown still retained an equitable interest in the area concerned and was entitled to settlement of the survey charge before the land was transferred to the Māori King.

The Lands Department then discovered that the amount owing was considerably higher than first thought: the cost of surveying the northern portion was also still outstanding, bringing the total — including interest — to nearly £500. The Lands Department considered that the charge should be remitted given that ‘Natives have received no substantial benefits from survey of township which Māori Land Board now appears to consider of little value’. Treasury, however, disagreed.

On 14 July 1926, the commissioner of crown lands indicated a willingness to accept a compromise. He admitted that during the period when his office had been responsible for the township (that is, up to October 1908), it had taken ‘no action to reimburse the Department for money expended on the survey’. The Māori land board had told him that the ‘claim for interest hardly seems equitable’ given that ‘practically the whole of the amount claimed as the original cost was collected by your Department prior to handing the administration of the Township over to the Board’. The board offered to pay £197 17s 4d. Noting that the 1895 Act actually seemed to make no provision for charging interest, the commissioner further commented that he had heard Te Rata was ‘anything but wealthy’. In sum, there was little likelihood of being able to recover the full amount financially. Te Rata was not likely to want to compensate the Crown in land, which was in any case ‘of little value being largely sand’. The commissioner recommended that the Crown accept the £197 17s 4d as offered by the board. The Under-Secretary, in reply, conceded that the proffered sum seemed to be all that could ‘legally be demanded’ and that the department’s position was ‘somewhat weak’. He agreed that the amount should be accepted.

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262. Telegram, 27 April 1926 (doc A76(a), pt B, p B155); doc A76(a), pt B, p B154.
264. Commissioner of crown lands to Under-Secretary for Lands, 14 July 1926 (doc A62(a), vol 2, p 253).
265. Registrar to commissioner of crown lands, 10 July 1926 (doc A62(a), vol 2, p 254); doc A62(a), vol 2, p 253.
266. Commissioner of crown lands to Under-Secretary, 14 July 1926 (doc A62(a), vol 2, p 252); doc A62, p 242.
267. Under-Secretary, Department of Lands and Survey, to commissioner of crown lands, Auckland, 22 July 1926 (doc A62(a), vol 2, p 255); doc A62, p 242.
15.4.1.4.2 PROBLEMS WITH THE SURVEY PLANS AND ROADS

In March 1926, Trevor Withers, a searcher of titles in Auckland engaged on behalf of Te Rata, discovered that no plan of the southern portion of the township had ever been registered with the Land Transfer Office. No proper title to that area therefore existed. In November, a plan (presumably that of the whole proclaimed area, dating from 1902) was accordingly forwarded to the surveyor-general for sign-off by himself and the Minister for Native Affairs. The original proposal was to have the plan certified under the 1895 Act so that the Māori land board would be able to make application for title under section 7 of the Native Townships Act 1910. This section, at subsection 2, effectively said that if the Minister declared it was vested as a township, then it was so, and on receipt of such an assurance, the land registrar could issue a certificate of title. However, since the 1895 Act had been repealed in 1910, officials eventually decided to get the plan of the omitted portion approved by the chief surveyor, and then ask the Native Minister to certify it under section 7 of the 1910 Act. The Minister eventually certified the plan on 8 June 1927.

Because no title had been issued for the southern part of the township, the roads there had not been gazetted. As a result, they were not legal roads, meaning it was not clear who owned them. Their ownership therefore had to be confirmed before any transfer of the area could occur.

Te Rata was initially concerned that if the roads were legalised, the beneficial owners would become liable for additional rates. He subsequently indicated that he was willing for the road along the eastern shore to be proclaimed as a public road. Judge MacCormick, however, wanted the chief surveyor’s views about which of the surveyed road-lines would be most suitable for a public road. Withers eventually contacted the registrar of the Native Land Court asking which of the road-lines across the southern portion was the most suitable for proclamation purposes. Once that was done, he said, the road-line could be proclaimed under section 18 of the 1910 Act. Road-lines that were not proclaimed could then be ‘included in the Deed of Gift to be executed by the Board on behalf of the beneficial owners in favour of Te Rata.’

In April 1929, the Māori land board laid off the road ‘from the Northern portion of the Township, where the Te Maika Post Office and Store are situated, to the main portion of the Taharoa Block of which the Township was formerly a part.’ The registrar asked that the Native Department take steps to have the road proclaimed under section 18 of the 1910 Act. The post office and store were located on what had been the quarry reserve. The registrar’s description thus included Maika Street, already laid off as public road, as well as its extension down the eastern coast of the peninsula.

272. Withers to registrar, 13 February 1928 (doc A62(a), vol 13, p 1515); doc A76(a), pt C, p C42.
273. Registrar to Under-Secretary, 17 April 1929 (doc A62(a), vol 13, p 1508).
Some departmental tussling followed: the Native Department passed the ball back to the Lands and Survey Department, presuming that it was their responsibility to take the necessary action. Lands and Survey, however, demurred and after seeking the advice of the commissioner of crown lands, eventually determined that the Public Works Department should handle the matter.\footnote{274}{Document A62(a), vol 2, pp 274, 276.}

The roading issue was eventually resolved in late 1929. On 7 September, the Minister of Public Works formally proclaimed around 21 acres of block xvi, Albatross Survey District, and block xiii, Kawhia North Survey District, as road.\footnote{275}{Document A62, p 245; doc A62(a), vol 2, p 278; doc A62(b), pp 4, 43.}

This proclamation included only the road-line running down the eastern coastline of the southern part of the peninsula from where Maika Street stopped being a public road.\footnote{276}{Document A76(a), pt C, p C42.}

No other legal roads existed in the southern part of the peninsula.\footnote{277}{Document J28(b), p 11.}

The proclamation about the eastern road was entered on the certificate of title on 2 October 1929.\footnote{278}{Document A62, p 247; doc A62(a), vol 13, p 1504; doc J28(b), p 44.}

As to roads in the northern part of the township, the commissioner of crown lands wrote on 9 October 1929 that ‘[a]s there are 21 sections under lease at the present time . . . I do not consider that the roads can be closed and vested in the former native owners.’\footnote{279}{Commissioner of crown lands to Under-Secretary for Lands, 9 October 1929 (doc A62(a), vol 2, p 279).}

From the time Te Rata had indicated which road-line he wanted formalised, the whole process had taken more than 18 months. Of note is that the proclamation about the road also affected sections 6 and 7 (held in trust for those who had dissented from the gift to the Kingitanga), but no expression of the views of those beneficial owners – or indeed of consultation with them – has been filed in evidence.

\section*{Parawai/Te Maika since 1931}

As noted earlier, lessees in the township were few in number and most of them leased multiple lots. One of them was Theodore Gibbons. On 22 September 1932, he applied to the land board for confirmation of another lease of land in the northern part of the peninsula. The person leasing was cited as Rata Mahuta (the Māori King) and the area involved was 49 acres 2 roods 21 perches. The initial lease term was to be for 21 years, coming into effect on 1 January 1933, at an annual rental of £20. It is not clear from the evidence whether he had a perpetual right of renewal but together with the 12 lots that he had already been leasing since 1 January 1921, this meant he was now leasing nearly three-quarters of all the lots in the original township, including all of those that had originally been designated native reserve.\footnote{280}{Commissioner of crown lands to Under-Secretary for Lands, 9 October 1929 (doc A62(a), vol 2, p 279).}

Two years later, Gibbons applied for confirmation of a further lease of land from the Māori King, this time of 331 acres 20 perches in the southern part of
the peninsula. Again, the initial lease term was to be 21 years and the annual rental £20, with the tenancy coming into effect on 1 January 1935.\textsuperscript{281} Both leases were approved by the board. In 1936, all three of Gibbons’ leases were transferred to Jane Gibbons. Six years later, she added another 25 lots in the northern part of the peninsula.\textsuperscript{282} From this, it would appear that by the early 1940s a large proportion of the peninsula was under lease to a single person.

In 1948, the Māori land board wrote to King Koroki (who by this time had succeeded to Te Rata), asking for his consent to renew three of Mrs Gibbons’ leases for a further 21 years, with a perpetual right of renewal thereafter. The proposed rental totalled only £6 a year – a drop from the previous £13. The King’s secretary, Tai Wirihana, responded that the King did not approve of the renewals at the rental proposed, ‘but understands that irrespective of his approval the Board will renew the leases on these terms.’\textsuperscript{283} His response indicates a misunderstanding about legal rights and the complaints procedure.

Meanwhile, according to one witness, there may have been excavation of some of the material on the quarry reserve.\textsuperscript{284} If such was the case, it is not clear what became of that material since there were still no formed roads. Nor is there any reference to it being used to fill swamp areas.

By the 1950s, a number of out-of-town people were trying to secure land at Te Maika for baches.\textsuperscript{285} In July 1954, the Kawhia County Council wrote that because some people had been unable to secure land, it had decided to grant the right to occupy ‘certain areas of the Road Reserve [sic]’ – presumably a reference to Maika Street. The land was not, in fact, a road reserve but officially proclaimed public road and, as such, Crown property. As a public road, it was also not legally able to be built on. The county council, however, seemed unaware of this. It told the occupiers that they were there ‘solely at the pleasure of the Council’, and the council reserved the right to serve them with 30 days’ notice to remove any buildings they erected. Occupation was to be for holiday purposes only, at a ‘peppercorn rental’ of £2 a year.\textsuperscript{286} Soon after this, the Kawhia County Council ceased to exist and its responsibilities and functions were split between Otorohanga County and Waitomo County. Te Maika was placed under the latter, who have said that in fact they received no rent whatsoever from the bach owners.\textsuperscript{287}

In 1958, with some of the earlier leases coming to an end, the eastern side of what had been block 1 of the township was resurveyed. This was apparently at the request of the Waitomo County Council although the survey was actually commissioned by the Māori King, who also paid part of the cost.\textsuperscript{288} The bach owners on
the foreshore contributed money for the exercise as well. A new plan was drawn up. It showed the area bordering Maika Street now divided into slightly smaller lots, most of them around a quarter-acre. One of these lots (lot 26 on the corner of Maika and Kiwi Streets) then became Crown land. According to the memory of one witness, this was to satisfy the requirements of the Land Subdivision in Counties Act 1946. The Act specified that where land was subdivided to allow for building, part of it was to be reserved for public purposes. Lot 26 became the site for a school house.

Also at this time, three small areas of less than a perch each, designated lots 29, 30, and 31, were taken by the Crown to add to Maika Street and tidy up its alignment. The majority of the lots, however, were leased out individually in May 1959. This time the leases were for only 10 years. Over the following years, other lots on the peninsula were also leased out, again mostly on an individual basis, including a few to Māori.

It thus seems to have been from the mid-1950s onwards that Te Maika became popular for holiday baches. By 1976, 62 of the 133 lots in the northern area (that is, just under half) were leased out, although it was noted that ‘in most cases where residences have been built these are not on actual sections’. The swampy area, where lessees had tended to obtain permits to build on the adjoining legal road instead of on the lots themselves, was particularly a problem. Of the 62 lessees, about 20 were permanent residents. These included Tom Rewi, a descendant of the original owners, who farmed there and ran a boat service between Te Maika and Kāwhia – there being, by this time, a permanent wharf built out from what had been the quarry reserve. (According to Edith Dockery, it had been constructed by the local council, but without any consultation with the tangata whenua.)

Despite the increased population at Te Maika, there were still no public amenities or services. Nor was there any proper road access from the wider Kāwhia area (although with the advent of four-wheel-drive vehicles, land access did become possible at certain times of the year). The main means of access was still by boat.

As to schooling, information is sketchy. Paul Christoffel’s evidence on education in Te Rohe Pōtae covers the Taharoa school but does not discuss schooling at Parawai/Te Maika. Other evidence suggests that there was a single-teacher

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290. Document A76(a), pt b, p 81077; doc J28(a), pp 10–11; doc J28(b), pp 8, 44.
292. Land Subdivision in Counties Act 1946, s 12.
294. Document J27(b), p 6; doc J27(c) (O’Shea responses to questions), p 2; doc J27(a), p 16; doc J28(b), p 8.
296. Brochure on proposed redevelopment of Te Maika, 1976 (doc A76(a), pt b, p B54).
299. Document A76(a), pt b, p 870.
300. Document A27 (Christoffel).
school for a few years from about 1909, but that it had closed by 31 March 1913.\textsuperscript{301} Following the population increase of the 1950s, however, the situation changed and it seems a request for a new school was made, likely around 1960.\textsuperscript{302} Other evidence reveals that this new school, when opened, was located towards the southern end of the original town area, with the Education Board taking out a lease over sections 47, 48, and 52 of block III.\textsuperscript{303} (In passing, we note that section 47 was one of those that had originally been designated native reserve.)

In May 1963, the Crown-owned lot on the corner of Maika and Kiwi Streets was leased to a school teacher from Raglan, on a rent-to-buy basis under the ‘deferred licence’ provision of the December 1920 native township regulations. This provision allowed payment by annual instalments over a period of up to 20 years, with a licence to occupy being issued until payment was complete.\textsuperscript{304} The total price in this instance was £150, payable over 10 years. The teacher received title to the section in 1972, but on-sold a few years afterwards to another teacher (possibly his successor).\textsuperscript{305}

Meanwhile, Parawai A (just over 11 acres) had come before the Māori Land Court in Hamilton. This was the area that had been held on behalf of those who had voted against the land gift to the Kingitanga. The land had never been leased and the court agreed, on 15 December 1971, that it should be revested in the beneficial owners under section 14 of the Māori Reserved Land Act 1955.\textsuperscript{306} Around three months later, ownership passed in fee simple to Susan Mauriohooho. The certificate of title records that on the same day, 10 March 1972, it ceased to be Māori land (presumably because of the ‘Europeanisation’ provisions under the Māori Affairs Amendment Act 1967, which affected Māori land in sole ownership).\textsuperscript{307} Some 20 years later, it would be transferred to the Māori Queen.\textsuperscript{308} The evidence gives no details about the circumstances.

As to Parawai B (the Kingitanga land), the Māori Land Court issued an order in 1981 declaring it to be Māori freehold land, with the appellation ‘Te Maika B’.\textsuperscript{309} A section 438 trust was put in place to administer Te Maika on behalf of the Kingitanga.\textsuperscript{310}

The new trustees, though, found themselves with various outstanding costs to be met, and they also needed to arrange for a new survey of Te Maika to be undertaken. On top of that, the land around the school required draining. To

\begin{itemize}
\item \textsuperscript{301} AJHR, 1909–12, E-2.
\item \textsuperscript{302} Document A62, p 368.
\item \textsuperscript{303} Document J28(a), p 5; doc A76(a), pt B, p B77.
\item \textsuperscript{304} ‘Regulations regarding the Disposal of Lands Acquired by the Crown under the Native Townships Act, 1910, and its Amendments’, 20 December 1920, New Zealand Gazette, 1921, no 3, pp 23–24.
\item \textsuperscript{305} Document J28(a), p 6; doc J27(a), p 10; doc J28(b), p 25.
\item \textsuperscript{306} Document A62(a), vol 11, p 1345.
\item \textsuperscript{307} Document J28(b), p 33.
\item \textsuperscript{308} Document J27(a), p 9.
\item \textsuperscript{309} Document J27(b), p 15; MLIS information on Te Maika, accessed 10 March 2016.
\end{itemize}
cover these costs, the trust had to secure a loan of some $60,000, in the form of a mortgage from the Māori Trustee. With interest rates rising well over 10 per cent (they finally reached more than 20 per cent), that debt quickly mounted. By 1992, the trust owed upwards of $116,000 (one witness putting the amount at more like $200,000). Other issues still facing the trust at that time included rates arrears (which at 30 June 1992 stood at $18,724.09), and the renegotiation of leases to allow a proper rental income.

In October 1992, the trustees were finally able to complete the depositing of a new survey plan (DPS 60648). This in turn allowed a series of new leases to be negotiated, thus improving income. One of the existing leases, though, was a perpetually renewable lease held by Phillip Green. After much negotiation, the trustees agreed to buy out the lease for $30,000 and allow Mr Green to use the money to purchase the freehold of lot 47. The beneficial owner, though, would retain the right, under certain circumstances, to buy the property back. Together with the one that the Crown had sold to the school teacher, this meant there were now two privately owned sections in Te Maika.

At the time of our hearing, Edith Dockery was the chair of the Te Maika Trust, which is now an ahu whenua trust. In evidence, she said there was still no sewerage system, no power supply, no road access, no water supply, and no rubbish disposal. The sheep that graze the area are managed by a team of volunteer farmers. As to the people who occupy Te Maika, she categorised them into ‘council tenants, . . . our own tenants and . . . people who have been able to, through one way or another, . . . own freehold a section on Te Maika.’ She cited rates as a particular problem.

Another witness, Errol Balks, referred to the confused cadastral situation that the trust had inherited. Then there is the foreshore road, which has never been used as such – having never been formed and graded, let alone surfaced – and which is still the site of numerous baches. Despite this, the trust is charged a ‘road maintenance levy.’ The owners of the foreshore baches, meanwhile, pay no rates, no rent for the land on which their baches stand, and range freely over Te Maika. Many of the baches are becoming rundown, as is the old school building, and there are no protections for sites that are of significance to the traditional owners.

The fact that problems remain is not due to lack of effort by the trust. In February 1994, it paid off the rates arrears as they stood at the time, and the same year it paid $21,000 to the Māori Trustee for the mortgage (although the Trustee regarded this as payment towards the interest only). There still remained the principal and the rest of the interest, and a debt of $113,921.37 to an attorney who had

314. Edith Dockery, personal communication, 8 December 2010 (doc A76, pp 112–113); doc J17(b), paras 20, 25.

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earlier been employed by the Kingitanga to try to sort out some of the problems associated with the township.\textsuperscript{318}

Over the years, meetings have been held with the Prime Minister, the Minister of Māori Affairs, the Māori Trustee and his staff, and the Waitomo District Council. The trust has also been in contact with the Department of Conservation. These various interchanges have enabled some progress, even if it has not always translated into concrete results on the ground. In 1995, for instance, the Waitomo council expressed a willingness in principle to vest the quarry and other reserves in the trust. In the end, this did not happen because the council wanted some other issues resolved first. Then, in 1996, it seems that the Māori Trustee waived the residual interest on the mortgage (although the Tribunal does not have full details). By October 2000, the debt to the Trustee was down to $43,000; it has now been paid off entirely.\textsuperscript{319} It is not clear, though, what has happened with respect to the other debt, to the former attorney.

There has also been further consideration of the status of the road along the foreshore. This had its origin around 1994, when a deputation of foreshore occupiers approached the trust, asking for its support in getting the road closed. The following year, the Waitomo council began court action to remove them. By 1997, discussion between the trust and the council had resulted in consideration of a scheme for the road to be closed, another subdivision to take place, and leases to be sold to the occupiers for a lump sum plus an annual rental. Matters seem to have stalled, though: in 2000, the Māori Land Court revoked the reservations created by an earlier (1992) subdivision because the council had not upheld its side of the arrangement by taking steps to regularise the situation of the people occupying the foreshore.\textsuperscript{320}

As to the problem of rates, although the trustees succeeded in paying off arrears in 1994 as noted above, and then apparently had further arrears written off, debt still kept building up – not helped by the fact that rates charges kept rising. In 2012, the annual charge was over $8,000. That charge includes a special rubbish rate which, although forgiven for a time, has been reinstated – even though there is still no rubbish collection. Rates are charged on each individual section and have all had to be paid out of lease revenue, even though some of the sections are unoccupied and hence not yielding income. Meanwhile, those whom Ms Dockery described as ‘council tenants’ have not paid rates at all (presumably because they were not occupying a section as such, but instead held a licence to occupy the foreshore road).\textsuperscript{321} In short, the question of rates is still a thorny one.

On the cadastral situation, Errol Balks told us that even he, an experienced surveyor and planner, found it complex. Not only are houses and baches located outside their title areas (many of them, as already mentioned, being on the

\textsuperscript{318} Document J27(b), pp 8, 19.
\textsuperscript{319} Document J27(b), pp 19–22; doc J27(c), pp 4–5.
\textsuperscript{320} Document J27(b), pp 19–21.
\textsuperscript{321} Document J27(b), p 22; doc J27(c), p 5; Edith Dockery, personal communication, 8 December 2010 (doc A76, p 113); doc J17(b), paras 20, 25.
foreshore road) but there is a lack of knowledge of where some of the titles exist on the ground.\textsuperscript{322} To help clarify matters, Mr Balks has provided a diagram entitled ‘Title composition – Te Maika 2014’, to show the current situation. It shows the whole area that was proclaimed in June 1900 (that is, including the southern part and Tōtara Point), with an enlargement of the northern part of the main peninsula where the main township area is.\textsuperscript{323} Of note is that some of the roads shown the northern part of the township do not correspond with the original roadlines. Mr Balks stated that the current roads there are legal roads, even though they are not formed or fenced and there is no indication of them on the ground. He says, though, that while the location of the roads is reasonably well known in some places, it is only poorly known in many others. He also says that there is still doubt about the legality of some of the roads through the southern part of the peninsula.\textsuperscript{324} 

\textbf{15.4.1.6 Land alienation in Parawai/Te Maika}\\
The Crown, in its closing submissions, said that no land in Te Maika was alienated through Crown or private purchase.\textsuperscript{325} While that is technically correct, it paints an incomplete picture of current landholding in the township.

From the evidence provided, the bulk of the whole proclaimed area is indeed still in Māori ownership, being now held in an ahu whenua trust (the Te Maika Trust) on behalf of the Kingitanga. There are, however, exceptions. The legal roads are one of these, being vested in the Crown but administered by the Waitomo District Council. This includes the foreshore road on which 18 baches are still either completely or partly located. It also includes the three small areas taken by the Crown in the 1950s to tidy up the alignment of Maika Street.\textsuperscript{326} Another exception is the esplanade reserve, which is vested in the district council and also has a house on it. The quarry reserve (which likewise has a house on it) is not part of the trust’s land.\textsuperscript{327} Then there are the two sections that, although not purchased in the regular sense, did become privately owned (one through a debt to the Crown that was paid in land which was then onsold; the other through the effects of perpetual leasing).

\textbf{15.4.1.7 Treaty analysis and findings}\\
The selection of Parawai/Te Maika as the site for a native township was inspired by the Crown’s interests, rather than those of Māori. The Crown viewed Kāwhia Harbour generally as being strategically (and economically) important, and Parawai/Te Maika in particular as providing an ideal site for a deep-water landing. Its attempts at purchasing land in the Taharoa A block, however, had met resistance from local Māori. The Native Townships Act 1895 provided the Crown with

\begin{footnotes}
\item \textsuperscript{322} Document J28(a), pp 1–2.
\item \textsuperscript{323} Document J28(b), p 1.
\item \textsuperscript{324} Document J28(a), pp 8–9.
\item \textsuperscript{325} Submission 3.4.291, p 40.
\item \textsuperscript{326} Document J27(b), p 6; doc J27(c), p 2; doc J27(a), p 16; doc J28(b), p 8.
\item \textsuperscript{327} Document J28(a), p 9.
\end{footnotes}
an alternative means of achieving its goal, and one that did not explicitly require the consultation or consent of Māori. It is unclear if there was any consultation with local Māori prior to the township’s proclamation: the evidence suggests that if it did take place then at best it involved only a handful of the over 200 owners of the block. The subsequent hui at Maketū where Taharoa Māori objected to the ‘compulsory seizure’ of the area and pledged to hand over the township land to the Māori King certainly suggests that local Māori did not want to hand over the land to the Crown.

The claimants alleged that the Crown took more land at Parawai/Te Maika than it needed or ever used. The evidence supports this. As detailed above, the Crown surveyed only slightly more than one-fifth of the proclaimed area into township sections; the remaining area was subdivided into larger pastoral blocks, or not subdivided at all. This hardly seems consistent with the intention of the legislation.

Returning to the matter of consultation, the 1895 Act did require the owners’ involvement at the stage of selecting native reserves. In the case of Parawai/Te Maika, the Crown contacted one chief and relied on him to ‘consult the hapu interested’. He was apparently sent a plan of the area, but it is not clear from the evidence how much other information he was given. Certainly, the records do not indicate that there was any face-to-face meeting with him. In the end, certain areas were reserved for Māori, including those identified by the chief, but they amounted to only 2.5 per cent of the total 485 acres proclaimed. When the township plan was displayed, there were a few objections to it, but they were either unsuccessful or dismissed.

Until October 1908, the commissioner of crown lands administered the township. The Crown therefore had direct responsibility for the township during this period. The evidence shows that the commissioner of crown lands’ oversight and administration of the township during this period was far from diligent. Oversight of rent collection was poor, and the Crown took no action against defaulting lessees, as it was empowered to do. As the commissioner of crown lands admitted in 1926, the Crown was also responsible during this period for the failure to pay survey costs. During the same period, the Crown likewise failed to deposit the survey plans and to legalise the roads. The existence of these problems only emerged in the 1920s when ownership of the township was being transferred to the Kingitanga.

The Māori owners of Te Maika had little to no influence over township affairs. In the township’s early years, they proposed a drainage scheme because they thought it might improve the uptake of leases, but the Crown did nothing. Indeed, officials suggested that the idea might gain more traction if it came from the predominantly Pākehā lessees, rather than the Māori owners, suggesting just how little influence the owners wielded in township affairs. The owners also asked that the name of the township be officially changed from Parawai to the more correct Te Maika – which was what most people, including settlers, called it – but they were turned down.

Matters apparently did not improve when the land board took over responsibility for the township in 1908. There is no evidence of any distribution ever being
made to beneficial owners under the trusteeship of either the commissioner of Crown lands or the land board. Leasing was not particularly successful under either administrator.

The Crown did eventually pass legislation to make it possible for most of the township land to be transferred to the Māori King. This is what Taharoa Māori had asked for at the outset. This only happened, however, after it had become plain that Te Maika was never going to thrive as the sort of township envisaged by the Crown, and after Kāwhia Harbour had lost its political and strategic importance to the Crown.

Even though Māori, under the Kingitanga, regained ownership, they were nonetheless left in a position of debt and with a raft of difficult administrative problems to solve. The construction of baches on a legal road – and what to do with those baches – has been an ongoing problem. Since then, Kingitanga plans to develop the area, with a view to trying to generate some income, seem to have met with more resistance than support.

Although the 1895 Act did not require the Crown to consult with the owners nor to gain their consent to the proclamation of a native township on their land, the Treaty and its principles did.

Having assumed control of the township lands, the Crown had a Treaty duty to ensure that the township was managed in a way that actively protected the interests of the Māori owners. Instead, during the period until 1908 when the township was under the Crown’s direct control, it failed to take action against defaulting lessees or to distribute income. It also failed to pay survey costs from the rental income and to properly deposit the survey plan. After the township passed to the Māori land board, in 1908, the board attempted to rectify some of the worst of these problems, but not always with the active support of government departments and officials.

In failing to consult adequately with the owners of Parawai/Te Maika and to gain their consent to a native township being established on their land, in taking more land than it needed for the township, for its failure to set aside sufficient reserves, for its administration of the township until 1908, and for its failure to assist the land board administer the leases, we find that the Crown acted inconsistently with the Treaty principles of partnership, reciprocity, and mutual benefit. We also find that the Crown acted inconsistently with the article 2 guarantee of tīno rangatiratanga and breached its duty of active protection.

The Crown ultimately transferred the ownership of most of Parawai/Te Maika to the Kingitanga in 1929. We consider this action mitigated some of the prejudice arising from its earlier Treaty breaches. At least, it meant Māori regained most of the land taken. The action did not, however, remove all the land’s associated problems, many of which had their origins in the period of direct Crown administration.

15.4.2 Te Puru and Kārewa
Te Puru and Kārewa were proclaimed as native townships in 1901 and 1902, respectively. Located on either side of the settlement of Kāwhia, the proclamation of the
two townships was influenced both by the Crown’s desire to purchase land in the strategically important harbour, and by growing settler pressure for land in the wider Kāwhia township area. Nonetheless, the townships were not immediately successful. Indeed, in Te Puru, leasing of the township sections generated so little income that by 1908 the beneficial owners were asking the Crown to purchase their interests in the township. The Crown’s purchase of Te Puru was eventually finalised in 1912, ending its brief time as a native township.

After a slow start, and an aborted Crown purchase in the 1910s, leasing of Kārewa finally took off in the early 1920s. Kārewa and Ōtorohanga are the only two townships in Te Rohe Pōtae to still have a number of leasehold sections, most of which remain subject to perpetually renewable leases. Some land was sold, however, particularly during the 1950s and 1960s. Some of the public reserves, never used for their intended purposes, were revested in the Māori Trustee in trust for the beneficial owners during the 1960s.

In Kārewa and Te Puru, the claimants pointed to a loss of control over their land and an associated loss of mana. Added to that, they said insufficient land was set aside as inalienable reserves for the owners, thus failing to provide for present and future needs of themselves and their descendants.

In the case of Te Puru specifically, claimants said that the Crown acquired 35 per cent of the township without payment. They say that it then held on to rental money which should have been paid out to the beneficial owners.

In the case of Kārewa, a major issue is whether Māori landowners agreed to the establishment of the township. If so, under what circumstances did they agree, and were conditions attached? As with Te Puru, the claimants pointed to more than one-third of the township land being acquired by the Crown without payment. They also asserted that the township was not administered effectively and that rental income was withheld. As to leases, they pointed to the large number that were perpetually renewable. By 1974, this applied to 75 of the remaining sections under lease. Associated with that, they said, was the problem of unfairly low rental returns. In the early 1970s, the Crown’s legislation also resulted in the loss of a number of so-called ‘uneconomic shares’ in the township to the Māori Trustee.

15.4.2.1 Were Māori consulted over the establishment of a native township at Te Puru?

Although Kāwhia was strategically and economically important to the Crown, it had limited success in purchasing land in the area throughout the nineteenth century. By 1896, it had only purchased 44 acres of land at Pouewe and four acres in the Kāwhia K1 block.

330. Claim 1.2.101, p8; claim 1.2.99, pp81–82.
332. Claim 1.2.99, pp77–83; claim 1.5.13, p14; submission 3.4.226, p66.
333. Document A60 (Berghan), pp252–255.
In March 1901, T Wake sent a request to the Native Minister ‘that the Land in Kawhia South should be allowed to go to ballot as there are a large number of applicants for land.’ \[^{334}\] The next month, the chief surveyor in Auckland told the surveyor-general that ‘all’ of the owners with interests in Te Puru were ‘anxious that it should be brought under the Nat. Townships Act’. He enclosed a plan and description of the area, so that it could be gazetted as a Native Township. \[^{335}\] By 19 September, the Minister was asking the governor to proceed with ‘setting apart land for Native Township to be called “Te Puru”’. This communication predated a 23 September letter to the Minister from Taui Wetere, the major shareholder in the block, requesting that land at Te Puru be laid off as a township. Wetere’s letter has not itself been located, only a reference to it. The implication in that reference is that he meant a native township, but it is impossible to be certain. \[^{336}\]

Te Puru was proclaimed as a native township under the 1895 Act on 24 September 1901. The Gazette notice cited plan ‘6036 13B (in red)’ and gave the township area as 23 acres 3 roods 37 perches. \[^{337}\] The plan shows Pirongia Road as already being a recognised road. \[^{338}\]

In January 1902, surveyor W Spencer completed his survey of the township. \[^{339}\] Eight months later, on 17 September, a plan was forwarded to the surveyor-general for his consideration prior to exhibition under the terms of the Act. \[^{340}\] The surveyor-general wanted modifications: he instructed that Wetere Street and Taui Street, both currently shown as dead ends, be extended through to Pirongia Road (which ran along the foreshore). The alterations were made accordingly. \[^{341}\] On 16 October, the plan was sent to the chief judge for exhibition. \[^{342}\] It was subsequently annotated in te reo to the effect that it was to be displayed until 15 January 1903. \[^{343}\]

There is no evidence of any discussion with Māori about what areas they might have wanted reserved for them, but since records for the township are sparse, \[^{344}\] that is not to say that no discussion occurred. Following proclamation of the township, the Education Board had promptly applied for a school site. \[^{345}\]

The plan that was displayed in late 1902 and early 1903 showed the township laid out in three blocks:

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\[^{334}\] Wake to Minister, 26 March 1901 (doc A62(a), vol 3, p 392).
\[^{335}\] Chief surveyor, Auckland, to surveyor-general, 19 April 1901 (doc A62(a), vol 3, p 392); doc A62, p 84.
\[^{336}\] Minister to governor, 19 September 1901 (doc A62(a), vol 3, p 392); doc A62, p 84.
\[^{337}\] ‘Land set apart as a Site for a Native Township in the Auckland Land District’, 24 September 1901, New Zealand Gazette, 1901, no 86, p 1890; doc A62(a), vol 3, p 392.
\[^{338}\] ‘Land set apart as a Site for a Native Township in the Auckland Land District’, 24 September 1901, New Zealand Gazette, 1901, no 86, p 1890; doc A62(a), vol 7, p 876.
\[^{339}\] Document A62, p 83.
\[^{340}\] Document A62, p 84; Native Townships Act 1895, s 8.
\[^{341}\] Document A62(a), vol 3, p 392; doc A62, p 83.
\[^{342}\] Document A62(a), vol 3, p 393.
\[^{343}\] Document A62, p 83.
\[^{344}\] Document A62, p 82.
\[^{345}\] Document A62, p 84.
block I, comprising 20 sections, including one municipal reserve and two reservations for Māori;
b) block II, comprising 33 sections, including five public reserves of various kinds and eight reservations for Māori; and
c) block III, comprising eight sections, all of them beachfront and none reserved for any reason.\footnote{346}

In all, there were 61 sections, of which 45 were to be available for general lease. Of the total 23 acres 3 roods 37 perches, 1 acre 2 roods 25 perches were reserved for public purposes and seven acres was set aside as roads. Of the public reserve land, two sections totalling 2 roods 32 perches were designated as a school site (as requested by the Education Board in 1901), and another section of 38 perches was identified as a ‘government buildings reserve’. The remainder was simply described as ‘municipal reserve’.\footnote{347} Taking into account the public reserves and road-lines, the Crown was slated to receive 35 per cent of the township land for no payment.\footnote{348} Sections reserved for Māori were all at the north-eastern end of the township.\footnote{349} At about 10 per cent of the whole township area, the Māori allotment was only half of the maximum 20 per cent that they were allowed under section 6 of the Act.

In early March 1903, the chief judge informed the surveyor-general that no objections to the plan had been received.\footnote{350} A fortnight later, on 23 March, the surveyor-general certified that the plan was correct and that the township was duly constituted. The plan was deposited on 12 June 1903.\footnote{351}

\textbf{15.4.2.1.1 LEASING THE TOWNSHIP SECTIONS}

As early as September 1902, Crown officials had noted their intention to lease the sections by public auction, at an annual rent of £3 an acre.\footnote{352} In June 1903, just prior to the plan being deposited, the commissioner of crown lands in Auckland indicated his desire to see the lands ‘brought into the market with as little delay as possible’.\footnote{353} Then, in August 1903, the surveyor-general was told that the Māori beneficial owners were anxious that all their Māori reserves in the township be leased, too, as they had other land in Kawhia County.\footnote{354} While the Tribunal did not receive evidence to support this, it is noted that the 1895 Act did not allow native

\footnotetext[346]{Document A62, p 86.}
\footnotetext[347]{Document A62, pp 84–85, 87. It is possible that the school site became vested in the Education Board in 1906: in January that year, the commissioner of crown lands in Auckland sent the Under-Secretary of Lands and Survey a schedule of sections in several native townships, including Te Puru, Te Maika, and Kārewa, ‘for which Certs of Title are required to be issued’: commissioner of crown lands, Auckland, to Under-Secretary, 31 January 1906 (doc A62(a), vol 3, p 395).}
\footnotetext[348]{Document A62, p 87.}
\footnotetext[349]{Document A62, pp 83, 85–86; doc A62(b)(i) (Bassett and Kay appendix: Māori townships land alienation summary figures), p 21. Note that although the sections in block II appear to be numbered from 1 to 34, there is no section 32.}
\footnotetext[350]{Document A62(a), vol 3, p 393.}
\footnotetext[351]{Document A62, p 83.}
\footnotetext[352]{Document A62(a), vol 3, p 392.}
\footnotetext[353]{Commissioner of crown lands to surveyor-general, 6 June 1903 (doc A62(a), vol 3, p 394).}
\footnotetext[354]{Document A62(a), vol 3, p 394.}
allotments to be leased out, and a later source gives no indication of rent being received for any of the sections in question.\textsuperscript{355}

The date when the general leases were first auctioned is not clear from the evidence. One source dating from 1904 shows rent being paid from August 1903 onwards, suggesting that some leases had already been auctioned by then.\textsuperscript{356} A notice for an auction that was held on 30 June 1904, in Kāwhia, lists only 10 sections as being on offer at that time, suggesting that most or all of the other leases had already been taken up.\textsuperscript{357} The auction notice indicated that the leases were to be for 21 years, ‘with right of renewal for [a] further term.’\textsuperscript{358}

By the end of September 1904, the Crown had collected £69 1s 3d in rent on the leased sections.\textsuperscript{359} Taui Wetere contacted Native Minister James Carroll, enquiring how and when the beneficial owners would start receiving some income. He was told that the commissioner of crown lands in Auckland would work out how much was due to each owner, have vouchers made out accordingly, and ensure that the money was made available for collection at Kāwhia, having first given notification in the \textit{Gazette}.\textsuperscript{360} On 28 November, Wetere again asked when payments would be made: his children were in Auckland and wanted to go to school at Te Aute, and he needed the money.\textsuperscript{361} He was told that rent money up to 31 December would be paid out on 5 April 1905, through the postmaster in Kāwhia.\textsuperscript{362}

As at 31 March 1905, the total amount collected in rent was £88 17s 6d. Of this, £6 1s 3d was deducted to go towards survey costs, leaving £82 16s 3d available for distribution to owners.\textsuperscript{363} On 7 April, Wetere wrote yet again: why had the money still not been paid? He was told that all the rental income from the township had been transferred to Wellington, and he would be paid ‘direct from the Native Land Purchase Dept there.’\textsuperscript{364} Whether Wetere then received any money is not known. In September, however, a Mr Duncan forwarded a letter from Amo Amo (apparently an owner, although not on the original list of names), ‘asking when payment [would] be made for his share of Te Puru township.’\textsuperscript{365}

Records indicate that rent was payable twice a year, for the periods beginning 1 January and 1 July.\textsuperscript{366} As to how many tenants were actually paying, the evidence is mixed. One source shows more than 30 lessees having paid rent by the end of

\begin{thebibliography}{999}
\bibitem{355} Document A62(a), vol 7, pp 873–874.
\bibitem{356} Document A62(a), vol 7, pp 873–874.
\bibitem{357} Document A62(a), vol 2, p 222. Bassett and Kay, based on a 1909 memorandum from Judge Browne, stated that the 1904 auction involved 87 Te Puru sections, but that cannot be correct since, as indicated above, there were only 61 sections in the whole township, and only 45 of those were available for general lease: see doc A62, p 87; doc A62(a), vol 5, p 595.
\bibitem{358} Notice of auction to be held on 30 June 1904 (doc A62(a), vol 2, p 222).
\bibitem{359} Document A62(a), vol 7, pp 873–874.
\bibitem{360} Document A62(a), vol 7, p 877.
\bibitem{361} Document A62(a), vol 7, pp 870–871.
\bibitem{362} Document A62(a), vol 7, p 869.
\bibitem{363} Document A62, p 87; doc A62(a), vol 7, p 865.
\bibitem{364} Chief surveyor to Taui Wetere, 7 April 1905 (doc A62, p 88).
\bibitem{366} Document A62(a), vol 7, p 862.
\end{thebibliography}
September 1904. Most of them, however, had made a first payment in August 1903, and of those only five are shown as having made any subsequent payment.\textsuperscript{367} Two other sets of data give different pictures again, varying not only from the September 1904 figures but from each other as well: Judge Browne, writing in 1909, gave figures for a four-and-a-half-year period apparently running from mid-1904 to 1908;\textsuperscript{368} and a file from the Lands and Survey office in Auckland shows rents collected for the period from mid-1904 to the end of 1906.\textsuperscript{369} Table 15.1 compares the results from the two latter sources:

Given the inconclusive nature of the data, the most that can be said is that after the initial flurry of payments, few lessees seem to have met their obligations.

Even where lessees did make payments, they were often tardy – especially in the early years. From the Lands and Survey source, it is evident that for the three half-year periods between mid-1904 and the end of 1905, 12 of the 16 payments came in more than a year after the beginning of the period for which it was due. That said, matters did then improve: for the first half of 1906, all payments of rent were made within a year; and for the last half of 1906, they were made within (or, in one case, before) the six months for which they were owed.\textsuperscript{370}

Survey costs also needed to be deducted from the rental income. From the information available, it seems that these were to be covered by 10 half-yearly payments of £6 1s 3d each. It is not known when the first payment occurred, but one was certainly made in early 1905. Three more had been made by the end of

<table>
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<tr>
<th>Period</th>
<th>Number of lessees who paid</th>
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<tr>
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<td>Judge Browne’s figure</td>
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<tr>
<td>2nd half 1904</td>
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<td>1st half 1908</td>
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</table>

* This figure may not be accurate since it was linked to a comment about 87 leases having been auctioned which cannot have been the case for Te Puru alone. It is, however, closer to the September 1904 figure of 30.

Table 15.1: Comparison of number of individuals who paid rent in Kāwhia as calculated by Judge Browne and the Auckland Lands and Survey office
1906. These payments, coupled with the poor rental income, meant that as at 7 November 1906, there was only £25 4s 6d available for distribution to the beneficial owners.\(^{371}\) In December 1907, the balance available for distribution was even less: £20 7s 6d.\(^{372}\)

But the money was apparently not reaching the beneficial owners. In January 1909, after the administration of Te Puru had been handed over to the Maniapoto–Tūwharetoa District Māori Land Board, the Under-Secretary for Lands provided Judge Browne (the board’s president) with information about sums owed to owners. The total amount involved was £44 17s 6d. Of this, £41 11s 7d had been held since before the end of September 1907. The money was to be passed to the board for distribution.\(^{373}\) In the event, it was decided that this was the wrong board and the money should have gone to the Waikato board. The matter was rectified by Maniapoto–Tūwharetoa board’s president in September 1909.\(^{374}\)

At the time the Under-Secretary wrote about the funds, on 19 January 1909, there were 13 owners (including two minors). Six owners were owed £4 6s 4d each; two were owed half that amount. One, Te Awhe Toataua, having already been paid up to the end of September 1907, was only due 5s 10d. As to Taui Wetere, he was to get £8 12s 5d.\(^{375}\) The township was far from being a financial success. Judge Browne’s verdict in May 1909 was telling: ‘I should think the Dept was glad to get rid of it.’\(^{376}\)

The board nevertheless seems to have done nothing about ensuring better distribution of the money: its records indicate that at 1 April 1909 it held £47 18s, and by 31 March 1911 it still held £47 15s 2d.\(^{377}\)

The evidence does not reveal much about the extent to which the Māori owners were able to be involved in township affairs. When the Kawhia Town Board – covering an area which included Kāwhia, Te Puru, and Kārewa townships – was formed in 1906, Wetere stood as a candidate but failed to get elected. By contrast, at least two of the first five elected members of the board were, or had been, leaseholders in Te Puru.\(^{378}\)

As to the sections reserved for the use of Māori, there is little or no information about the extent to which they were occupied and used in the township’s early days. By about 1910, there were 15 beneficial owners – Wetere and four whanaunga,

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\(^{371}\) Document A62(a), vol 7, pp 861, 865.

\(^{372}\) Document A62, p 88; doc A62(a), vol 7, p 859.

\(^{373}\) Document A62, pp 150–151; doc A62(a), vol 7, p 905.

\(^{374}\) Document A62(a), vol 7, p 903.

\(^{375}\) Document A62(a), vol 7, p 905.

\(^{376}\) Document A62, p 150; Browne to Under-Secretary, Native Department, 3 May 1909 (doc A62(a), vol 5, p 595).

\(^{377}\) Document A62, pp 150–151; doc A62(a), vol 7, p 881. Between those two dates, the boards had undergone a reorganisation: as discussed in chapter 12, in June 1910 the Waikato and Maniapoto areas had been brought together under a Waikato–Maniapoto District Māori Land Board.

\(^{378}\) ‘Constituting the Town District of Kawhia, in the County of Kawhia,' 12 October 1906, New Zealand Gazette, 1906, no 87, p 2720; ‘Kawhia,' King Country Chronicle, 16 November 1906, p 3; doc A62(a), vol 7, pp 873–874.
plus Te Awhe Toataua, Maru Te Moihana, Te Urangatitaka Taui, Te Hae Toataua, and six members of the Amoamo whānau.\textsuperscript{379}

\textbf{15.4.2.1.2 SELLING THE TOWNSHIP LAND}

In March 1908, Wetere and others wrote to the Minister asking that the Crown purchase their interests in the township.\textsuperscript{380} The Under-Secretary for Lands, in response, advised him that the Government was not interested in purchasing land in Te Puru, and that there was no power, under the 1895 Act, for anyone else to buy it.\textsuperscript{381} A year later, in March 1909, Wetere wrote again, saying that if the Crown would not buy the land, he wanted to put it up for auction.\textsuperscript{382} It is not known what response he received (if any) but on 1 October 1910 he wrote a third time: the owners wanted to sell to the Crown, at a price agreeable to both parties.\textsuperscript{383} On 4 February 1911, Native Minister James Carroll finally sent an offer of purchase, at government valuation, to the Waikato–Maniapoto land board.\textsuperscript{384}

There was some delay in convening a meeting of owners to consider the offer, but one eventually took place on 20 June 1911 at Kāwhia. Eight owners attended in person, one by proxy. Also present was J Seymour, representing the board, and an interpreter, W Edwards. Wetere chaired the meeting. He asked that the board amend the list of owners so as to omit three people who, he said, had no interest in the township land. It was put to the meeting ‘that an offer made by the Crown to purchase the land at the Government valuation be accepted’. The motion was carried unanimously.\textsuperscript{385} The board confirmed the owners’ resolution in August 1911.\textsuperscript{386}

In the meantime, the board had asked for a valuation of the township.\textsuperscript{387} A March 1909 valuation gave the capital value of Te Puru as £1,565, being made up of an unimproved value of £1,210 plus improvements of £355.\textsuperscript{388} Wetere was advised in September 1911, however, that there was to be a new valuation.\textsuperscript{389} The new valuation, supplied in October, valued the town at £1,525, being £1,210 capital value plus £315 improvements. This valuation related to only 15 acres 3 roods 7 perches – that is, the area of the leased sections and Māori allotments. The public reserves and legal roads making up the remainder of the township area had already been alienated.\textsuperscript{390}

\begin{itemize}
\item \textsuperscript{379} Document A62(a), vol 10, pp 1227–1228, 1243–1244.
\item \textsuperscript{380} Document A62, p 191.
\item \textsuperscript{381} Document A62(a), vol 3, p 396.
\item \textsuperscript{382} Document A62(a), vol 5, pp 594, 596.
\item \textsuperscript{383} Document A62(a), vol 5, pp 597–598.
\item \textsuperscript{384} Document A62(a), vol 5, p 599.
\item \textsuperscript{385} Carroll, application to summon meeting of owners, 4 January 1912 (doc A62(a), vol 7, p 895); doc A62(a), vol 5, p 599, vol 7, pp 891, 893–894; doc A62, pp 191–192.
\item \textsuperscript{386} Document A62, p 192; doc A62(a), vol 7, p 891.
\item \textsuperscript{387} Document A62(a), vol 7, p 901.
\item \textsuperscript{388} Document A62, p 192; doc A62(a), vol 7, p 897.
\item \textsuperscript{389} Document A62, p 192; doc A62(a), vol 5, p 606.
\item \textsuperscript{390} Document A62, p 192; doc A62(a), vol 5, p 607.
\end{itemize}
Wetere, aware that the revaluation had now been carried out, again pressed for matters to be concluded.\textsuperscript{391} Two other owners also wrote to ask why payment had not yet been forthcoming, adding: ‘Our Pakeha neighbours declare that we are being humbugged by Government.’\textsuperscript{392} Wetere then followed up on behalf of one of them, asking whether borrowing against the money due might be possible, and wanting to know when payment would be made.\textsuperscript{393}

Following yet another inquiry from Wetere, the Native Under-Secretary authorised the land board president to make advances against the purchase money, even though title had not yet been finalised.\textsuperscript{394} Accordingly, in December 1911, Bowler paid out the equivalent of £50 per share to eight owners. The total amount distributed came to £316 13s 4d.\textsuperscript{395} By June the following year he said he had paid out a total of some £579 in advances, and owners were ‘worrying [him] for the balance’. It is not clear whether any of the payments already made were to Wetere or those on behalf of whom he had been writing.\textsuperscript{396}

Towards the end of 1911, it appears that Bowler was trying to ascertain how many of the township sections were actually occupied or being used. He wrote to Wetere, who then visited ‘every section mentioned in [Bowler’s] letter’. Wetere reported that section 28, block 11, was occupied by one G G Jonathan. It was fenced and had a house on it. He also informed Bowler that sections 16 and 17, block 1, were fenced and occupied by the Lawn Tennis Club.\textsuperscript{397}

Subsequently, in February 1912, Bowler issued a formal statement indicating that the leaseholds of those in arrears with their rent were being rescinded:

\begin{quote}
I, Walter Harry Bowler of Auckland, President of the Waikato–Maniapoto District Maori Land Board, hereby certify that the . . . Board being registered proprietor . . . has reentered on certain leases in Te Puru Native township (as set out in the schedule attached) on account of the nonpayment of rent by the lessees of the sections concerned, and taken formal possession, as provided for in terms of the said leases . . .\textsuperscript{398}
\end{quote}

The list of lessees guilty of non-payment seems to have been lengthy.\textsuperscript{399} It is unclear why such action had not been taken previously.

\footnotesize
\begin{itemize}
\item \textsuperscript{391} Document A62, p192.
\item \textsuperscript{392} Roia Te Ake and Te Awhe Toataua, 24 October 1911 (doc A62(a), vol 5, pp 610–611); doc A62, p193; see also doc A62(a), vol 7, p 905.
\item \textsuperscript{393} Document A62(a), vol 5, p 615.
\item \textsuperscript{394} Document A62, p193; doc A62(a), vol 5, p 617.
\item \textsuperscript{395} Document A62, pp193–194.
\item \textsuperscript{396} President to Under-Secretary, 8 June 1912 (doc A62(a), vol 7, p 886).
\item \textsuperscript{397} Taui Wetere to president, 12 December 1911 (doc A62(a), vol 7, p 889).
\item \textsuperscript{398} W Bowler, 18 February 1912 (doc A62(a), vol 7, p 887).
\item \textsuperscript{399} The actual schedule was not filed in evidence, but faint traces can be perceived through the thin paper of Bowler’s statement: see doc A62(a), vol 7, p 887.
\end{itemize}
The treatment of one Pākehā lessee, William Howe, provides some indication of the board’s approach. Bowler reported that, while he had formally taken possession of the leased sections, he had found that Howe was still living on section 28, block II, despite having not paid rent since 12 January 1909. Still, Bowler hesitated to foreclose on the man as he had built a house there, worth about £300. ‘Would it prejudice the Crown purchase in any way’, asked Bowler, ‘if I gave him an opportunity to pay up the rent on his lease?’ Fisher responded that Howe could pay the rental money due and his lease could remain on the title, but he would not be paid out for his improvements. Howe subsequently paid up to 30 June 1913.

In September 1912, the Native Minister requested the issue of certificates of title in favour of the Crown for all the public reserves with the exception of sections 3 and 4, block II (the latter two having earlier been vested in the Education Board as a school site). The Native Department later confirmed to the Lands and Survey Department that the public reserves did not form part of the Crown purchase.

The township land held in trust by the board was declared Crown land on 30 September 1912. Although notice of the transfer, involving 15 acres 2 roods 30 perches of Te Puru township land, was gazetted on 3 October, payment to the board was not made until December. This was because of ongoing uncertainties about what the valuation covered. In the end, the Crown paid the board £1,225, being £1,210 for the unimproved value (in line with the October 1911 revaluation) plus £15 for the fencing erected by Wetere in 1910. No evidence has been filed to show when the owners received the balance of payment for their land.

15.4.2.2 Were Māori involved in the decision to establish a township at Kārewa?

On 22 March 1901, Hone Kaora and 11 others wrote to the Minister of Lands proposing that Kawhia M (Te Papa-o-Kārewa) be used for a township:

He Pitihana tenei na matou na ngaingoa e mau ake i raro nei, kia ruri tia a Kawhia M hei tunga taone.

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400. The section involved was the same as that referred to by Wetere (being the sea-front section on the corner of Pirongia Road and Taui Street), but there is nothing to explain the discrepancy over the name of the occupier, whom Wetere had cited as GG Jonathan.
401. President to Under-Secretary, 3 January 1912 (doc A62(a), vol 5, p 619).
402. Under-Secretary to president, 29 January 1912 (doc A62(a), vol 5, p 620).
410. Hone Kaora was the son of John Cowell and his second wife (who was of Ngāti Hikairo); he should not be confused with John Vittoria Cowell, born to John senior and his first wife (who was English): ‘In the King Country’, Star, 27 February 1902, p 4.
Kaua e tukua ki raro ite mana ote kaunihera Maori, mete kai tiaki ote katoa, e ngari meahu tonu mai ite Kawanatanga kia matou.
Ko tenei Poraka ka wehewehea kia matou i naia nei ete Kooti whenua Maori.411

A translation from the time reads:

This is a petition from us the undersigned, requesting that our land Kawhia M may be laid off as a site for a Township.
Do not let it come under the authority of the Maori Council or of the Public Trustee but let the Government deal direct with us.
This Block is to be subdivided [for] us now by the Native Land Court.412

Later in 1901, Tahuri Kaora and others applied for part of Kawhia M to be divided into smaller pieces and apportioned out to the owners. The application was supported by the Morgan family, who set out ‘the boundaries agreed upon for their section, Pukerua’413 On 7 October, orders were made dividing an area of 49 acres 1 rood 27 perches into nine small blocks (Kawhia M2 to M10), each being awarded to a small number of Māori owners.414

The owners’ March 1901 letter coincided with an upsurge in settlers agitating for access to land in Kāwhia. Some were already negotiating informal leases.415
These events seemed to have motivated the Crown to respond. On 3 January 1902, W Spencer received ‘instructions verbal’ and began surveying ‘Kawhia M2’ – apparently ignoring the subdivision orders that had been made in October the previous year – for a native township shortly after.416

On 13 August 1902, Charles Pollen sent the surveyor-general a copy of a tracing of ‘Pt Kawhia “M” Block (Papaokarewa)’ and an attached memorandum. He assured the surveyor-general that the native owners were ‘desirous’ that their land should be leased under the 1895 Act. He said they had ‘marked the reserves they required’.417 This suggests that there had been some discussion with the owners. That said, the copy of the tracing that is on file, dated 5 August, does not give any indication of what reserves they had requested.418 Moreover, Hone Kaora would later reiterate that a condition of agreeing to the township was that it would not be taken under the 1895 Act.
Pollen indicated that a full survey plan would be forwarded shortly. He ended his memorandum by stating that: ‘I have forwarded the two descriptions in case

411. Hone Kaora and others to Minister of Lands, 22 March 1901 (doc A60(a) (Berghan document bank), vol 24, p 1348).
412. Hone Kaora and others to Minister of Lands, 22 March 1901 (doc A60(a), vol 24, p 1347).
413. (1901) 40 Otorohanga MB 78 (40 WMN 78) (doc A62(a), vol 13, p 1585).
you may decide to gazette the Township as part of Kawhia “M” which has been
surveyed and not as subdivisions of “M” which have not been surveyed." It was
belated acknowledgement of the orders that had been made on 7 October 1901, but
which then seem to have been left in limbo by the lack of survey.

The following month, Gerhard Mueller, the assistant surveyor-general, sent
through an approved survey plan, as promised. He also relayed some comments
that had been made by Spencer, the surveyor, to the effect that there would have
to be some reclamation work for the street shown along the foreshore. This was
because there was a high bank along most of the shoreline. Furthermore,

there are a number of fine Pohutukawa trees which would be destroyed if the bank
were cut away to form a road, [and] the owners of the land make it a condition that
the trees are not to be injured in any way and the Government has always ordered that
the trees are not to be touched.\footnote{pollen for assistant surveyor-general to surveyor-general, 13 August 1902 (doc A62(a), vol 4, pp 516–517).}

The pōhutukawa trees were very carefully marked on the plan that Spencer had
drawn.\footnote{Spencer quoted in G Mueller to surveyor-general, 23 September 1902 (doc A62(a), vol 4, pp 522–523).}

Spencer also indicated problems with two of the sections. There was a privately
owned section with an orchard – being lot 66, block II – which the owner, a Mrs
Forbes, wanted reserved from the township. This had prevented him from being
able to extend Tahuri Street (now called Panera Street) to link up with Waiwera
Street. In addition, lot 65, block II, had been given to a Mr T H Hill of Raglan.
The section had not yet been legally transferred to him, but the Māori owners had
confirmed in court that the land belonged to him.

As to the nature of the land in the north-west part of the township, Spencer
warned that it was deep swamp (‘being six feet in places’) and implied that it had
resulted from drainage activity in the back country. He had been unable to peg the
sections there but thought the area could be drained when required.\footnote{Spencer quoted in Mueller to surveyor-general, 23 September 1902 (doc A62(a), vol 4, p 523).}

An earlier map, dating from 1894, seems to have shown the area as a lake.\footnote{Plan 6096 of Kawhia subdivisions (doc O18 (Bassett, Kay, and Luiten document bank for cross-examination), p 2); transcript 4.1.13, pp 673, 679 (Heather Bassett, hearing week 8, Te Kotahitanga Marae, 6 November 2013).}

In their tangata

whenua evidence, Ngāti Hikairo have identified it as the lake known to them as Ōweka, a traditional resource that they were still using through to the first decade
of the twentieth century.\footnote{Transcript 4.1.13, p 680 (Heather Bassett, hearing week 8, Te Kotahitanga Marae, 6 November 2013).} Despite this, Spencer’s plan indicated that there would
not only be sections there but also roads.
His final comment concerned some existing houses: ‘The dwelling houses near the beach . . . are occupied by the owners who wish to reserve the sections adjoining.’

He presumably meant the Māori owners of the township land, since most of the houses ended up in Māori reserves (see below). Mueller’s memorandum also bore a handwritten postscript: ‘If more Public Reserves are required, the 5¾ acres of Crown land adjoining the Township could be utilized.’

A separate ‘schedule of lands in the Karewa Native township’ listed 37 acres 27 perches as being for sections and 17 acres 2 roods 11 perches for roads: a total of 54 acres 2 roods 39 perches (which differed from Spencer’s plan where the area was shown as 55 acres 19 perches). Of the sections, 7 acres 1 rood 28 perches were to be for native reserves and 2 acres 23 perches for public reserves. The remainder – totalling 27 acres 2 roods 16 perches – were ‘for disposal’. Taking the streets and public reserves together, the Crown therefore got around a third of the township land free of charge.

Moreover, although the 7 acres 1 rood 28 perches for Māori was described as being ‘20% for Native Reserves’, the schedule acknowledged that this was ‘excluding Streets’. The area proposed for Native reserves in Kārewa was in fact only around 13 per cent of the total township area.

Also accompanying Mueller’s memorandum was an indication of land values. It estimated the township land as being worth from £10 to £20 an acre. Overall, the expected annual rental revenue from the leased sections was calculated at £335. To be offset against that figure, though, was a survey cost of £80 1s 6d and £15 for ‘Administration etc.’

Kārewa native township was proclaimed on 26 September 1902 (exactly a year after Te Puru), and the proclamation was gazetted on 16 October. The proclamation referred to ‘Kawhia M (Papa-o-Karewa) Nos 2 to 10 Blocks, and two private roads’, with the area being given as 55 acres 19 perches (slightly more than on the above-mentioned schedule). The description referenced plan ‘SG 49075’. No plan marked SG 49075 has been filed in evidence. It is to be noted, however, that the wording of the proclamation did recognise the existence of the October 1901 subdivisions.

In this inquiry, the claimants and the Crown disagreed about what kind of township the owners were requesting in their March 1901 letter. As outlined above, in that letter the owners asked that the township not ‘come under the authority of the Maori Council or of the Public Trustee’. Instead, they wanted ‘the Government [to] deal direct with us’. The claimants drew on the evidence of Bassett and Kay, who argued that, in this letter and in others, the owners ‘specifically rejected the

430. ‘Land set apart as a Site for a Native Township in the Auckland Land District’, 26 September 1902, New Zealand Gazette, 1902, no 82, p 2266; doc A62(a), vol 4, p 520.
The Crown, however, submitted that ‘the evidence is at least equivocal on this point’. It is necessary here to closely consider the available evidence.

Asked to report on the owners’ March 1901 letter, George Wilkinson (at this stage still a native land purchase officer) told head office that the owners object to their land being managed per the agency of the Public Trustee, or, in other words, putting it under The Maori Townships Act, and also object to hand it over to the Maori Council (under the Maori Land Administration Act of last Session) when it is formed.

Instead, he thought that what they wanted was ‘that Government shall lease it for them in the same way that it leases its own lands, and pay them the rents periodically, they still retaining the freehold’. Wilkinson repeated this characterisation of the owners’ March letter when he reported on a further letter from Moke Pumipi concerning the township in May 1901.

Subsequent accounts, both official and unofficial, presented different interpretations of the owners’ intentions for the township:

- In October 1901, a correspondent to the New Zealand Herald reported that ‘Ngatihikairo and Ngatimahuta’ were ‘agreeable to hand the required land to the Government to be dealt with under the Native Township Act’. But he noted also that they were agreeable to ‘a still better proposal’: surveying the land into a township and giving ‘the Natives a free hand to sell or lease as they may think fit’.
- As noted above, in August 1902, surveyor Charles Pollen assured the surveyor-general that the native owners of Kārewa were ‘desirous’ that their land should be leased under the 1895 Act.
- Later in the same month, the Native Under-Secretary reported that the owners had handed over Kawhia ‘voluntarily’ for a Native Township as an extension of the Govt Township of Kawhia.
- In 1903, Prime Minister Seddon and the Minister of Lands paid a brief visit to Kāwhia, meeting with local Māori at Maketū Marae on the afternoon of 24 May. Two newspaper accounts of this hui give differing information about what those Māori said about the township. One newspaper account reported that Hone Kaora said he had earlier told the Minister that their consent to taking the land for a township was conditional upon it being settled.

432. Submission 3.4.291, p 18.
433. Wilkinson to Sheridan, 23 April 1901 (doc A60(a), vol 24, p 1345).
434. Wilkinson to Sheridan, 23 April 1901 (doc A60(a), vol 24, p 1345).
437. Pollen for assistant surveyor-general to surveyor-general, 13 August 1902 (doc A62(a), vol 4, p 516).
as soon as possible. He then reiterated the owners’ wish that ‘the land should not be under the Native Townships Act, or the Public Trustee; but under the Government themselves’: that was what they had told the Minister, and that was what they still wanted.439 The Auckland Star, meanwhile, reported that the ‘various heads of all the tribes’ had asked that the areas surveyed for townships in 1901 ‘be immediately dealt with, and administered by the Government under the Townships Act’.440

The plan drawn by Spencer after his 1902 survey was later stamped [ML] ‘12756’. It is annotated in te reo Māori to the effect that it was to be publicly displayed and that any objections were to be filed with the chief judge before 26 January 1903. Indicative of the surveyor’s understanding of the nature and purpose of the native township, the area covered was described as ‘Kawhia South Extension’ (which had been subsequently amended to ‘Karewa’). Nor did it show the nine subdivisions ordered in 1901 – which may be because they had never been surveyed. Rather, it showed the township being divided into two blocks: block I with 67 sections; and block II with 91 sections.441 Both the sections mentioned in Mueller’s memorandum as being in private ownership were shown on the plan as native reserves.

In early March 1903, the chief judge wrote to advise the surveyor-general that there had been ‘several objections’ to the plan.442 The surveyor-general asked that the court hear these as soon as possible because the Crown was pressing to get the land leased.443 On 16 June, the chief judge told the chief surveyor: ‘The matter will be dealt with as soon as I can arrange for a sitting of the Court at Kawhia’.444

The court sat to hear the objections that had been lodged against the plan at the end of July, although the hearing was in Ōtorohanga, not Kāwhia. One of those objecting was Te Wharepoutapu (also known as Te Pouwharetapu), who said his wife had ‘not got enough’.445 Hone Kaora asked the court to dismiss the objections because they were ‘all from people who want more sections’. He pointed out that compromises were necessary, saying ‘It is really a matter of adjustment. Every owner cannot possibly get exactly the land he held originally’.446 Te Wharepoutapu subsequently withdrew his objection. When the case resumed the following month, none of the remaining objectors appeared and all the objections were dismissed.447

439. ’Deputation to Rt Hon Premier & Minister of Lands, Maketu Pah, Kawhia, May 24th, 03’, 12 June 1903 (doc A62(a), vol 4, p 531).
440. Document A93 (Loveridge), pp 42, 42 n
442. Chief judge to surveyor-general, 2 March 1903 (doc A62(a), vol 4, p 529).
444. Document A62(a), vol 4, p 530.
445. (1903) 41 Otorohanga MB 119 (41 W MN 119) (doc A62(a), vol 13, p 1590); see also doc A59(b) (King Country petitions document bank), p 1631. Of relevance here, perhaps, is that the subdivision orders made in October 1901 had included one that allocated ‘Kawhia M No 2’ (2 acres 2 roods 5 perches) to Te Rihi and Tame Te Pouwharetapu; see also doc A62(a), vol 13, p 1588.
446. (1903) 41 Otorohanga MB 119 (41 W MN 119) (doc A62(a), vol 13, p 1590).
Following the dismissal of the remaining objections, the Kārewa survey plan was registered as correct by the surveyor-general and formally deposited.\textsuperscript{448} It showed the township as being in ‘Block IX, Kawhia North sd’. There were school and police reserves in the middle of the township; two adjoining sections for government buildings near the southern end; and three other sections reserved for ‘municipal purposes’. Māori had 30 sections reserved for them, two of which were those occupied by Forbes and Hall. Another nine of the 30 were in the north-west – at least some of them, it would seem, being in the swampy area that would later be referred to as ‘a lagoon’. As to the sections near the foreshore, 11 were marked as native reserve and care seems to have been taken to incorporate most of the already existing dwellings. That said, one dwelling lay almost entirely outside native reserve, and another was on the land marked for Kaora Street.\textsuperscript{449} This was despite the terms of the Act which said (section 6) that the reserves must include ‘every building actually occupied by a Native’.

In the coming months and years, there were several other objections to the township – both its proclamation and the allocation of reserves – and to the ownership of Kawhia M. During 1903, Mutu Te Ake and three other members of his family petitioned for ‘Te Papa-o-Karewa or Kawhia M Block’ to be reheard, on the grounds that they, too, had been wrongly omitted from the title. Hone Kaora lodged a counter-petition, asking that Te Ake’s petition be disregarded. In November, the Native Affairs Committee referred both petitions to the Government for inquiry.\textsuperscript{450} The following year, the Māori Land Claims Adjustment and Laws Amendment Act provided for a commission of inquiry to be set up to investigate Te Ake’s petition, along with a number of others.\textsuperscript{451} This was to impact on the leasing of the township, as will be seen below.

In June 1904, Walter Morgan and five other owners in the township land wrote letters to the commissioner of crown lands in Auckland. Prior to the proclamation of the township, their interests had been in the area known as Pukerua. Morgan said he had already written about a year previously, asking for lots 21 to 33 in block I to be ‘reserved from sale’. This was because ‘the original grant to the late Mr Morgan passed through or partly through these sections’. Moreover, they represented ‘about the area we are entitled to after allowing for roading.’\textsuperscript{452} What they presumably meant was that they did not want the lots in question to be included in the auction of leases but, instead, to be reserved for them to offset the land they had lost when the township was formed (some of which was now included in these lots).

\textsuperscript{448} ‘Karewa Native Township Survey Plan’, [ML] 12756 (doc A62, p.73); doc A62(a), vol 4, p.532.
\textsuperscript{449} Document A62, pp.73, 76; HA Ellison, valuer, ‘Karewa Township’, 30 January 1912 (doc A62(a), vol 5, p.669).
\textsuperscript{450} Document A59(b), pp.701–705, 708–721.
\textsuperscript{451} Document A62, pp.79–80; Māori Land Claims Adjustment and Laws Amendment Act 1904, s.11, sch 2.
\textsuperscript{452} Morgan to Captain Boscawen, 30 June 1904 (doc A62(a), vol 9, p.1121); see also doc A62(a), vol 9, p.1119.
The commissioner of crown lands did not reply until October. He said the ‘whole matter had been most carefully gone into, and it was found that 20 per cent of the land had already been reserved for natives so it was ‘too late now to make further reservations’. In fact, as noted earlier, the native reserves made up rather less than 20 per cent of the township’s total area. As will be detailed below, the Morgan family continued to complain about the inclusion of their land in the township for several decades.

15.4.2.3 Early leasing of the township sections
Preparations for leasing the sections began as soon as the approved plan had been deposited, if not sooner, and by late October 1903 an auction had been publicised. It was held on 18 December 1903, along with the auction of the Parawai leases, in Auckland as the owners had requested. A total of 119 sections in Kārewa were on offer, for 21 years with right of renewal. At least two sections seem to have been taken up as a result, with lots 62 and 74 in block 11 both being leased for 21 years from 1 January 1904.

A second auction was then held six months later, this time in Kāwhia. It took place on 30 June 1904, which was exactly the same time that the Morgan family had been writing to the commissioner of crown lands. As it happens, two of the sections they were concerned about were not included in the offer anyway: section 33 of block 1 was not listed because it was already designated as Māori reserve; nor was section 25 auctioned, although in this instance the reason is not clear since it was not reserved for any purpose.

There is no report on the second auction, but a later memorandum noted that ‘only a few sections were taken up’. One source indicates that as at 31 March, only 10 sections totalling 2 acres 2 roods 33 perches were under lease, yielding an annual revenue of £40 12s 6d. Another source suggests that 11 sections were taken up (all except one of them being in block 11), and that the total annual rental revenue should have been £37 2s 6d. Either way, fewer than one in 10 sections were subject to lease and the likely income fell far short of the £335 anticipated.

The leasing situation was further impacted by the Māori Land Claims Adjustment and Laws Amendment Act 1904. This Act included a caveat that effectively prevented any further dealing in township sections until Mutu Te Ake’s grievance had been investigated and responded to. The caveat affected not only unleased sections, but also those sections where leases had not yet been registered.

453. Commissioner of crown lands to Morgan, 4 October 1904 (doc A62(a), vol 9, p 1120).
458. President to Under-Secretary, 30 April 1913 (doc A62(a), vol 5, p 665).
A commission of inquiry was appointed in late 1904 and heard Te Ake's case in Te Kūiti in April 1905. Probing back into the original subdivision of the Kawhia block in 1892, it noted that the court had found that Ngāti Hikairo had occupation rights, but in conjunction with other tribes. Papa-o-Kārewa had been awarded to Hone Kaora and his people (who were of Ngāti Hikairo descent), while Mutu Te Ake's family (also of Ngāti Hikairo) were granted land elsewhere in the block. The commission took no issue with the court's decision and recommended no further action in the matter.\(^\text{461}\)

Parliament, however, still had to decide what to do with the commission's recommendations and seemed in no hurry to do so. An amending Act was not passed until 1906. Rather than deal with the commission's recommendations, however, section 11 of the Māori Land Claims Adjustment and Laws Amendment Act 1906 simply added the words 'or until the Minister by notice in the Gazette and Kahiti declares that the necessity for such caveat . . . no longer exists'. Ministerial action was thus still needed, causing a further two-year delay. The Gazette of 17 December 1908 finally carried a notice lifting the caveat against 'the registration of dealings and the issue of orders' relating to 'Papaokarewa or Kawhia M'.\(^\text{462}\) In the interim – a period of four years from the passing of the 1904 Act – no formal dealing had been able to take place.

While the caveat was in place, Māori were left in an invidious position: they could expect little or no income from the 'official' leases but were barred from negotiating their own informal leases. Letters on file indicate that this did not stop them from trying. In September 1905, for instance, a certain W Healy wrote to the commissioner of crown lands saying that given the difficulty in finding grazing land, he had concluded a verbal agreement with local Māori for an area of land within the township.\(^\text{463}\) He was advised that the Natives had 'no right to deal with [him] direct'.\(^\text{464}\)

Likewise in August 1908, Thomas Wackett wrote to the commissioner saying that for the past nine months he had been 'renting a place, and living entirely at the mercy of [his] landlords'. There was vacant land all around, he said, but 'not a piece to be had'. He asked if the commissioner could 'strain a point, & let [him] have the section 88' (in block 11, overlooking the harbour). An annotation on the file records that once the amending Act came into force, the township lands had been deleted from the official list of lands available and had still not been restored.\(^\text{465}\) Wackett was told his request could not be met because the township sections were

\(^{461}\) AJHR, 1905, G-1, pp 7–8 (doc A59(b), p 701).

\(^{462}\) 'Papaokarewa or Kawhia M Block – Withdrawing Caveat against Registration of Dealings and Issue of Orders', 9 December 1908, New Zealand Gazette, 1908, no 102, p 3162 (doc A60(a), vol 4, p 2736).

\(^{463}\) Document A62, p 80; doc A62(a), vol 9, pp 1117–1118.

\(^{464}\) Commissioner of crown lands to Healy, 20 September 1905 (doc A62(a), vol 9, p 1116); doc A62, pp 80–81.

\(^{465}\) Wackett to commissioner of crown lands, 16 August 1908 (doc A62(a), vol 9, p 1113); doc A62, p 82.

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no longer listed in the land guide – the commissioner adding that he presumed this was ‘because there has been trouble about collecting rent &c’.  

Meanwhile, in July 1906, one of the Kaora family had written to James Carroll saying they wanted half the rents from the township to be sent to them, to help support them ‘i tenei tau hemokai’ [in this year of scarcity].  

Hone Kaora had previously been allowed to grow kūmara on the Crown block adjacent to the township, under a verbal agreement that he could use the land until such time as the Crown needed it. Around the end of 1905, however, the arrangement came to an end and he was instructed that he should ‘cease to cultivate there’. The Kaora family were advised that if they wanted an advance on rents, they should apply to the commissioner of crown lands in Auckland. There is nothing in the evidence to show whether they did so.

It seems that, by the close of the decade, the township was providing little benefit to the owners. In April 1908, while the caveat arising from Mutu Te Ake’s grievance was still in place, the crown solicitor was authorised to prosecute the Kārewa lessees – apparently ‘all . . . except one’ – who were in arrears on their rent. However, many of them pleaded ‘dire distress and poverty’ and the action was withdrawn. By the time the township lands passed from the commissioner of Crown lands to the Māori land board at the beginning of 1909, accumulated rentals stood at £66 18s 3d. Given that in 1902 the surveyor-general had expected the annual rental income to be £335 (excluding outgoings), it was not a huge amount – and there is no evidence that any distributions had been made to the beneficial owners.

By 1911, only eight Kārewa township sections were leased out, seven of which were several years in arrears. Following another enquiry from the Morgan family (this time asking for their township land to be returned to them), the president of the Māori land board advised the Native Department that there was ‘no denying the fact that the Township is practically of no benefit to the owners, in view of the small amount derived by way of rent’. Indeed, ‘[m]ost of the lessees seem to have relinquished their holdings.’ He wondered whether the township ‘might be offered for sale to the Crown, at Government valuation.’

In response to the letter from the president, the Native Department asked the valuer-general to supply a valuation for Kārewa, ‘exclud[ing] any Municipal Reserves and Government allotments’. The resulting valuation, dated January 1912, gave a capital value of £1,440, made up of £705 unimproved value and £735

466. Document A62, p 82.
470. Registrar to Under-Secretary, 15 March 1917 (doc A62(a), vol 5, p 716).
473. President to Under-Secretary, 3 October 1911 (doc A62(a), vol 5, p 661).
474. Under-Secretary to valuer-general, 16 November 1911 (doc A62(a), vol 5, p 663).
for improvements. The valuer explained that, apart from the sections between Pahi and Tahuri Streets, which lay ‘in a lagoon’, the land was ‘well adapted for residential purposes’ and there were ‘nice terraces’ in parts. The sections would, however, benefit from reorganisation into one- and two-acre allotments, as the present small section size was ‘absurd’ for the township’s current state of development.

Nothing further seems to have happened at the time. By April 1913, however, the land board had decided that leasing was indeed a lost cause. There were now ‘only two leases in force, and only one of the lessees pays rent’. The best chance of ‘disposing’ of the township, the board thought, was to offer it for sale by public auction. The only way the board could see a public auction happening was by resolution of a meeting of owners under the Native Townships Act 1910, and with the consent of the governor in council.

The Native Department was under the impression that the board had already offered the township to the Crown and was considering the government valuation. But the board pushed back: a public sale would be ‘more advantageous from the point of view of the beneficiaries than a sale to the Crown at the Government Valuation, which valuation seems rather low’. This seems a rather rare example of the Crown considering the interests of the beneficial owners. Fisher, the Native Under-Secretary, proposed that the Native Minister authorise a meeting of assembled owners, and that the governor in council approve the scheme generally, so as to then allow each transfer to be endorsed individually.

By now, however, word had apparently got out to the owners that another new valuation had been carried out in about March 1913, and that it was ‘very much in excess of the former one’. Tahuri Kaora wrote to the Native Minister in August saying that the owners were now keen to sell the township land to the Crown, except for ‘the sections reserved as homes for [them]’ which should on no account be included in the sale. In the end, the Native Minister directed the board to call a meeting of owners to consider a resolution to sell the land at public auction, but at a price not less than government valuation.

The meeting was held at Kāwhia on 29 April 1914 and was well attended. But afterwards Bowler, now a land purchase officer, had fresh doubts. He believed that, because of the existence of the 1901 subdivisions, the correct procedure was in fact for the board to seek the owners’ precedent consent in writing, as per section 19 of the Native Townships Act 1910. At the meeting, the owners had also told him about the March 1913 valuation, which was apparently later than the one on Native

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477. President to Under-Secretary, 30 April 1913 (doc A62(a), vol 5, p 665).
479. President to Under-Secretary, 19 June 1913 (doc A62(a), vol 5, p 670).
481. Under-Secretary to valuer-general, 26 May 1914 (doc A62(a), vol 5, p 677).
482. Tahuri Kaora to Native Minister, 4 August 1913 (doc A62(a), vol 5, pp 673–674).
Land Purchase Department files. It meant that the land was now worth about £80 an acre. Writing to the Native Department Under-Secretary afterwards, he said that if there was ‘any chance of the Crown [still] entertaining the question of purchase’, he would draw up a list showing the valuation of each section and then try to obtain the owners’ precedent consent to sale.  

The Crown subsequently sought ‘a more up-to-date valuation’ from the valuer-general. Supplied on 10 October 1914, the fresh valuation showed a capital value of £1,835 for 36 acres 3 roods 7 perches (being made up of £1,135 unimproved value and £700 for improvements). This valuation covered only individual sections: government and municipal reserves were excluded.

In the New Year, one of the owners, Te Aho Te Hae, wrote seeking an update on the sale: with debts to pay at the end of the month, it would be helpful to be able to realise the value of one’s interests. It would appear Te Hae was not alone in wanting to sell. Fisher, the Under-Secretary, wrote to Bowler that several of the native owners were ‘very anxious that the Crown should acquire the land . . . as soon as possible’. Over the coming months and years, Te Hae and other owners would continue to seek updates from the Crown about the progress of the purchase.

Further investigation by the Native Department and the land board in early 1915 revealed an array of complications with the township. The leasing situation was far from clear: one lease had lapsed, most others were ‘very much in arrears’ and liable to re-entry, and only two lessees were up-to-date with payments. Further, although there was a title for the whole township, it was not known if the reserves had been legally set aside. The boundaries of the township sections were also not aligned with those of the 1901 subdivisions, and instead overlapped. Bowler considered that the subdivisions would have to be annulled.

The Crown initially contemplated ignoring the old partitions and proceeding with purchasing the township direct from the land board under section 19 of the Native Townships Act 1910. But by early 1916, Bowler was reporting that the plan showing the partitions was ‘so dilapidated that it [was] quite impossible to take the necessary steps to acquire the owners’ interests under Section 19’. An application for the partitions to be cancelled was subsequently lodged. After several adjournments to give ‘every opportunity’ for parties to raise objection, the Native Land Court cancelled the partitions for Kawhia M2 to M10 (inclusive) on 6 October 1916.

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484. Bowler to Under-Secretary, 6 May 1914 (doc A62(a), vol 5, p 676).
485. Under-Secretary to Te Aho Te Hae, Oparau, 22 June 1914 (doc A62(a), vol 5, p 680).
488. Under-Secretary to Bowler, 13 January 1915 (doc A62(a), vol 5, p 687).
492. Bowler to Under-Secretary, 25 January 1916 (doc A62(a), vol 5, p 701).
493. Judge MacCormick to Under-Secretary, file note, 6 October 1916 (doc A62(a), vol 5, p 707).
The new title to Kawhia m2, dated 16 October 1916, was for 55 acres 19 perches and was vested in the land board on behalf of Tahuri Kaora and 33 others. Only two current leases were listed, being those for sections 62 and 74 of block 11. These both dated from 1 January 1904 and were for a period of 21 years. They were the two leases that had been formally registered before the 1904 caveat came into effect. Although the caveat had been withdrawn in 1908, no steps had been taken to complete registration of the remaining leases. Nor had there been any further effort to recover the outstanding rental money. Indeed, the leases seemed to have been abandoned.

By early 1917, the Crown was having second thoughts about purchasing Kārewa. The Native Under-Secretary thought the Native Land Purchase Board should reconsider the proposed purchase ‘as conditions have somewhat altered.’ The outcome of its deliberations was that the matter should ‘stand over for the present.’ Thus, when Te Aho Te Hae again enquired whether the Crown was now in a position to buy the township, the Under-Secretary responded that the Native Land Purchase Board was taking ‘no further steps at present to acquire any sections.’

Over the coming years, the Crown rebuffed other offers to purchase Kārewa as the value of the township continued to grow. In June 1920, a new valuation for Kārewa, based on a separate valuation for each section, totalled £4,672 (£2,977 being for unimproved land value and £1,695 for improvements). This was more than twice the valuation done in 1912 when the Crown had first been looking at purchase. The commissioner of crown lands recommended to the Under-Secretary for Lands that ‘any proposals for acquiring the Township should be abandoned as the present value is far in excess of what the Crown can afford to pay.’ Similarly, the Crown rejected a 1924 offer from Tahuri Kaora to purchase the township, as ‘its acquisition would not be of any benefit to the Crown.’

With a Crown purchase of the township off the agenda – at least temporarily – the Māori land board began advertising leases again in 1919. That year, Te Rata wrote to Maui Pōmare asking that the board not offer leases in both Kārewa and Parawai. The tender went ahead, but it is unclear if any new leases were entered into. However, in early 1920, the registrar reported that the land board had recently received inquiries about new leases and had therefore asked for new valuations so

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497. Under-Secretary to Bowler, 29 January 1917 (doc A62(a), vol 5, p 711).
498. Under-Secretary to Bowler, 20 February 1917 (doc A62(a), vol 5, p 713).
499. Under-Secretary to Te Aho Te Hae, 26 February 1917 (doc A62(a), vol 5, p 715); see also doc A62(a), vol 5, p 714.
500. Commissioner of crown lands to Under-Secretary for Lands, 21 June 1920 (doc A62(a), vol 1, p 12).
501. Commissioner of crown lands to Under-Secretary for Lands, 18 November 1924 (doc A62(a), vol 1, p 14); see also doc A62(a), vol 5, p 738.
as to be able to fix low rental prices.\footnote{503} The new valuations were supplied in June 1920.\footnote{504}

In September 1920 leases were again notified as being on offer.\footnote{505} However, several of the advertised sections were native reserves. Not having obtained the precedent consent of the owners to lease these sections, a meeting of owners was necessary under section 15 of the 1910 Act. At the meeting, held on 7 April 1921, and the owners rejected the resolution to lease the sections.\footnote{506} Nevertheless, lease agreements were signed for around 65 other township sections, with some of the lessees taking multiple sections. The term was for 21 years from 1 January 1921, with right of renewal for a further 21 years. Among the lessees were George Mackenzie and Taui Wetere (who had also been an owner in Te Puru). Another dozen or so sections were then leased out as from 1 July, and further leases were agreed over the next two or three years.\footnote{507} For the first time, there was the prospect of the township earning some income for the beneficial owners.

A further auction of leases was held towards the end of 1924 for 66 lots, 30 of which were native reserves.\footnote{508} The land board received tenders for at least seven new leases, including three for native reserves (lots 78, 90, and 91 in block 11). Once again, however, the board had not obtained the consent of the beneficial owners for leasing their reserves. A subsequent meeting of owners rejected the proposed leases at the rentals set by the board.\footnote{509} In 1927, a further 46 lots were tendered; no information has been provided about the outcome.\footnote{510}

As of early 1925, 90 sections – none of them being native reserves – were leased. As many of the lessees held multiple sections, there were only about three dozen people involved. But of the total number, nearly half were in arrears with the rental on their tenancies – in 10 cases by more than a year.\footnote{511}

Meanwhile, the Morgan family were still battling to get their interests partitioned out of the township, with George Mackenzie firing off numerous letters on their behalf to anyone he thought might have influence in the matter, including Maui Pōmare, Gordon Coates, Āpirana Ngata, William Massey, and William Herries. In November 1920, he told Pōmare that the owners had ‘never signed anything[,] got any payment or given the Maori land board any right to interfere with Karewa.’\footnote{512} Similarly, in September 1921, he told Native Minister Herries: ‘Your dept had held this land 19 years and paid nothing to the owners.’ The owners had

\begin{enumerate}
\item Document A62(a), vol 5, pp 731–733.
\item Document A62(a), vol 5, p 737.
\item Document A62(a), vol 4, p 562.
\item Document A62(a), vol 4, p 562; doc A62(a), vol 12, p 1426.
\item Document A62(a), vol 7, pp 913–914.
\item ’Tenders for Leases in the Karewa Native Township’, 2 October 1924, New Zealand Gazette, 1924, no 64, p 2310 (doc A62(a), vol 7, p 912).
\item Document A62(a), vol 7, pp 913–914, 950–951.
\item ’Tenders for Leases in the Karewa Native Township’, 20 September 1927, New Zealand Gazette, 1927, no 66, p 2954 (doc A62(a), vol 4, p 577).
\item Document A62(a), vol 7, pp 913–914.
\item Mackenzie to Pōmare, 3 November 1920 (doc A62(a), vol 4, p 547); doc A62, p 180.
\end{enumerate}
asked him to seek legal advice about whether any law had ever been passed by ‘any government under Britain’ enabling it to ‘take land from British subjects without paying either rent or value’.\textsuperscript{513}

The Native Under-Secretary advised the Native Minister that there was nothing on file to show that the land had been handed over for a limited period only, ‘and the owners had an opportunity at the time of objecting to the Proclamation of the land as a Native Township’.\textsuperscript{514} This was incorrect: the 1895 Act actually gave owners the right to object only to ‘the sufficiency, size, or situation of the reserves or the Native allotments’, not the proclamation itself.\textsuperscript{515} The registrar, meanwhile, told the Native Under-Secretary that the Morgan family was entitled to undivided interests amounting to 15 shares out of a total 195 – ‘equivalent to rather more than four acres’. If they wanted to have their interests located, they should apply to the Native Land Court.\textsuperscript{516} But, Coates told Mackenzie, there was ‘at present apparently no existing provision by which any part of [the land] can be revested back in the Natives’.\textsuperscript{517}

Other owners were also trying to secure specific parts of the township area. In 1920 and again in 1924, one owner, Mrs Forbes, failed to have her interests in the township partitioned out.\textsuperscript{518} It seems she was living on one of the ‘most desirable’, and hence more valuable, sections but was apparently ‘opposed to any compromise in the reduction of area which a partition on a valuation basis would necessitate’.\textsuperscript{519} Similar complications arose in May 1923, when the land court considered an application from Tahuri Kaora and others to have family members placed as beneficial owners in particular native reserves in the township. They planned to make the reserves available for lease via the land board. The court noted, however, that any owner who took a reserve would ‘lose the value of that Reserve from the rest of the block’. One of the owners present also noted the varying values of different parts of the township. Some parts were swamp and some sand, while the sea frontage was worth most.\textsuperscript{520}

The judge ultimately instructed that the partition had to be on a valuation basis and encouraged the owners to come to ‘some reasonable arrangement’. A few owners said they had homes on several of the sections and wanted that to be taken into account. It was also pointed out that lots 14 to 18 of block 1, at the back of the township, were in a swamp.\textsuperscript{521} The orders were finally made on 9 January 1926, dividing the reserves into 15 partitions, Kawhia M2A to M2O.\textsuperscript{522} Additionally,
sections under general lease were put into a separate partition, M2P, in which all the owners shared, thus preserving the possibility of them realising some income.\footnote{Document A62, pp 73, 185; doc A62(a), vol 13, pp 1577–1583. The partitions, and the lots they comprised, were: M2A (lots 2 and 4, block I), M2B (lots 14 and 15, block I), M2C (lot 19, block I), M2D (lot 20, block I), M2E (lot 33, block I), M2F (lots 34 and 35, block I), M2G (lots 22[?] and 26, block II), M2H (lots 27[?] and 78, block II), M2I (lots 37 and 48, block II), M2J (lots 42 and 43, block II), M2K (lot 65, block II), M2L (lot 66, block II), M2M (lot 71, block II), M2N (lot 72, block II), M2O (lots 90 and 19, block II), M2P (lots 1, 3, 5–13, 16–18, 21–32, 36–44, 49–62, 64–67, all in block I; and lots 1–21, 28, 29, 32–36, 38–41, 44–47, 49–64, 67–70, 73, 74, 79–89, all in block II).}

15.4.2.4 Transferring Kārewa to the Māori Trustee

Following the abolition of the Māori land boards in 1952, responsibility for the administration of Kārewa passed to the Māori Trustee. Reporting in February 1960, the district officer commented that there had been ‘a considerable number of transfers of leases’ in Kārewa, something he attributed to an improvement in the road link between Kāwhia and inland centres. His report reveals the administrative situation at the time: he said the Māori Trustee had ‘no defined duty to make regular inspections of this urban land’. There was, however, a requirement to ensure that there were ‘no serious breaches of covenant’ when leases were being transferred.\footnote{District officer to head office, 4 February 1960 (doc A62(a), vol 1, p 95).}

A full inspection of each leasehold property revealed that there were 106 residential sites in Kawhia M2P (the block comprising all the general lease sections), with 66 beneficial owners. Of these sites, 90 were under the control of the Māori Trustee. A report on the Māori reserve sections had yet to be completed. The inspection had shown that, while some properties were used for gardening, others were overgrown. In some cases, buildings straddled two sections.\footnote{Document A62(a), vol 1, p 95.}

In addition, some Māori reserves were occupied by Pākehā lessees and as far as could be ascertained, the Māori Land Court had never confirmed any agreement to lease. In view of the ‘increased demand’ for sections, the individual Māori owners were to be approached to see if they wished to lease the land in their own right.

As and when leases had been renewed over the preceding two years, rentals had been reassessed to reflect new government valuations. This had resulted in increases of up to 600 per cent over the £3 to £5 a year typical of the previous 21 years. (Another source suggested that ‘most of them’ had even been as low as £1 to £2 a year.\footnote{Document A62(a), vol 1, p 91.}) In the past 12 months the annual income had been £185. There was currently £220 available for distribution, out of which the district officer recommended that £52 10s be retained to cover the cost of the inspection.\footnote{Document A62(a), vol 1, p 95.} Of note here is that, if the £185 of annual income for 1959 represented a possibly four-fold increase (errring on the conservative side), then the earlier annual income must have been minimal.
In April 1963, the Māori Trustee indicated that around 45 of the leases were in the course of being renewed. Subsisting lease terms, he said, generally provided for the rental to be fixed by arbitration. In nearly all the 45 cases, however, the lessees had elected to take ‘prescribed leases’ instead, as provided for under the Māori Reserved Land Act 1955. Although this meant a significant increase in rental – the prescribed leases being based on new government valuations – the trade-off for the lessees was that they got a perpetual right of renewal. The Māori Trustee noted, however, that there had been 25 objections lodged about the new valuations (eight being from one lessee). If the objections could not be ‘otherwise disposed of’, they would have to go to the land valuation committee for determination.\(^{528}\)

It seems the objections did indeed go to the land valuation committee, and the objectors appealed the committee’s decisions in the Land Valuation Court, on the grounds that the valuations arrived at were unfairly high. In the case of Douglas Seymour, a Hamilton solicitor who was leasing several Kārewa sections, the appeal was allowed and the valuation revised downwards.\(^{529}\) The outcome of the other appeals is not clear from the evidence.

### 15.4.2.5 Revesting of public reserves

Nine Kārewa sections totaling 2 acres 23 perches were reserved for public purposes: two sections each for school, police, and government building reserves, and three other sections for municipal purposes. The evidence suggests that most of these reserves were never used for their intended purposes.

By the 1960s, of the various municipal and other reserves, only the two sections making up the campground were being used for any kind of public purpose. As of 1960, the police reserves had apparently long been used by a succession of local constables only for grazing sheep or cows. More recently, a constable had also been grazing stock on the school reserves. All four sections had some degree of infestation with noxious weeds. In late 1960, a recently arrived constable took steps to gain a formal tenancy of the school reserves, but seems to have not gone ahead with the lease.\(^{530}\) He continued, however, to graze stock there.\(^{531}\)

In May 1965, Maringirangi Wetere and other beneficial owners wrote to the Minister of Lands seeking a return of various public reserves. They particularly mentioned the school and police reserves, noting that these had never been used for their intended purpose and that there was little likelihood of that situation changing.\(^{532}\)

At this time, five of the sections were being used for grazing and two had baches on them.\(^{533}\) By mid-June 1965, the commissioner of crown lands had established that the three municipal reserves vested in the county council had all been leased out on 21-year leases. It might be possible to re-vest them in the beneficial owners

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528. Māori Trustee to Seath, 16 April 1963 (doc A62(a), vol 1, p 91).
if the council could give no good reason for holding on to them, but there would need to be protections for the lessees. The Ministry of Works, he said, had no objection to those three sections plus the two school reserves being returned to Māori ownership, but sought to retain the two police reserves for ‘another 2 or 3 years’, in case they were needed for other government purposes.\textsuperscript{534}

The Otorohanga County Council, when consulted, revealed it had no plans to use the municipal reserves, which it said had been ‘leased to private people for holiday baches . . . by the now defunct Kawhia Town Board’. Indeed, lots 63 and 76 now each had a house on them. It was not sure about the third.\textsuperscript{535} As to the school reserves, the Education Board advised that it was willing to release only one of the sections (lot 48), as it thought it might need the other (lot 47) for a residence site in connection with Kawhia District High School.\textsuperscript{536}

In August 1965, the commissioner of crown lands therefore recommended that lot 47 be retained, along with the police reserves, against possible future Crown requirements, while the other school reserve and the three county council lots all be revested in the original owners or their descendants. The leases over the latter were however to remain in force. One of them was due to expire in March 1968, one in July 1968, and one in March 1974, but all were subject to one further right of renewal.\textsuperscript{537} The municipal reserves were subsequently re-vested in the Māori Trustee in trust for the beneficial owners by the Reserves and Other Lands Disposal Act 1966. The Act allowed the Trustee to include the sections in the title to Kawha Māp and provided for the existing leases to remain in place.\textsuperscript{538}

Meanwhile, in December 1965, the commissioner of crown lands had advised the Education Board that he was considering arranging short-term leases of both the school reserves, pending the use of lot 47 for its designated purpose and the re-vesting of lot 48.\textsuperscript{539} It is unclear if lot 48 was leased, as it was ultimately re-vested on 20 July 1967 and added to the title of Kawha Māp.\textsuperscript{540} A five-year lease of lot 47, however, was approved on 15 March 1968. The lessee subsequently sub-let it to others, including the owner of the Kāwhia bakery. Maringirangi Wetere, commenting on this, said it ‘seemed unusual’ that reserves intended for specific purposes were now being used for entirely different ends. In the end, however, the lease was terminated in November 1968 due to the lessee’s ill-health.\textsuperscript{541}

By the late 1960s, the leases on two of the former municipal reserves – namely lots 75 and 76 of block 11 – had expired. The Māori Trustee initially proposed that

\textsuperscript{534} Commissioner of crown lands, Hamilton, to director-general, 17 June 1965 (doc A62(a), vol 9, p1154).
\textsuperscript{535} File note, Titles and Reserves Office, Hamilton, 1 June 1965 (doc A62(a), vol 9, p1155).
\textsuperscript{536} Document A62(a), vol 9, p1147.
\textsuperscript{537} Document A62(a), vol 9, p1147.
\textsuperscript{538} Reserves and Other Land Disposal Act 1966, s 4.
\textsuperscript{539} Document A62(a), vol 11, p1333.
\textsuperscript{540} Document A62(a), vol 9, pp1167, 1170, 1182, 1185.
\textsuperscript{541} Maringirangi Wetere Te No to Minster of Lands, 18 April 1968 (doc A62(a), vol 9, pp1180–1181); see also doc A62(a), vol 9, p1170.
the sections be offered for purchase to the respective lessees. Head office saw no problem with the idea, but warned: ‘We also wish to avoid any adverse publicity that the Maori Trustee is touting these lands for sale.’ However, around the same time, in April 1968, Maringirangi Wetere wrote to the Minister of Lands noting that lots 75 and 76 had already been ‘handed back to the owners,’ along with lot 48 and lot ‘65.’ Wetere now wanted the police and education reserves to be ‘vested in the owners,’ too.

In response to the request, the South Auckland Education Board said it still required lot 47 ‘for education development.’ The police reserves, however – after briefly being considered as a possible house site for New Zealand State Forest – could be re-vested.

An application for the revesting of the police reserves – lots 45 and 46 – came before the Māori Land Court on 11 March 1969. A degree of official confusion about the township and its history was evident during the hearing. An officer from the Māori Trustee’s office in Hamilton told the court that as far as he could establish from the files, the land had originally come from Kawhia M2P. This was incorrect since M2P had not been created until 1926, whereas the police reserves had been set aside when the township was first established. The court granted the re-vesting application. On the officer’s advice, the land was given the separate appellation of M2P12 but revested in all the owners of the recently created Kawhia M2P11.

By the mid-1970s, land values in the area were rising. Alongside that, there was also ‘steady inflation.’ In response, the Māori Trustee issued instructions that when any terminable lease (that is, not perpetually renewable) came up for review, the lessee was not to be offered a prescribed lease. Rather, the owners should be consulted as to the lease’s future. If it was decided to issue a further lease, then it should be for a finite term. This demonstrates that the Māori Trustee was clearly already aware of the problems that were to be highlighted by the Sheehan commission the following year.

However, it was too late: by June 1973 there was only one remaining terminable lease in Kārewa – namely, lot 75, block 11. When that lease expired in July

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544. Maringirangi Wetere Te No to Minster of Lands, 18 April 1968 (doc A62(a), vol 9, pp 1180–1181). Wetere was not completely correct: it was lot 63, block 1, the former municipal reserve, not lot 65. Also, as described earlier, these lots had actually been vested in the Māori Trustee, as a result of the 1966 legislation, not revested in the owners.
547. Document A62(a), vol 9, p 1176. Wetere was advised accordingly on 9 July 1968: see doc A62(a), vol 9, p 1173.
1989, the Hamilton office, noting that there was provision for neither renewal nor compensation for improvements, sought instructions from head office. The Māori Trustee advised that it would be ‘desirable to arrange only a short term tenure’, and one that would ‘return the best available rent upon the capital value’. He suggested a maximum of 12 months, terminable at one month’s notice, and perhaps with the tenant being responsible for ‘rates, insurance and other charges’. There is no indication, in the evidence presented, of what happened to lot 75, block 11. Over the township as a whole, however, a report dating from sometime during or after 1985 noted that ‘[o]f the original 167 sections, . . . 26 were revested in the beneficial owners; [and] 50 were sold’. The reference to 167 sections probably reflects the fact that some (including, for example, lots 21 and 29, block 11) had been subdivided.

15.4.2.6 Selling township land
The only block purchase prior to the 1960s was lot 71, block 11, also known as Karewa M2M, was purchased sometime during the 1950s. It had originally been native reserve and is significant for having a memorial on it to Hone Kaora.

Around a decade later, in the mid-1960s, the Māori owners seem to have been under considerable pressure to sell their interests in township land. In November 1966, Miki Te Hae, one of the beneficial owners of Kawhia M2P, appeared before the Māori Land Court in Hamilton seeking to partition out his interests and sell them to three lessees. Fred Phillips, the lessees’ solicitor, appeared in support of the application and outlined why Te Hae was seeking to sell. Although the land had considerable cultural value to the owners, being near the settlement site of the crew from the Tainui waka, they had little hope of regaining possession. Due to inflation, they were earning less than 4 per cent interest on the value of their interests in the land. Meanwhile, Te Hae was paying 5 per cent interest on his Māori Affairs housing loan.

Six objectors travelled to Hamilton, including Maringirangi Wetere. She told the court that Te Hae ‘had people constantly going to see him and urging him to do this’. Added to which, one lessee had ‘gone around Kawhia a lot seeking a Petition to Parliament to allow sale of [the] block’ and had also been complaining that his rates and rent were too high. Wetere was unsympathetic: ‘If he thinks so, she said, ‘he should relinquish his lease and allow an owner to take [it] up’.

The court hearing was adjourned, and the owners then had several meetings with officials and the lessees’ solicitor. The owners complained about low returns and the perpetual leases and expressed their desire for Kārewa to remain in Māori ownership. Wetere was particularly worried that once one or two lessees secured

552. Document A62(a), vol 1, p 41.
556. Document A76, p 188.
the freehold of their sections, it would be the thin end of the wedge.\textsuperscript{559} She thought that if Te Hae wanted to sell his interests, the other owners should have the option to purchase them and suggested that the Māori Trustee use the accumulated rent to buy the shares. It was agreed that such a resolution should be put before a meeting of owners, but the outcome of that meeting – if it was held – is unknown.\textsuperscript{560}

In December 1967, another owner anxious at the prospect of township land being alienated out of Māori ownership, Mrs Turnbull, applied for her interests to be partitioned out. She said that her grandfather (unnamed) had been instrumental in getting the township set up, and she and her family wanted to protect ‘the original home site from disposition of the freehold.’\textsuperscript{561} The district officer recommended that the Māori Trustee consent to the application.\textsuperscript{562}

Sections 155 and 156 of the Māori Affairs Amendment Act 1967 empowered the Māori Trustee to offer existing lessees the freehold of the township lots they were leasing. The Secretary of Māori Affairs explained to officials that the intention of the measures was ‘to allow the Māori Trustee to acquire from willing individual owners sufficient shares to fill the area [necessary for] one lease at a time and then hand on the freehold to the lessee.’\textsuperscript{563}

Districts were asked to review all vested and reserved land within their area and consider which blocks might present problems for freeholding. They were to submit a list of such blocks by the end of January 1968. As an example of the type of problem that might exist, mention was made of

Cases where the land in a trust is . . . partly leased and partly unleased. The point is that for the computation of how many shares must be bought for the freeholding of one lease, there must be an easy method to reach owners’ interest in the lease, and total owners’ interest in the trust land.\textsuperscript{564}

On the copy filed at the Hamilton office, somebody annotated the cited example: ‘as with Kawhia M2P’.

In January 1968, the assistant district officer in Hamilton advised head office that in terms of the 1967 Act, he could see ‘no difficulty’ in freeholding land in Kawhia M2J and M2P as all leases in those blocks were within the boundaries of the Māori Land Court titles and the owners were therefore readily ascertainable.\textsuperscript{565} A return memorandum from head office instructed the district officer to ‘circularise

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\item \textsuperscript{559} Document A62(a), vol 1, pp 75–76.
\item \textsuperscript{560} Document A62(a), vol 1, pp 75–76.
\item \textsuperscript{561} Judd Page Brown and Kay to Māori Trustee, Hamilton, 14 December 1967 (doc A62(a), vol 1, p 71).
\item \textsuperscript{562} Document A62, p 265.
\item \textsuperscript{563} Secretary for Māori and Island Affairs, circular, 1968 (doc A62(a), vol 11, p 1349).
\item \textsuperscript{564} Secretary to district offices, 18 December 1967 (doc A62(a), vol 11, pp 1373–1374).
\item \textsuperscript{565} Assistant district officer, Hamilton, to head office, 26 January 1968 (doc A62(a), vol 11, pp 1369–1370).
\end{itemize}
\end{small}
the owners’ along the lines indicated in the original communication – that is, ‘for information on who would be interested in considering the sale of their interest’. In the case of Kawhia M2J, which only had two owners, it was further suggested that it might be better to try to get their consent to sale under section 86 of the Māori Reserved Land Act 1955.566

Letters were sent out to both the owners in Kawhia M2J, and to 39 of the 78 owners in M2P.567 A major reason why the other 39 missed out is probably for lack of an address: other information on file indicates that the addresses of more than one-third of owners in the Hamilton district were unknown.568 The letters were presumably in the prescribed format (see the sidebar on page 340).569

Neither of the owners in Kawhia M2J wished to sell, and only seven of the contacted owners in M2P. Their interests amounted to 10,272 shares out of 156,078 (a little over 6.5 per cent).570

On 3 July 1968, Kawhia M2P was partitioned, with M2P11 created as the ‘residue’ block.571 This was likely done to enable the freeholding of some of the lease sections, with the rest of the block retained as M2P11. From Paula Berghan’s block narratives, for instance, it seems that M2P2 (one rood) went to G M Sutton; M2P3 (37 perches) to B F Ganley; and M2P4 (17 perches) to H Cowley.572 Annotations on plan ML 12756 indicate that deals on a number of lots in block II were finalised in late 1970 and early 1971. The lots in question were 28 and 47 (sold on 29 September 1970); part lot 29 (sold on 13 November 1970); lot 84 (sold on 22 December 1970); lot 49 (sold on 23 December 1970); lot 21A (sold 8 March 1971).573 Later evidence to the Sheehan commission pointed to ‘a great many’ sections being freeholded after the 1967 Act, to the point where as much as a half of Kārewa may have been held in freehold title by 1974.574

The 1967 legislation had other impacts on Kārewa. It enabled the Māori Trustee to use the reserves and vested land purchase fund to acquire the ‘uneconomic shares’ of 21 beneficial owners in the township (see chapter 16). In this way, the Māori Trustee came to hold around 5 per cent of the shares in M2P12 (the former police reserves) and 0.2 per cent of the shares in M2P11 (the general lease sections).575 Berghan has also noted that, under part 1 of the Act, several Kawhia

566. Secretary to district officer, Hamilton, 5 February 1968 (doc A62(a), vol 11, p1367); Secretary to district offices, 18 December 1967 (doc A62(a), vol 11, p1374).
575. ‘Kārewa Māori Township History, 1903–1985’, no date (doc A62(a), vol 12, p1246). These were subsequently revested in the other owners in 1987; see doc A62(a), vol 12, p1394.
M2 subdivisions were ‘Europeannised’ during the late 1960s and early 1970s. These included M2B, M2D, M2G1, M2I1, M2I2, and M2N.576

15.4.2.7 The current status of Kārewa

The schedules to the Māori Reserved Land Amendment Act 1997 listed 74 Kārewa leases that were still extant (some involving more than one lot). The Māori Trustee was lessor for 67 leases, and the Māori Queen for the other seven. The lots affected by these last seven leases were all in the southern-most corner of the township.577

Pay-outs from the Crown in respect of the Kārewa leases administered by the Māori Trustee came to something over $133,000, tax free. On 15 September 1998,
staff from the Māori Trustee’s office met with the beneficial owners of Kawhia M2P11 to determine what was to be done with the money assigned to that block, and also discuss the future administration of the block. After some discussion, those owners present decided that administration should remain with the Māori Trustee. They also voted for the pay-out from the Crown to be distributed to the beneficial owners.\textsuperscript{578} Distribution was made in January 1999.\textsuperscript{579}

Following the 2002 deed of settlement in respect of rental losses, a further $404,925.09 was paid to the Māori Trustee for the losses sustained on M2P11.\textsuperscript{580} Once the Māori Trustee’s costs and commission had been deducted, just under $388,500 remained. The owners met on 5 February 2003 and again decided to distribute the money. The owners also voted in favour of retaining the Māori Trustee. The distribution was made that same month.\textsuperscript{581} Told at the February meeting that there had been several enquiries from lessees who wished to purchase the sections they were occupying, ‘the owners present were adamant that they were not interested in selling their land’ (emphasis in original).\textsuperscript{582}

By June 2007, the Māori Trustee was still responsible for the leasing of 73 residential sections in Kawhia M2P11. Of these, 62 were under perpetually renewable leases; 10 had non-perpetual leases that were due to expire between 2011 and 2024; and one was being let on a monthly tenancy for 10 years, due to expire in 2015.\textsuperscript{583}

On 27 November 2009, Kawhia M2P11 was revested in the beneficial owners and is now administered by Te Papa o Kārewa Ahu Whenua Trust. The Māori Trustee is the responsible trustee and there are three advisory trustees. The block comprises just under 16 acres and is made up of 55 different leasehold titles.\textsuperscript{584}

The Crown in its closing submissions noted that, according to the evidence provided by Bassett and Kay, there have been no Crown purchases in Kārewa, but some eight acres have been lost through private purchase.\textsuperscript{585} Out of a total of some 54 acres, that is not a huge amount, but it does not, of course, take account of other forms of permanent alienation, including the 17 acres acquired for roads, the two acres proclaimed as Crown reserves (one acre of which have been revested), and the public works taking of Māori land for a district nurse’s house.\textsuperscript{586}

15.4.2.8 Treaty analysis and findings
In both Te Puru and Kārewa, at least some owners requested that some form of township be established on their land.

\begin{itemize}
\item \textsuperscript{578} Document A62(a), vol 12, pp 1438, 1440–1442.
\item \textsuperscript{579} Document A62, p 328.
\item \textsuperscript{580} Document A62(a), vol 12, p 1435.
\item \textsuperscript{581} Document A62(a), vol 12, pp 1429–1434, 1445–1447.
\item \textsuperscript{582} ‘Minutes of the Meeting of Owners for Kawhia M2P11 Held in the Office of the Māori Trustee on Wednesday 5 February 2003’ (doc A62(a), vol 12, p 1431).
\item \textsuperscript{583} Document A62(a), vol 12, pp 1448–1449.
\item \textsuperscript{584} Document A62(c), p 6.
\item \textsuperscript{585} Submission 3.4.291, p 40.
\item \textsuperscript{586} Document A62(b)(i), p 20.
\end{itemize}
The evidence about Te Puru is particularly limited for this period. We know that in April 1901 the chief surveyor advised that ‘all’ of the owners wanted a township to be established on their land, and particularly that they were anxious that it should be brought under the Native Townships Act. In September of that year, four days after the Native Minister had recommended that the governor proclaim a township under the 1895 Act, Taui Wetere wrote to the Minister, requesting that a township be established at Te Puru. This evidence suggests the owners consented to and indeed wanted the township.

In the case of Kārewa, some of the owners also requested a township, but stated that they wanted to deal with the Crown directly and did not want the Māori land council or Public Trustee to be involved. At the time, Wilkinson, then the native land purchase officer, interpreted the owners’ concern about the Māori land council and Public Trustee to be a reference to the Native Townships Act 1895. In any case, while some owners consented to a township of some form being established at Kārewa, not all owners did. The Morgan family in particular protested vigorously and consistently over several decades that they had never consented to their land being included in the township.

Crown officials were responsible for planning and surveying the two townships. In both townships, the Crown acquired around one-third of the area at the outset for roads and reserves. It did not pay the owners any compensation for these takings. We do not know if there was any discussion with the owners of Te Puru about the areas they wanted reserved for their own use, though 10 such reserves were included in the plan. These reserves totalled only about 10 per cent of the whole township area, half of the maximum 20 per cent allowed under the 1895 Act. But there were no objections to the plan when it was exhibited, and the owners subsequently requested that the Crown lease out their reserves, as they had other lands elsewhere. In Kārewa, around 13 per cent of the total township area was allocated for native reserves. There were several objections to the plan for Kārewa, but all were ultimately withdrawn or dismissed, and no changes to the plan were made. Some owners protested in other ways: as noted already, the Morgan family in particular mounted a sustained campaign about the inclusion of their land in the township.

In their early years, neither Te Puru nor Kārewa were particularly successful in terms of generating an income for the beneficial owners. As with Parawai, the commissioner of crown lands’ administration of the townships was not especially diligent. Payments to beneficial owners were slow, and little action seems to have been taken to chase up defaulting lessees.

By 1908, the beneficial owners of Te Puru had apparently abandoned any hope that leasing would ever become beneficial to them. They began making enquiries about sale to the Crown. Towards the end of 1911, the Crown decided to buy and the land board began making advance payments to the owners. The transfer of ownership to the Crown was finalised in late 1912. Significantly, it was only after the Crown had made up its mind to buy that any move was made to re-enter the numerous sections on which lessees were in default of payment.
In Kārewa, the leasing situation in these early years was exacerbated by the Crown’s slow response to a petition from Mutu Te Ake. Although the petition was investigated and the subject of recommendations in 1905, it took the Crown a further three years to formally respond. In the meantime, a caveat prevented any further legitimate dealing in the township. There is evidence that, while the caveat was in force, the beneficial owners took matters into their own hands and came to informal leasing arrangements. These were just the sort of arrangements the native township regime was supposed to stamp out. There is no indication in the evidence of why it took the Crown so long to respond to the petition and lift the caveat. But it is clear that, in the meantime, the township’s success – and the benefit that would ultimately accrue to the owners – was seriously hamstrung.

The board’s summary of the situation in Kārewa by 1911 is telling: ‘the Township is practically of no benefit to the owners, in view of the small amount derived by way of rent’. Around this time, the Crown contemplated purchasing Kārewa. In the end, however, revised – and significantly higher – valuations deterred the Crown from going through with its planned purchase.

After a series of further auctions in the 1920s, the number of leased sections in Kārewa increased to nearly 90 by early 1925. However, the increase in leasing does not seem to have translated to a corresponding increase in income: the 90 leases were held by only about three dozen people, nearly half of whom were in arrears with their rental payments. The leases entered into during this period were also perpetually renewable, further depressing the owners’ income. By 1959, the total annual income on the general-lease sections was £185. Even before deductions for administration costs, that meant an annual income of less than £3 for each of the 66 beneficial owners. More leases became perpetual in the early 1960s, when Kārewa leases started being shifted to ‘prescribed leases’. Several beneficial owners complained but, as the Māori Trustee pointed out, his options were limited by the 1955 legislation.

In 1973, the Māori Trustee, aware of the income-depressing effect that perpetually renewable leases were having, issued instructions that terminable leases should not be replaced by prescribed leases wherever possible. But this realisation came too late for the owners of Kārewa: by this time, there was only one terminable lease still in force in the township. By 2007, there were still 62 perpetually renewable leases in the township, and 11 fixed-term leases.

From the mid-1950s onwards, some Kārewa sections were permanently alienated. By 1966 it is evident that the beneficial owners were under considerable pressure to sell; new legislation passed in 1967 added to that pressure. In all, from 1967 to 1975, between eight and nine acres were freeholded, yielding just over $29,000. The evidence does not show how much of that amount was deducted for costs and how much found its way to the beneficial owners. By the mid-1980s, 50 sections – of a total 167 – had been sold. Without knowing the degree to which those sales were voluntary, and how much of the proceeds ended up in the hands

587. Bowler to Under-Secretary, 2 February 1911 (doc A62(a), vol 5, p 660); doc A62, p 170.
of the beneficial owners, it is difficult to say whether the sales were fair and in the owners’ interests.

Some of the Kārewa land originally taken for public purposes was eventually revested in the Māori Trustee in trust for the beneficial owners. Most of these public reserves had never been used for their intended purpose and had instead been leased to a variety of parties, largely for grazing. During the 1960s, the owners requested that the public reserves be returned to their ownership. It seems that five of the total seven public reserves – totalling just over one acre of the two acres originally reserved – were eventually returned and added to the title of the block containing the general lease sections. It is notable, however, that in 1953, despite the apparent surplus of available land already in its ownership, the Crown still took one of the general lease sections under the Public Works Act in order to house the district health nurse.

At least some owners did not consent to Kārewa being proclaimed as a native township. We cannot be sure about Te Puru. It appears that when those owners who had requested a township eventually understood what was available under the 1895 Act they were disappointed. In particular, the owners in Kārewa wanted to retain the fee simple, and to deal directly with the Crown.

With respect to Kārewa and for all the above reasons, including the failure to compensate for roads and reserves, and in failing to involve the owners in the administration of the township, and for including land against the wishes of the owners, and in failing to intervene to stop the practice of perpetual leases and the taking of land for reserves, the Crown acted inconsistently with the Treaty principles of partnership, reciprocity, and mutual benefit and the article 2 guarantee of tino rangatiratanga. The Crown also breached its duty to actively protect the tino rangatiratanga of Te Rohe Pōtae Māori and their ability to retain this authority over their land. We make no similar findings with respect to Te Puru other than our general findings regarding the legislation as outlined in section 15.3.8.

In terms of Kārewa, we note that the 2002 settlement benefited some of the owners of the land in this township and we consider this mitigates some of the prejudice they suffered.

15.4.3 Ōtorohanga

Ōtorohanga was already a thriving township set up by Te Rohe Pōtae Māori when it was proclaimed as a native township in January 1903.\(^ {588}\) By the end of the first 10 years, and after a slow start, many of the 292 township sections had been leased out.\(^ {589}\) Crown purchase would subsequently be allowed.\(^ {590}\) By 1975, the township comprised 315 sections (11 of the original lots having been subdivided). Just 43 of


them, comprising a little over 15 acres, were still held in trust for the Māori owners, and all were encumbered by perpetually renewable leases.\textsuperscript{591}

In their claims against the Crown, claimants said that Māori of Ōtorohanga specifically rejected the idea of a native township being established there under the 1895 Act because it meant they would lose control over their land.\textsuperscript{592} Their agreement to establish a township under the later, 1902, Act was ‘qualified’, hingesing on the management structure to be put in place, and particularly “[t]he ability of Maori to exercise control over the townships’ through the Māori land councils.\textsuperscript{593} Even so, they proposed Kiokio as an alternative site, being conscious that parts of Ōtorohanga were prone to flooding.\textsuperscript{594} The Crown emphasised that it obtained the consent of Māori to proclaim Ōtorohanga as a native township under the 1902 Act.\textsuperscript{595} It also said that it was the Māori land council, not the Crown, that decided to proceed with the planned location for the township.\textsuperscript{596}

The claimants said that, in establishing the township, the Crown failed to respect a prior agreement with certain owners about the naming of streets.\textsuperscript{597} The Crown said in response that a township plan was exhibited in November 1903 and there is no indication that any complaint was raised about the names assigned to the streets.\textsuperscript{598}

Then, said the claimants, after the town had been set up the Māori land council and board failed to adequately protect the owners’ interests. ‘Essentially, the owners were reduced to the status of beneficial owners which removed their ability to exercise rangatiratanga over their lands.\textsuperscript{599} In particular, the land council and board failed to be proactive in obtaining overdue rents or in terminating leases that had been abandoned.\textsuperscript{600} In addition, perpetually renewable leases have left Ōtorohanga Māori without sufficient land.\textsuperscript{601} The land board also allowed land to be sold. An example cited was land that had belonged to Parehuia Maratini, originally in the Waikowhitiwhiti block. Despite extensive research, the whānau say they can still not understand how the sale (to the borough of Ōtorohanga) was allowed to occur.\textsuperscript{602} The Crown, in response, said that by the time of the sale in 1913, Parehuia Maratini had passed away and someone else had succeeded to her interests. Moreover, the sale did not include all of Parehuia’s former interests: part

\begin{itemize}
\item \textsuperscript{591} Document A62, p 286; AJHR, 1975, II-3, pp 234–235.
\item \textsuperscript{592} Claim 1.2.20, p 65; claim 1.2.133, p 51; submission 1.5.13, pp 4–5; submission 3.4.150(a), p 9.
\item \textsuperscript{593} Submission 3.4.125, p 11.
\item \textsuperscript{594} Submission 3.4.140, p 49.
\item \textsuperscript{595} Submission 3.4.291, p 28.
\item \textsuperscript{596} Submission 3.4.310(c), paras 81–82.
\item \textsuperscript{597} Submission 3.4.140, p 14.
\item \textsuperscript{598} Submission 3.4.310(c), para 62.
\item \textsuperscript{599} Submission 3.4.150(a), p 10.
\item \textsuperscript{600} Claim 1.2.133, pp 51–52.
\item \textsuperscript{601} Submission 3.4.150(a), p 11.
\end{itemize}
of that land is still beneficially owned by Māori and administered by the Māori Trustee.  

The claimants noted that, during the 1920s, Crown officials instructed the land board to delay offering more Ōtorohanga sections for lease, thereby denying the beneficial owners an improved rental return and increasing the likelihood that they would sell. The Crown said that it is unclear ‘how long this situation persisted’ and ‘[t]he amount of prejudice this caused to the Māori owners is therefore unknown.’ Crown counsel further submitted that, in regard generally to the permanent alienation of township lands in Ōtorohanga, ‘the Māori Land Board had considered that the owners would benefit more from the purchase monies than from the proceeds of the leases.’

A further complaint is that the township plan did not take account of existing block boundaries. This has meant, in some cases, that two or three different sets of beneficial owners are affected by a single lease. Coupled with the perpetually renewable nature of those leases, the claimants submitted that this makes it virtually impossible for them ever to secure the return of their own hapū or whānau land. The Crown, however, said that the claimants overstated the difficulties and that there are no leases that run across lots. It would therefore be ‘a relatively simple task’ to ascertain the interests of each group in both the land and the income or debt from the land. It would, though, be necessary to secure succession orders in some instances before steps could be taken to revest the land.

15.4.3.1 Were Māori consulted over the proclamation of Ōtorohanga as a native township?

The native township at Ōtorohanga was established on land in the Orahiri, Otorohanga, and Waikowhitihiti blocks. This had long been an important area of Māori settlement, and by the early 1880s there was already a mill there and significant economic activity.

In 1889, Wilkinson reported that the landowners were ‘anxious for a township.’ William Kensington from the chief surveyor’s office had heard that ‘houses & fences were daily being erected’ on part of the Orahiri block, and Judge Mair had...
already accepted a scheme of streets (proposed by Mr Keast, the surveyor), even though there had been no authorised survey.\textsuperscript{611}

A letter written by John Ormsby and John Hetet, dated April 1890, is indicative of what seems to have been a widespread Māori view at the time. They wanted Pākehā to come and reside in the district but the fact that would-be settlers could not obtain any sort of legal title direct from Māori was at present standing in the way. These settlers wanted ‘small areas for the erection of dwelling houses and places of business’, but under the current regime Māori could only sell to the Crown; they could not deal with private individuals.\textsuperscript{612} Despite this impediment, though, it seems there was by now a thriving commercial area near the railway station, with stores, a substantial hotel, and a billiard room.\textsuperscript{613}

Following the passing of the Native Townships Act, Wilkinson met with the Māori landowners of the area in March 1896. The owners told Wilkinson that ‘it would not be beneficial to their interests to have their land formed into a township under that Act in its present form’. They added that there was ‘no pressing necessity for forming a township . . . at Otorohanga’, and they hoped that the Government would not take any of their land under the Act. A particular bone of contention was section 12(3), whereby even native allotments would be vested in the Crown (albeit in trust for the owners). They pointed out that several Māori-owned buildings – including the Temperance Hotel, the Public Hall, and various dwellings – ‘would all be on the allotments or portions that would come under the heading of “Native Allotments”’.\textsuperscript{614}

Wilkinson was sympathetic to the owners’ views. He reported to his superiors:

\begin{quote}
I think you will see why the owners object to giving up the title – in some cases Land Transfer – under which they own them at present, and in lieu thereof put themselves in the position of minors or owners under disability who require to have their estate managed by a Trustee – in this case in the person of Her Majesty.\textsuperscript{615}
\end{quote}

However, Patrick Sheridan, head of the Native Land Purchase Department at that time, was unmoved. He informed Wilkinson that ‘[t]he feeling in Parliament in favor of [section 12(3)] was very strong’, adding that ‘the object of the subsection is of course obvious’. His view was unequivocal: ‘The Natives I presume are aware that their consent is not necessary and that when the proper time comes a

\textsuperscript{611}\ W Kensington, for chief surveyor, to surveyor-general, 20 November 1889 (doc A62(a), vol 7, p 848).
\textsuperscript{612}\ John Ormsby and John Hetet to Wilkinson, 12 April 1890 (doc A60(a) (Berghan document bank), vol 22, pp 83–84); Wilkinson to Under-Secretary, 21 April 1890 (doc A60(a), vol 22, p 82).
\textsuperscript{613}\ Document A144, p 115.
\textsuperscript{614}\ Wilkinson to commissioner of crown lands, Auckland, 12 March 1896 (doc A62(a), vol 1, pp 109–110).
\textsuperscript{615}\ Wilkinson to commissioner of crown lands, Auckland, 12 March 1896 (doc A62(a), vol 1, p 110).
township will be formed whether they like it or not.’ He ended tersely: ‘Try [Te] Kūiti next.’

In another letter to Sheridan, Wilkinson was insistent that the owners ‘will not consent to efface themselves so completely’. He also had other doubts about the appropriateness of a township under the 1895 Act for the situation in Ōtorohanga or Te Kūiti:

Do you think that the Act was ever intended to be exercised in places like Otorohanga or Te Kuiti, where the Native owners have spent hundreds of pounds . . . in building houses and improving their property and, as in the case of Otorohanga, where the land proposed to be taken under the Act consists of some 50 or more separate Blocks, many of small area (from 1 to 5 acres) some of which are fenced in, built upon, and improved, and in the occupation of the owners?  

The surveyor-general subsequently asked that Wilkinson mark on a tracing of Ōtorohanga all portions of Native land occupied by Pākehā and all those in actual occupation by Māori within an area of about 500 acres around the railway station. Wilkinson’s investigation revealed numerous areas as being fenced and under cultivation, and most other areas as divided into plots with houses on them. In addition, there were roads, a public hall, a store, a bakehouse, and a saw mill and associated timber yards. Ōtorohanga, it is clear, was already a thriving township.

For some considerable time after this, nothing more was said on the subject of proclaiming a native township at Ōtorohanga.

While the Crown took no further moves to establish a township at Ōtorohanga under the 1895 Act, surveying and subdivision in the area continued, and the Crown was able to acquire one or two small plots of land through the purchase of interests and through survey charges. One such plot, acquired in lieu of survey charges, was Orahiri 1 where the Ōtorohanga sawmill stood. Then, in September 1900, John Ormsby sent an urgent telegram to the premier. He had heard that the Crown intended to proclaim both Te Kūiti and Ōtorohanga as native townships and begged that ‘the same may be deferred until we are fully consulted’. On the same day, Hone Heke (member for Northern Māori) backed up the request with an appeal to the Minister of Lands, on their behalf.

The Minister maintained he was unaware of any such move. A note on the bottom of Heke’s message, in the Minister’s own hand, says: ‘I will enquire if this is
so. I believe it is not true. If found true I will have it delayed.\textsuperscript{623} In the event, no proclamation was issued for either township at this time, though a proclamation certainly had been planned for Te Kūiti. It is not clear from the evidence whether the Minister had any hand in preventing the proclamations.

At some point after this, however, Ormsby and Eketone expressed an interest in establishing a township at Ōtorohanga. According to Ormsby’s later account, they employed surveyor F Mace to draw up a plan ‘with a view to asking Govt to proclaim the land shown on [the] plan as a township under the Maori Land Administration Act’. He and Eketone then used the plan when discussing the proposed township with the Native Minister in Wellington.\textsuperscript{624} The timing for these events is likely to have been the second half of 1902, because the Hikairo–Maniapoto–Tuwharetoa Māori Land Council had come into being by then, and the Māori Lands Administration Amendment Act of 1901 had given the councils power to set apart land for native townships at the request of the owners.\textsuperscript{625} That Act was followed by the Native and Māori Land Laws Amendment Act 1902, passed in October, which allowed the governor to proclaim land as a native township for the council to plan and administer.\textsuperscript{626} Ormsby and Eketone were both council members.

It is clear that Ōtorohanga Māori were by no means averse to Pākehā settlement in their township. However, they wanted that settlement to be on their own terms. They had categorically rejected handing their land over to the Crown for a native township under the 1895 Act. Now, though, there was the prospect of a native township run by the District Māori Land Council. In the case of Te Rohe Pōtae, that council was predominantly Māori: only two of the six councillors were non-Māori (one of them being George Wilkinson). It must thus have seemed to Māori of the area that through their councillors (and notably Ormsby and Eketone) they had a reasonable assurance of retaining control if Ōtorohanga were declared a township. Certainly, the commissioning of the survey and the ensuing discussions in Wellington suggest that Ormsby and Eketone themselves viewed the situation in this light.

Ōtorohanga was duly proclaimed as a native township on 22 January 1903 under section 8 of the Native and Māori Land Laws Amendment Act 1902. The proclamation listed over 50 parcels of land to be included in the township, giving the total area as slightly over 243 acres, including 18 acres of ‘roads of access laid off by order of the Court’. It did not, however, include the main trunk railway.\textsuperscript{627} The roads had already been awarded to the Crown, and the proclamation also

\begin{itemize}
  \item 623. Annotation by T Y Duncan, Minister of Lands, on Hone Heke to Minister, 14 September 1900 (doc A62(a), vol 3, p 326).
  \item 624. (1905) 1 Maniapoto–Tuwharetoa District Māori Land Council MB 242 (1 WMN 242) (doc A62(a), vol 13, p 1561).
  \item 625. Māori Lands Administration Amendment Act 1901, s 8(11).
  \item 626. Native and Māori Land Laws Amendment Act 1902, s 8.
  \item 627. ‘Proclaiming Native Township of Otorohanga’, 22 January 1903, New Zealand Gazette, 1903, no 7, p 254 (doc A55, p 139).
\end{itemize}
excluded the railway station. Wilkinson, in his capacity as native officer (not as president of the land council), told Sheridan (now superintendent of the Māori Land Administration Department) that to only take the area that was ‘actually required at the present time’ would be unwise as if it was to be ‘found necessary later on to extend the township[,] it might be difficult to do so without first having to buy out those who are in possession of the land required for the purpose.’

Following the proclamation, Wilkinson (once again in his capacity as native officer rather than president of the council) quickly tried to deal with the matter of public reserves. In April 1903, he inquired whether the Crown might want to obtain any land for government buildings, or public or local purposes in Ōtorohanga and Te Kūiti. He thought that in view of the ‘numerous separate holdings’ within the townships, it would not be possible for the land council ‘to confiscate’ land for such purposes. He asked whether the Crown was intending to provide any money for purchase of sites for public reserves. He thought that arrangements could be made to hold back any allotments considered suitable, ‘provided the value of same is paid or guaranteed by Government.’

Sheridan responded tersely that ‘[t]he town would not be a town without necessary public buildings’ and instructed the council to ‘make sufficient reservations for all such purposes’. He also refused Wilkinson’s suggestion of payment for the land involved, saying that: ‘The Natives are indirectly recouped by the enhanced value given to sections which are to be thrown open to the Public.’ After being asked to intervene by Sheridan, Carroll spoke with Mueller (the assistant surveyor-general) and was assured that the parties were ‘not at variance in any way’: ‘all the matters in connection with Reserves[,] cutting up sections[,] and roading have been agreed upon between Wilkinson Pepene Ormsby and Mueller himself’. The only issue remaining unsettled was the width of the main road, and on that subject, Wilkinson had been given ‘supreme power to do what he considered best’. From what happened subsequently, it appears that the council did not set aside public reserves in the plan. Instead, according to Bassett and Kay, public reserves ‘were subsequently acquired under the Public Works Act, and compensation paid accordingly, or purchased from the owners.

Wilkinson then moved on to other matters. This time writing in his capacity as president of the Maniapoto–Tūwharetoa land council, he advised that the boundary needed to be altered at the northern end of the township so as to include an additional four acres. This would allow allotments on that side of the township to front onto a government road that ran past there. The land was Māori land, but Wilkinson anticipated no difficulties about including it. His accompanying

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630. Sheridan, 1 May 1903, annotation on Wilkinson to Sheridan, 25 April 1903 (doc A62(a), vol 4, p 431).
631. Sheridan to James Carroll, 7 May 1903 (doc A62(a), vol 4, p 430).
632. Carroll to Sheridan, 10 May 1903 (doc A62(a), vol 4, pp 423, 427–429).
sketch map showed the proposed boundary extension, and various features within the already-existing boundary. Among the latter were a school site, some swampy areas, and several unnamed streets.  

At the end of June, Sheridan asked Wilkinson to send an amended description of the township, excluding Orahiri L which had been taken for public buildings around three months earlier. The school site was also to be excluded if it was no longer Māori-owned. Wilkinson responded that the site had been conveyed to the Education Department ‘years ago’. Passing Sheridan’s request on to the surveyor, he accordingly instructed that both Orahiri L and the school site be omitted. When the amended description was proclaimed on 5 August, it included the extra area of Otorohanga E5 and omitted (as compared with the original proclamation) Waikowhitihiti F, and Orahiri A (the school site), K, and L. The new area was given as 246 acres 2 roods 21 perches (being about three and a half acres more than originally proclaimed). A further amended description was gazetted in August 1904 when it was discovered that Orahiri K had been omitted in error.

During the planning stage, the council demonstrated a willingness to contemplate permanent alienation of native township land. Towards the end of August, a query arose about land that Eketone and H M Hetet had been intending to sell to two Pākehā, one piece being in Ētorohanga and the other in Te Kūiti. The Ētorohanga section involved was Orahiri D1 section 2. Applications for the governor to approve the sales had already been submitted in January, prior to the proclamation of the two townships. The land was now vested in the land council, but section 10(c) of the 1902 Act allowed the council to sell. The regulations of 13 February, on the other hand, implied an expectation of leasehold – although did appear to hold open the door for the governor in council to authorise sale (clause 9).

Sheridan asked for the council’s views on leasehold and freehold tenure: ‘Should the township be held by Europeans on uniform conditions or should certain individuals be allowed to acquire freeholds to the exclusion of all others?’ Wilkinson’s response was even-handed: the council was aware that some beneficiaries would not wish to dispose of their interests, but others did wish to do so. As long as no owners were forced to dispose of their interests against their will, the council could see no problem with allowing sale – providing always that a careful check was made to ensure that those selling had ‘sufficient other land for the purposes of a Papakainga’. Indeed, the council believed that ‘if the freehold

635. Document A62(a), vol 4, p 424.
636. Annotation on Wilkinson to Sheridan, 29 June 1903 (doc A62(a), vol 4, p 423).
640. J W Ellis to Carroll, 13 July 1903 (doc A62(a), vol 4, p 418); Wilkinson to Sheridan, 25 August 1903 (doc A62(a), vol 4, p 417).
of some of the allotments were acquired by Europeans the progress and success of [the] townships would be materially increased.\textsuperscript{642} Sheridan, however, was not convinced, noting that regulations provided ‘for perpetual lease and that ought to be quite good enough for the parties applying’.\textsuperscript{643} ‘Applications for freehold’, he subsequently stressed, ‘will not under ordinary circumstances be entertained’.\textsuperscript{644}

On 19 September 1903, a plan of Ōtorohanga township was put on display for comment.\textsuperscript{645} Assuming that the plan(s) on display corresponded to the deposited plans reproduced in Bassett and Kay’s report, it is to be noted that the names assigned to some streets, particularly in the northern part of the township, did not correspond with those on an 1892 Māori Land Court sketch map of the Waikowhitihiti block.\textsuperscript{646} Also of note is that the allotment boundaries did not always correspond with the original block boundaries. As will be discussed below, this would later cause significant complications for income distribution and attempts to sell township sections.

The month after the plan had been displayed, the Gazette carried a notice inviting beneficial owners to let the land council know which allotments they wanted reserved for their own use.\textsuperscript{647}

The council met in late November to consider both objections to the plan and applications for reserves. From the evidence, there do not seem to have been many objections: in a couple of instances owners seem to have been unhappy about the placement of roads and streets but there is no indication of any complaint about the names assigned.\textsuperscript{648}

As to the applications for allotments, the council seems to have done its best to be accommodating but at the same time even-handed. It was willing, for instance, to entertain requests for reserves from two owners – Wiremu Tūtāhanga and Kite Paiaka – who had not made proper written application, though it ultimately did not award reservations to either owner.\textsuperscript{649}

The council also tried to accommodate requests relating to sections where houses had been built, even if it meant altering boundaries slightly. Tawhi Erueti’s application for section 1, block X111, was granted and its boundary was shifted so as to accord with the western boundary of Orahiri N.\textsuperscript{650} Pioi Pararohe’s application to reserve an area of block XI where he had a house was slightly more complicated. The dwelling must have been sited across more than one section: after some discussion it was agreed that the section boundaries would be reconfigured slightly

\textsuperscript{642.} Wilkinson to Sheridan, 10 September 1903 (doc A62(a), vol 4, p 416).
\textsuperscript{643.} Sheridan to Native Minister, 17 September 1903 (doc A62(a), vol 4, p 416).
\textsuperscript{644.} Sheridan to Wilkinson, 2 October 1903 (doc A62(a), vol 4, p 415).
\textsuperscript{645.} Document A62, p 117. The map referenced by Bassett and Kay in their footnote is one taken from an auction notice, not published until late in 1905. More likely is that the displayed map would have been an officially deposited plan (or plans) such as DP 19460 and DP 19461, reproduced in Bassett and Kay’s report at pages 115 and 116.
\textsuperscript{646.} Document A62, pp 115, 116; doc O6(a)(i), pp 3–4; doc O6(b) (Te Kanawa-Tauariki).
\textsuperscript{647.} Document A62, p 120.
\textsuperscript{648.} Document A62, p 120.
\textsuperscript{649.} Document A62, pp 120–121.
\textsuperscript{650.} Document A144, p 122; doc A62, p 121.
so that the house would sit comfortably within just one of them. Pioi would then be issued an occupation licence for that section, and the other two sections could be made available for lease.\textsuperscript{651}

In several instances where requests involved a number of sections, compromises ended up being made – sometimes initiated by the person applying, and other times as a result of the council granting only some of the sections. Topeora Te Kare (one of the Tūhoro whānau), for example, asked to reserve five sections of block x but subsequently revised the application to just section 2, with the other sections being left available for lease.\textsuperscript{652} Te Ratauhinga Ponui Pene apparently had interests in five sections in block xx but decided to limit her request to just section 13, which had a house on it. In this instance, however, the request was still refused, on the grounds that Pene and her husband had left Ōtorohanga years ago and now lived near Hamilton.\textsuperscript{653} Ngahiriroa Tūhoro, on the other hand, wanted to reserve sections 12, 21, and 22 in block x1, on which she had buildings, a garden and an orchard. Initially, it was suggested that she shift her houses from sections 21 and 22 (fronting onto Tuhoro Street). She refused. Her request for all three sections was finally granted.\textsuperscript{654} Taonui Hīkaka, who wanted eight sections in block xi reserved, was less successful. He said he had a house on one of the sections and cultivations on parts of others, and he refused to omit any from his application. In the end, he was granted just sections 17 and 18, with a view to combining them into a single section.\textsuperscript{655}

John Ormsby, himself a member of the council, also made some applications. First, he raised an issue about block ix. He said his daughter, now deceased, had been awarded Orahiri w2. That land was now in section 3 of block ix. However, section 3 included ‘more land than w2 is entitled to’, and he asked that the southern boundary of the section be adjusted to coincide with the court award. The council agreed.\textsuperscript{656} Ormsby then asked to have section 9 of block x reserved. Adjacent to the railway station, this was the section on which a billiard room and butcher’s shop stood, and it was part of the land that he and Hetet had earlier wanted to sell to the Crown. His request was granted. He indicated, however, that he was intending to leave section 8 (next door, with the hotel on it) available for lease. He also withdrew an application made on behalf of his wife, Moe Aranui, for the reservation of section 21, block x1i.\textsuperscript{657} There is no comment in the records about what procedure was used by the council in deciding on Ormsby’s applications.

\textsuperscript{651} Document A62, p 121; doc A62(a), vol 13, pp 1532–1533. The application concerned sections 5 to 7 of block x1.
\textsuperscript{652} Document A62(a), vol 13, pp 1535, 1542; doc A144, p 116. The original application concerned sections 1 to 5.
\textsuperscript{653} Document A62(a), vol 13, pp 1537, 1542. The original application was for sections 10 to 14 of block xx.
\textsuperscript{654} Document A62(a), vol 13, pp 1536, 1542; doc A62, p 122.
\textsuperscript{655} Document A62(a), vol 13, pp 1537, 1542. The original application concerned sections 17 to 20 and also sections 26 to 29 of block x1.
\textsuperscript{656} Document A62(a), vol 13, p 1539.
\textsuperscript{657} Document A62(a), vol 13, p 1540.
Ormsby also came up with a proposal regarding sections 19 and 20 of block XII. Parts of these sections had originally been intended for a road and taken in 1899. The intended road had never been built; instead, its trajectory had been realigned and it had become Haerehuka Street. He proposed that his wife (Moe Aranui) and Pepene Eketone, out of whose blocks the land for Haerehuka Street had been taken, be compensated with the unused land in sections 19 and 20. They would then donate that area to the Crown, and it could be supplemented with the remaining portions of sections 19 and 20 (which he said belonged to Taonui Hīkaka). The resulting area would be just under an acre, which could be used for public buildings. The council agreed with the proposal, commenting that Hīkaka could be ‘recompensed if necessary by contributions from adjoining & adjacent sections.’

Hīkaka’s views on the matter are not recorded.

The final proclaimed area of Ōtorohanga township was 246 acres 2 roods 21 perches, including approximately 60 acres set aside for roads. According to the Sheehan commission in 1974, this area was originally divided into 292 sections. It is unclear from the evidence how many of these sections were ultimately set aside for the owners’ use, though 236 sections were advertised for general lease during the township’s first auction in June 1904.

15.4.3.2 Managing the leases and finance

According to the advertised terms of the first set of auctioned leases, the first six months’ rent was due in advance ‘upon the fall of the hammer.’ At its September 1904 meeting, the council observed that the lessee of section 9, block III (one of the sections taken up in June), had not yet paid. It decided that a notice needed to be sent to him and any other lessees in a similar position before the expiration of the six-month period. In doing so, the council seems to have already been acting far more proactively to enforce lease terms than the commissioner of crown lands was for the townships established under the 1895 Act.

The council had other financial matters to deal with. By November 1904, the council was anxious to ‘get in all claims against the townships,’ so that it could decide how to spread survey payments, and identify what other accounts needed paying and in what way. By May 1905, the council had produced a statement of accounts for both Te Kūiti and Ōtorohanga, showing items such as rents, ‘loadings’ (presumably related to the existing improvements on the sections), and survey and advertising costs. The council decided to spread the payments for the latter two items over 10 years, as permitted under the regulations. The council felt that ‘not
more than five per cent on the gross rents of each township’ would be appropriate to cover its administration costs.\textsuperscript{664}

There is very little evidence of what the beneficial owners thought of the council’s administration of the township during this time. However, before the 1905 Commission on Crown Lands, Jeremiah Ormsby cited native townships as an example of why Te Rohe Pōtae Māori were reluctant to vest their land in the land councils: it had meant, he said, that they handed land over to the council, which ‘can practically do as they like with it’. The owners found the situation ‘very unsatisfactory’.\textsuperscript{665} Jeremiah’s brother John Ormsby was a member of the local land council at this time. He also appeared before the 1905 commission but did not say anything about native townships.

The evidence presented to the Tribunal does not contain any analysis of the amount of rental income realised over the years. It is possible to see, though, occasional references to individual sections and, in May 1916, fleeting reference to ‘the Board’s officers’ being in town to pay out rents.\textsuperscript{666} The Tribunal did not see any information, though, about how much money and to whom.

In terms of individual sections, the evidence reveals that one of the sections in block x (on Maniapoto Street, near the railway station) – which as noted earlier, Topeora Te Kare had initially wanted to reserve for the owners – was being leased out in around 1914 or 1915 for only £2 15s a year. Bruce Stirling, who wrote a research report for the Tūhoro whānau, described this as ‘laughably inadequate’, given that a rent of 5 per cent of unimproved value would have amounted to more than £17 per annum.\textsuperscript{667} The evidence does not show whether the lease was perpetually renewable. A section made up of land from Orahiri e and Waikowhitihiti c, however, was leased out from 1926 at £6 15s a year.\textsuperscript{668} The evidence in this instance suggests that the lease was perpetually renewable.\textsuperscript{669}

By 1961, the Māori Trustee was still administering around 60 leases in the township.\textsuperscript{670} The value of those leases, however, in terms of income to the beneficial owners, is likely to have been losing further ground. A section in block x1, for example, had been leased out from November 1951 at £23 10s a year. The lease in this instance was only for nine years and six months. In preparation for a renewal of the lease, the land was revalued in September 1959. At £975, the new valuation meant the rental would need to increase to £167 – an increase of over 600 per cent. The lessee sought to purchase instead.\textsuperscript{671}

\textsuperscript{664} Document A62, p133.
\textsuperscript{665} AJHR, 1905, C-4, pp 968–969 (doc A93 (Loveridge), p 48).
\textsuperscript{666} Bowler, land purchase officer, to Under-Secretary, 25 May 1916 (doc A62(a), vol 6, p 810).
\textsuperscript{667} Document A144, pp 117, 119; see also doc A62(a), vol 13, pp 1535, 1542.
\textsuperscript{668} Document A144, p 120.
\textsuperscript{669} Document A144, p 122. The reference to the Lyceum Club, which is at 33 Turongo Street, indicates that the section in question was section 7, block xv1. Comprising a little under a quarter-acre, it is the only section made up of land from both Orahiri e and Waikowhitihiti c.
\textsuperscript{670} Document A62(a), vol 5, p 581.
\textsuperscript{671} Document A62(a), vol 5, pp 582–583; transcript 4.1.13, pp 613–615 (Heather Bassett, hearing week 8, Te Kotahitanga Marae, 6 November 2013). The section in question was section 23, block x1.
Also in relation to the advantages (for the lessee) of renting, it is relevant to note that, at some point prior to 1959, the lessees of sections 6 and 7, block XI, had jointly been able to raise a mortgage of £30,000 on their leases while paying a mere £12 10s a year in rent (£6 on one section and £6 10s on the other). This suggests that while lessees might not always have been in a position to purchase, they probably had rather better access to finance than did the beneficial owners.

15.4.3.3 Selling township land

In 1912, a lease auction was held for various township sections but it was noted that section 13, block XVI, was excluded because it was ‘reserved for public purposes’. Just a few months later, in January 1913, the land board recorded that it had received an application under section 23 to sell the section to the Borough of Otorohanga. The land involved in the requested sale – now the subject of a claim by one of the Te Haauauru group of claimants – was part of what had been formerly known as Waikowhititiwhiti B in which Parehuia Maratini had been an owner. The evidence suggests, however, that Parehuia had passed away by 1897. Certainly, when John Ormsby filed the application on 31 January 1913, he said he was acting ‘on behalf of Te Kouorehua’. The Crown surmised that Te Kouorehua was Maratini’s successor. The board approved the sale, and a memorandum of transfer was signed by Walter Bowler, as president, on 9 September. It said, among other things, that the beneficial owner had, ‘by writing under his hand’, requested the board to sell. The price paid had been £225 (which was fractionally above government valuation). The land at the centre of the deal became the site of the Ōtorohanga Town Hall.

A couple of years later, in 1915, Horopapera Ihakara, living in Hawkes Bay, wrote to the Native Minister offering to sell his interests in what had been Waikowhititiwhiti F and K. Another letter soon followed from other members of his family, also in Hawkes Bay and in favour of selling. They later said that they were ‘destitute’: all their lands were ‘in the hands of the Commission and Board’ and they had ‘no land, no homes, no houses’. The Native Land Purchase Board indicated that it was willing to acquire the interests offered by Ihakara, although

675. Submission 3.4.310(c), para 68.
677. Submission 3.4.310(c), para 69.
678. (1913) 10 Waikato-Maniapoto Māori Land Board MB 71 (10 WMN 71) (doc A62(a), vol 13, p 1606); memorandum of transfer, 9 September 1913 (doc O6(a) (Te Kanawa-Tauariki index and appendices), app F, p 8).
681. H Ihakara and three others to the speaker, 4 November 1915 (doc A62, p 200).
the land purchase officer was instructed to make sure that none of the vendors were left landless.  

Between March and August 1916, the Crown then purchased about 13 acres of township land, as shown in table 15.2.

In 1920, the Crown amended the regulations governing native townships to further facilitate private purchasing. Lessees were now able to trigger a process by which the Crown would negotiate to buy township land from the beneficial owners and onsell it to the lessees. Over the following two years, the process was fine-tuned, extending its ambit, for example, to include deferred payment options for land bought by the Crown prior to the introduction of the regulations. This included the interests the Crown had acquired in Ōtorohanga in 1916.

The Crown first decided to purchase interests in Ōtorohanga for onsale to lessees in October 1922. However, little further seems to have happened for the next couple of years. Then, in April 1924, the land board indicated that, based on the successful leasing of several sections ‘[s]ome months ago,’ it had re-entered a number of sections where lessees were in arrears. It now wanted to put these sections up for re-lease, but, noting that some lessees had signalled an interest in acquiring the freehold via Crown purchase, queried whether leasing the sections would ‘prejudice the Crown in any way.’ The Native Under-Secretary responded that ‘leasing the sections at the present juncture [would] operate adversely to the interests of the Crown in the purchase of the township’ and asked that the board not proceed with leasing.

Table 15.2: Ōtorohanga native township blocks purchased by the Crown, 1916

<table>
<thead>
<tr>
<th>Block</th>
<th>Area (a r p)</th>
<th>Price (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sections 1, 5, 7–16, block V (part Orahiri V) and sections 1–7, block VI (part Orahiri V)</td>
<td>8 0 20</td>
<td>2,094</td>
</tr>
<tr>
<td>Sections 8, 9, block XI (part Orahiri P)</td>
<td>0 3 39</td>
<td>326</td>
</tr>
<tr>
<td>Section 14, block XVI (part Waikowhitihitihi A)</td>
<td>0 0 29</td>
<td>130</td>
</tr>
<tr>
<td>Sections 1–7, 11, 12, block XII (part Orahiri N)</td>
<td>3 0 16</td>
<td>1,082</td>
</tr>
<tr>
<td>Sections 4, 5, block IV (part Orahiri G1)</td>
<td>0 2 19</td>
<td>505</td>
</tr>
<tr>
<td>Section 2, block XIV (Otorohanga J)</td>
<td>0 1 35</td>
<td>25</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>13 1 38</strong></td>
<td><strong>4,162</strong></td>
</tr>
</tbody>
</table>

Sources: Document A62 (Bassett and Kay), p 202; doc A62(a) (Bassett and Kay document bank), vol 2, p 162, vol 6, p 806
By December 1924, the necessary proportion of applications for valuation had been received and the Otorohanga Chamber of Commerce had even formed a ‘Freeholding Committee’. The requested valuation was carried out the following April, but there was no immediate action from the Crown. The Freeholding Committee expressed its concern: leases were due to run out shortly and if freeholds were not to be made available immediately, the lessees would need to exercise their right of renewal.  

Events in Te Kūiti may have been influencing the Crown’s approach in Ōtorohanga. There, the Crown was left holding several sections as lessor, after lessees had reneged on their agreements-to-purchase. Officials were concerned about the same thing happening in Ōtorohanga.

In October 1925, the commissioner of crown lands expressed doubt about whether the purchase of Ōtorohanga township sections for onsale to lessees was a wise course for the Crown to follow. He noted that lessees already had sufficient means for acquiring the freehold under the Native Land Acts; indeed, those provisions had been ‘more used in Otorohanga than in any other Native Township in this District.’

In the meantime, the Crown’s reluctance to proceed was potentially causing new problems. The registrar for the Waikato–Maniapoto land district pointed out that rents were being assessed according to special valuations made for the purposes of acquiring the freehold. He was concerned that if rents went up, lessees might rebel and relinquish their leases. On the other hand, if they managed to get their rents reduced, they may not go ahead with seeking the freehold. Either way, the position was not very satisfactory. But the Native Under-Secretary – likely thinking of the situation in Te Kūiti – remained concerned with the possibility of would-be purchasers pulling out of their contracts. He wanted the required deposit to increase from 5 to 20 per cent, making subsequent default less likely.

The commissioner of crown lands, however, pointed out that would-be purchasers in Ōtorohanga had already been told their deposit would be 5 per cent, and that it was too late to demand more.

The commissioner of crown lands further advised in mid-December 1925 that ‘a large number’ of the lessees had now paid the 5 per cent deposit. Nonetheless, negotiations could still not proceed in all instances. In Otorohanga D2, for example, only 21 of the 59 lessees had paid deposits by 12 January 1926, and although this later rose to 28 it was still not enough. The following month, the Native Department advised the Land Department that agreements to purchase in the
township more generally had not yet reached ‘the required number’, and was unlikely to do so.694 (To trigger a Crown purchase not less than half of the total number of lessees in a township, or alternatively within any particular subdivision in that township, had to express an interest in obtaining the freehold.)

In February 1926, the land board complained to the Native Under-Secretary that two years had passed since it had suspended leasing to allow the Crown to purchase sections. There were vacant township sections bringing in no revenue, but beneficial owners were still being charged for rates and for the cost of clearing noxious weeds. In response, the Native Department allowed the board to lease the vacant sections. The department explained that it had wanted to secure ‘full value [for the beneficial owners] in the event of Crown purchase rather than that lessees should acquire an interest in the unimproved value through a low rental’.695 There was no acknowledgement that the strategy had resulted in no income on the affected sections for almost two years.

By March 1926, around 24 subdivisions had reached the 50 per cent threshold of agreements-to-purchase – although in making that calculation, any unleased sections in each subdivision had apparently been left out of the equation. The commissioner of crown lands also cautioned that some sections overlapped into subdivisions where agreement had not been reached.696 At the end of the year, a native land purchase officer headed to Ōtorohanga to commence negotiations for the purchase of interests from beneficial owners.697 His arrival and negotiation activities in the township, reported in the local paper, generated inquiries from some of the lessees as to when and how they would be able to acquire the freehold. They were told that no steps could be taken to prepare freehold title until Crown purchase had been finalised and a proclamation issued, which was likely to take some time.698

Agreements-to-purchase were still being drawn up in the meantime. Orahiri J was added to the list of blocks for Crown purchase in January 1927.699 It also seems that a majority of Otorohanga D2 lessees had paid deposits by this time, as between November 1926 and August 1927 the Crown purchased just over 15 acres which became Otorohanga D2A.700 At some time before the end of 1929 it then managed to purchase a further half an acre which became D2B1.701 In all, the Crown purchased nearly 16 acres of Otorohanga D2 – just over one-quarter of the original area – and paid almost £3,707.702 Various costs would have been deducted before

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694. G Shepherd for Under-Secretary to Under-Secretary for Lands, 19 February 1926 (doc A62(a), vol 2, p163).
695. Document A62, p 229; Under-Secretary to registrar, 16 February 1926 (doc A62(a), vol 6, p795).
any money was paid over to the owners, including the 2.5 per cent for ‘purchase expenses’ that had become standard by 1927.\textsuperscript{703}

Purchase was not a foregone conclusion at this stage, as some owners refused to sell their interests. The purchase officer reported in January 1928, for instance, that while he had been able to secure shares in section 4, block XVII (in Orahiri K) to the value of £217 out of a total share value of £331, the remaining owners were refusing to sell ‘at the present time’.\textsuperscript{704} Since freehold title to the section (which was on Turongo Street) clearly could not be secured unless and until all owners were willing to sell, the commissioner of crown lands indicated that the application would have to remain in abeyance.\textsuperscript{705} On the other hand, there were instances where owners wanted to sell but no one wanted to buy. In Waikowhitihiti F2B and K2B, for example, the owners were willing to part with their interests but none of the lessees had lodged applications for freehold.\textsuperscript{706}

The purchase process could be complex and confusing. Even the Crown’s own departmental officials were not always clear what had been purchased and for how much. In March 1927, the Native Under-Secretary noted that because different district land offices had treated information in different ways, officials in the Lands Department and Native Department had not always been able to reconcile details of purchases.\textsuperscript{707} Owners themselves were sometimes left in a less-than-clear position, too. One elderly lady, Pari Kaihino Tūhoro, apparently agreed to sell half an acre in Orahiri U, about an acre in Orahiri O, and a strip of land connecting a stream with the river. She reported in April 1927 that the purchase officer had inspected the properties the previous month and she thought he had agreed to purchase, but she was not entirely sure.\textsuperscript{708}

In 1929, the Crown tried to bring an end to some of the uncertainty. On 17 September, the Native Under-Secretary wrote to the commissioner of crown lands saying that since there was now ‘no possibility of the Natives selling their interests’ in Waikowhitihiti B, Orahiri E, Orahiri T, and Orahiri 1 section 8, all deposits in those blocks should be returned to the applicants.\textsuperscript{709} Two months later, one of the would-be purchasers was told that ‘all efforts by the Native Land Purchase Officer to induce the natives to sell’ having failed, his deposit would be returned shortly.\textsuperscript{710} While acknowledging the context in which the letter was written – namely to a lessee who was likely to be disgruntled at the failure to secure a deal – the reference to ‘efforts . . . to induce [owners] to sell’ (emphasis added) carries more than

\textsuperscript{703} Under-Secretary to Under-Secretary for Lands, 21 March 1927 (doc A62(a), vol 2, p168).
\textsuperscript{704} Under-Secretary to commissioner of crown lands, Auckland, 14 January 1928 (doc A62(a), vol 9, p1077).
\textsuperscript{705} Document A62(a), vol 9, p1076; doc A62, p116. It is to be noted that, on the plan, the section is annotated ‘Proc 28866’.
\textsuperscript{706} Document A62(a), vol 9, p1087.
\textsuperscript{707} Document A62(a), vol 2, p168.
\textsuperscript{708} Document A62(a), vol 6, p827.
\textsuperscript{709} Document A62(a), vol 9, p1090.
\textsuperscript{710} Commissioner of crown lands, Auckland, to H Maxwell, 8 January 1930 (doc A62(a), vol 9, p1089).
a hint of Crown pressure being exerted on the owners of these blocks to part with their lands.\textsuperscript{711} Would-be purchasers were sometimes slow to pay the residual amounts owing on their sections. On 16 August 1933, the commissioner of crown lands accordingly advised against the Crown purchase of any further Ōtorohanga sections unless the lessees were willing to pay cash for the freehold.\textsuperscript{712} It also appears that the Crown’s fears about lessees not going through with purchases were justified in at least some instances. By 1938, the Crown still owned 21 leasehold sections in Ōtorohanga.\textsuperscript{713} Indeed, some years later the Under-Secretary for Māori Affairs was to comment in retrospect that the whole process had resulted in the Crown being ‘put to considerable inconvenience by the inability of lessees to carry out their contracts of purchase.’\textsuperscript{714}

From the mid-1930s, the Crown’s focus shifted to encouraging private individuals to negotiate sales under section 23 of the Native Townships Act 1910. As the decade wore on, however, the Crown became increasingly concerned about the rate of alienation of Māori land. At the end of 1938, the Native Minister wrote to all Māori land boards commenting that he was worried about ‘the gravity of the situation which will arise if Natives are permitted unduly to alienate their lands especially by way of sale.’ He nevertheless added that in urban or suburban areas, there were still instances when more might be gained from selling than leasing, if the proceeds could be used either to develop land elsewhere or to meet housing requirements. In the case of urban and suburban areas, though, he acknowledged that the critical factor was whether the land could ‘provide a fair source of income for the Native owners when leased.’ He also acknowledge that ‘there are cases where sales are of distinct benefit to the vendors, particularly where the proceeds are utilised in the purchase and/or development of other lands or in meeting housing requirements or for some other form of permanent benefit.’\textsuperscript{715}

The following year, when the lessees of sections 3 and 4 of block \textit{XXI} (in the north-east of the township) enquired about the possibility of acquiring the freehold of their sections, they were advised that they could seek purchase by direct negotiation with the beneficial owners, but the governor-general’s consent to the sale would be required.\textsuperscript{716} Subsequent applications for consent to purchase seem to have been framed with these considerations in mind. For example, a communication about the proposed purchase of sections 10 and 11, block \textit{XXIII} and section 25, block \textit{XII}, in July 1939, carefully set out what the owners wanted to do with the proceeds. It also noted an awareness of the need to secure the consent of the

\textsuperscript{711} Commissioner of crown lands, Auckland, to H Maxwell, 8 January 1930 (doc \textit{A62(a)}, vol 9, p 1089).
\textsuperscript{712} Document \textit{A62(a)}, vol 9, p 1087.
\textsuperscript{713} Document \textit{A62}, p 226.
\textsuperscript{714} Under-Secretary, Department of Māori Affairs, to Minister, 1 August 1950 (doc \textit{A62(a)}, vol 5, p 588).
\textsuperscript{715} Frank Langstone, for Native Minister, to all presidents of district Māori land boards, 14 December 1938 (doc \textit{A62(a)}, vol 1, p 35); doc \textit{A62}, pp 234–235.
\textsuperscript{716} Document \textit{A62(a)}, vol 9, p 1094.
governor-general (in line with section 23 of the Native Townships Act 1910).\textsuperscript{717} Sometimes, however, it is difficult to see what ‘more or less permanent benefit’ accrued to the beneficial owners, other than being freed of accumulated debt not of their own making.\textsuperscript{718}

In March 1950, representatives of the Otorohanga Town Board approached the Minister of Māori Affairs, Ernest Corbett, to seek a revival of Crown assistance with freeholding, through purchase and onsale to lessees. There were, said the representatives, 66 sections that ‘needed to be freeholded’ but they had ‘hundreds of Maori owners’. The Minister stressed that the owners had a right to keep their land and he would not be a party to relieving them of it. Rather, he wanted to see them use it, although he conceded that the multiplicity of owners was a problem. He wondered whether a consolidation of owners’ interests might help.\textsuperscript{719}

Subsequent departmental advice to the Minister of Māori Affairs supported the strategy of getting lessees to use the direct purchase mechanism. It however pointed to the difficulty caused by some sections having ‘two layers of title’ which meant that ‘some of the Township subdivisions in fact include pieces of several of the original blocks and consequently have several sets of Maori owners’. The department did not consider that ‘the consolidation of interests of the Maori owners would in a general way help towards the solution of [this] difficulty’.\textsuperscript{720}

A consolidation of interests in other land was however cited as the reason for several alienations around this time. In August 1950, for example, the sale of section 3, block XVII, to the Otorohanga Town Board, was approved so that the beneficial owners could ‘use the purchase money for equalisation of interests in connection with consolidation of interests in lands elsewhere’.\textsuperscript{721} Another case involved sections 1 and 4 of the same block, where again the vendors were said to be consolidating. In both cases, it was recommended that consent be given to the sale.\textsuperscript{722}

Purchase activity in the township seems to have gone quiet for a time after control of the township passed to the Māori Trustee in 1952. However, the Māori Affairs Amendment Act 1967 widened the Māori Trustee’s powers to sell reserved land, including native township land. The Secretary of Māori Affairs issued guidelines for the procedure to be followed, including for situations where freeholding might be difficult. One example was ‘where the land has been subdivided for leasing purposes without regard to title boundaries’. In terms of overall strategy, the circular noted that there were occasions when it might be desirable for the Māori Trustee to acquire the interests in a particular block ‘as a quick means of dealing with freeholding propositions and also getting rid of some of our distribution

\textsuperscript{717} The letter specifically refers to ‘a tightening up against alienation of Native lands’: Under-Secretary, Native Department, to Minister, 25 July 1939 (doc A62(a), vol 1, pp 33–34).

\textsuperscript{718} Commissioner of crown lands, Auckland, to Fred Philips, solicitor, 16 June 1938 (doc A62, p 235).

\textsuperscript{719} Notes of interview, 15 March 1950 (doc A62(a), vol 5, pp 590–591).

\textsuperscript{720} Under-Secretary for Māori Affairs to Minister, 1 August 1950 (doc A62(a), vol 5, p 588).

\textsuperscript{721} Under-Secretary for Māori Affairs to Minister, 29 August 1950 (doc A62(a), vol 5, p 587).

\textsuperscript{722} Document A62, p 237.
that the Māori Trustee did not want ‘to be left holding interests in blocks’ and district officers should ‘take early opportunities to dispose of them if possible.’

In Ōtorohanga, the Trustee assessed that some blocks posed no problem since all leases were within the boundaries of the Māori Land Court titles. In other blocks, some of the leases did not comply with title boundaries but as the area comprised in each lease was known, the purchase money for the leases could probably be ‘apportioned on an area basis without difficulty’. Some blocks, however, were considerably more complex as they straddled boundaries.

Early in 1968, the Trustee sent a form letter to owners of vested and reserved land, including township land, drawing attention to the provision due to come into force on 1 April under the Māori Affairs Amendment Act 1967. Under the provision, lessees of land subject to the Māori Reserved Land Act 1955 could make an offer to the Trustee for the land’s freehold. The Trustee wished to establish how many owners of such land would be interested in selling their interests.

He sent letters to 303 owners in 25 Orahiri, Otorohanga, and Waikowhitihiti blocks, most of which fell within the township boundary. Addresses were apparently lacking for another 150-odd owners who therefore did not get letters. Most owners contacted either did not respond or were against selling. The exceptions were Waikowhitihiti F1 and K2B1, each with only one owner. Of the rest, only Otorohanga D2B2B3B (three owners) and Waikowhitihiti F2B1 (nine owners) had a majority shareholding in favour of selling. For the blocks as a whole, only 91 of the 303 owners indicated they were willing to sell, with the value of their shares totalling $22,021. In addition, the Māori Trustee was in a position to acquire $4,181 worth of ‘uneconomic shares’. In the event, it seems that not all sales went through. When the Sheehan commission made its report on Māori reserved land in 1975, it indicated that just under four acres of Otorohanga land had been sold since the passing of the 1967 Act, yielding $24,990.

The response of Mason [Meihana/Mehana] Tūhoro serves as example of the kind of thinking behind the decisions owners were making. With interests in Orahiri E, O, and N1B2, he considered his options strategically. He had no objection to the freeholding of Orahiri O and N1B2, provided his co-owners had no objection.
either. If any of the other owners did wish to sell, though, he was keen to have the opportunity to buy them out first. Orahiri was a different matter. He was the sole owner and his house was situated on the block. Moreover it fronted onto Tuhoro Street in the commercial area and he believed that substantial increases in value were possible. He accordingly advised that he was ‘most reluctant’ to sell. When it later transpired that the price being offered for N1B2 was lower than he expected, he declined to sell there as well.729

Bassett and Kay’s evidence suggests that of the 264-odd acres in Ōtorohanga, 70 acres were purchased by the Crown, and some 26 acres by private individuals. They have warned, though, that the records relating to Ōtorohanga are incomplete and contain inconsistencies. Moreover, as noted for other townships, those figures do not take account of other forms of permanent alienation. In 1975, for instance, staff of the Māori Trustee’s office mentioned land ‘taken for recreation purposes or flood protection schemes, school sites and like.’730

The Sheehan commission’s 1975 report indicated that, by then, less than 16 acres of reserved land remained under the Māori Trustee. A total of some 230 acres of Ōtorohanga township must therefore have been sold, taken for public purposes, or revested. The commission did, though, note that ‘full research into the background history of the earliest dealings in the Otorohanga Maori Township has been made more difficult by the fact that some of the relevant land transfer documents cannot be located.’731

15.4.3.4 The current status of Ōtorohanga

By the time of the Sheehan commission’s report in early 1975, Ōtorohanga comprised 315 separate sections – some of the original sections having been subdivided. Only 41 leases, affecting 43 sections, were still current, and all were perpetually renewable. They had a recorded 329 beneficial owners in total, and were yielding $2,883.17 a year.732 Included among them was at least one section which had initially been granted as native reserve to Tawhi Erueti, namely section 1, block XIII.733 It is not clear from the evidence how it came to be subject to a perpetually renewable lease.

When a meeting was held at Tūrangawaewae in December 1975 to discuss the Sheehan commission’s recommendations about the future administration of reserves in Ōtorohanga and Kārewa, about 20 beneficial owners from Ōtorohanga attended. Overall, the speakers seemed happy with the Māori Trustee’s administration of the land, and a couple said that the owners themselves anyway lacked the experience and skills needed to do the job. They did, though, want to have

some of their own people working alongside the Trustee. Eventually, motions were carried in favour of the Māori Trustee continuing to administer both Ōtorohanga and Kārewa, although with two advisory trustees being appointed in each case.\textsuperscript{734} For Ōtorohanga, one of those trustees was to be Bob Korohohe.\textsuperscript{735}

The Māori Reserved Land Amendment Act 1997, when it was finally passed (see earlier, at section 15.3.6.2), listed 44 Ōtorohanga Māori township leases as being extant and subject to its provisions.\textsuperscript{736} Payouts from the Crown in respect of those leases came to a little over $65,800, tax free.\textsuperscript{737} This was made up of solatium payments to meet future expenses incurred by the beneficial owners; compensation to those owners for the delay in moving to market rents; and purchase money intended to help them buy out lessees’ interests, if and when the lessees decided to surrender their leases.\textsuperscript{738}

Following the pay-outs, the Māori Trustee’s district office tried to arrange for meetings of owners to talk about how the Act would impact on them and to seek their views on what they wanted done with the compensation money. In the case of Orakiri, the meeting was held in Ōtorohanga on 23 October 1998. The owners were advised that the Trustee was currently holding a total of just over $1,419 on behalf of the owners. They were also told that leases would move to market rates from 1 July 2004.\textsuperscript{739} Mason Tūhoro – who now owned a third of Orakiri, plus the whole of Orakiri N1B2a and Orakiri E – sent his apologies but indicated that he would support distributing the money. He added that he did not want an ahu whenua trust to be set up, nor was he interesting in selling any of his land.\textsuperscript{740}

In the case of Waikowhitihitihiti B (which in 1968 had been recorded as having eight owners), only one owner was able to attend the November meeting in Hamilton, although that owner also held a proxy for his brother. Given the poor attendance and the small amount of money involved, he proposed that the money be distributed. The Māori Trustee’s representative said she would lodge an application with the land court to that effect.\textsuperscript{741}

Following the 2002 deed of settlement in respect of rental losses, Te Puni Kōkiri sought information for all native townships, to ascertain which owners might be eligible for compensation.\textsuperscript{742} No evidence has been filed about any payments made in respect of Ōtorohanga.

\textsuperscript{734} Document A62(a), vol 12, pp 1479–1484.
\textsuperscript{735} Document A62(a), vol 12, p 1457.
\textsuperscript{736} Māori Reserved Land Amendment Act 1997, sch 3, pt A.
\textsuperscript{737} Document A62, pp 323–324. It is to be noted that Bassett and Kay’s list of leases in Orakiri, Ototokowhanga, and Waikowhitihiti blocks adds up to 45, as compared with the 44 leases listed in the schedule to the Act. The latter are identified by township section and block number, however, rather than by Māori land block.
\textsuperscript{738} Document A62(a), vol 12, pp 1455–1456.
\textsuperscript{739} Document A62(a), vol 12, pp 1455–1456.
\textsuperscript{740} Document A62(a), vol 12, p 1454.
\textsuperscript{741} Document A62(a), vol 11, p 1363, vol 12, p 1453.
\textsuperscript{742} Document A62(a), vol 12, p 1485
15.4.3.5 Treaty analysis and findings

By the time Ōtorohanga was proclaimed as a native township, it was already a bustling township. In 1896, local Māori were consulted about the establishment of a native township at Ōtorohanga under the 1895 Act and emphatically rejected the idea. Similarly, when rumours emerged in 1900 that the Crown was planning to proclaim a township at Ōtorohanga, local Māori again protested. It was not until after the passage of the 1902 Act, when they believed that their local, Māori-dominated land council would be able to plan and administer the township, that they agreed to a township being proclaimed.

The Crown submitted that where Māori owners consented to native townships, they were accepting that those townships would be managed and administered by a third-party entity. It emphasised that, no matter which management structure was charged with administering the townships, ‘the fundamental terms of the trust remained the same’.\(^{743}\) We do not agree with the Crown’s submissions on this point with respect to Ōtorohanga. The evidence instead indicates that the owners’ consent to Ōtorohanga being proclaimed as a native township was conditional on the nature and identity of the third-party entity charged with administering it being the land council. Ōtorohanga Māori had twice had the opportunity of their land being subject to a regime which afforded them no say in the administration of the township, and they had twice rejected it. Representation on the entity charged with administering the township – in this case, the Māori-dominated Maniapoto–Tuwharetoa Māori Land Council – was clearly an important condition of the owners’ consent to the township being established. As we know, this situation could not continue once the Crown eliminated the councils and substituted the land boards.

Once the township was proclaimed, the Māori land council was proactive in planning and establishing the township. It set about matters such as slightly extending the township’s northern boundary, deciding on road widths, and giving thought to where and how public reserves might be created.

We do not have sufficient information to come to a general conclusion on the success or otherwise of the leasing regime in Ōtorohanga. It appears that most of the township sections were leased by 1912. In the township’s early days, while under the administration of the Māori land council, it demonstrated a willingness to pursue lessees who were not meeting their obligations. It is unclear if the board, with its minimal (and eventually non-existent) Māori representation, continued to be as proactive in this regard, though there is some evidence of it re-entering leases in the early 1920s.

As in other townships, many leases in Ōtorohanga were perpetually renewable. These leases not only depressed the income flowing to owners, but also made it much more difficult for the owners to regain direct control of their lands. The Māori Trustee abandoned the idea of revesting some of the sections in the beneficial owners because of the complications caused by the perpetually renewable

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\(^{743}\) Submission 3.4.291, p 32.
terms, thus demonstrating the extent to which the leases protected the interests of the lessees.

Rather than being leased, a significant proportion of Ōtorohanga was ultimately sold. Lobbying from local Pākehā for the freeholding of leased sections began as early as 1908. From that time and into the 1920s, the Crown attempted to purchase township blocks for on-sale to lessees. In doing so, it asked the local Māori land board to hold off leasing because it might 'operate adversely to the interests of the Crown in the purchase of the township'. While it is true that owners could refuse to sell their interests, there is evidence that there was ongoing pressure on them to sell. We acknowledge that some owners did actively want to sell, and it was their prerogative to do so. We cannot, though, accept the above evidence of ongoing Crown pressure over many years as being either fair or in the owners' interests. As late as 1968, Crown officials moved again to contact the beneficial owners of 25 Ōtorohanga blocks to ascertain if they wished to sell their interests. Addresses for only about two-thirds were available but less than one-third of the 300-odd contacted indicated any interest in selling.

The Crown played an active role in assisting lessees to obtain freehold. By 1975, the Sheehan commission recorded that over 200 acres of the original 260-plus acres in Ōtorohanga township had been sold, taken for public purposes, or vested. Without knowing how much was in the latter category, however, we cannot tell how much has been completely lost out of Māori ownership. From the evidence presented to the Tribunal, it is clear, however, that for far too long the Crown's emphasis was on pushing Māori to sell.

We find that in substituting the land councils with the land boards (with their alternate membership), and in curtailing the management by the councils, and for failing to intervene to stop the practice of granting perpetual leases, the Crown acted in a manner inconsistent with the Treaty principles of partnership, reciprocity, and mutual benefit. It also failed in its article 2 guarantee of tino rangatiratanga and its duty of active protection over the tino rangatiratanga of Te Rohe Pōtae Māori and of the land itself. Furthermore, in bowing to lessee pressure to acquire the freehold of their leased lands, and at times actively intervening to assist lessees to purchase their sections, the Crown breached the duty of active protection of the land, and it acted in a manner inconsistent with the article 3 principle of equity.

We note that the 2002 settlement benefited some of the landowners in this township and we consider this mitigates some of the prejudice they suffered as a collective of owners.

15.4.4 Te Kūiti

Te Kūiti was established on land in the Pukenui 2 block, located near the centre of our inquiry district. This block had been awarded to Ngāti Rōrā when the land court carried out its title investigation in 1892.\(^4^4\) By late in the century there was already a thriving settlement there, with a sizeable hotel. The Māori owners

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\(^{744}\) Document A62, pp 31–32.
rejected two attempts by the Crown to establish a native township at Te Kūiti under the 1895 Act. Following the introduction of the second regime, and the opportunity for the township to be established and managed by the local Māori land council, the owners requested a township. Te Kūiti was duly proclaimed as a native township in January 1903.

Claimants said that they only agreed to establishing a native township at Te Kūiti when they thought it was going to be under the control of a Māori land council with Māori representation. They claim that control was later vested in other Crown agencies, however, to the detriment of the beneficial owners, and without their consent having first been obtained. Further, the Crown, over the years, bought up five out of every six sections in Te Kūiti for onsale to lessees, although it then found some lessees unwilling to buy and ended up itself becoming the lessor. By 1974, only a little over a quarter-acre was left in Māori title, and both the sections involved were subject to perpetually renewable leases. The claimants said they have been marginalised from their heartlands, and their rangatiratanga has been undermined. They have lost key assets and sites of significance, and whānau have been dislocated from their ancestral entitlements.

The Crown said that it obtained the consent of the owners to proclaim Te Kūiti as a native township under the 1902 Act and there is no record of the owners protesting either the township’s creation or its layout. Regarding the permanent alienation of township lands in Te Kūiti, Crown counsel submitted that, as in Ōtorohanga, ‘the Māori Land Board had considered that the owners would benefit more from the purchase monies than from the proceeds of the leases’. The Crown further noted that purchase prices were based on government valuations.

15.4.4.1 Were Māori consulted over the proclamation of Te Kūiti as a native township?

As with Ōtorohanga, the Crown had long had an interest in establishing a native township at Te Kūiti but met resistance. In September 1900, the premier expressed his pragmatic view that in both places the owners had to be consulted if the Crown was to avoid a repetition of what had happened with the Kāwhia townships. ‘Neglect only causes ill-feeling’, he went on, ‘which ultimately militates against expedition in obtaining the townships’. While John Ormsby and others protested a plan initially proposed that same year, local Māori started to warm to the idea of a township after the passing of the Native and Māori Land Laws Amendment Act 1902, which allowed the Māori-dominated Maniapoto–Tuwharetoa Māori Land Council to control townships.
Following the proclamation, district surveyor Lawrence Cussen was asked to supply a plan for the new township. Of the 287 acres included in the plan he drew up, Cussen proposed setting aside 75 acres for streets and 34 acres for reserves. The remaining 178 acres would be available for sections. He envisaged public offices sited together in 'a convenient and healthy position,' and provision for parks, gardens, sports facilities, and a hospital. Cussen made no mention of provision for Māori, but someone noted on the Lands Department file that there would be '20% for Native allotments.'

Cussen’s plan, however, had some problems. For one thing, the proclamation had said the township would comprise an area of just over 238 acres. Cussen’s plan included 287 acres. The land council raised the discrepancy with the head of the Māori Lands Administration Department, and steps were taken for the proclamation to be amended (about which, see more below).

The was also the matter of public reserves. The Māori Lands Administration Department commented that a number of small areas currently in use by Māori had either been ‘entirely appropriated for reserves or . . . entirely ignored.’ The land council also raised the matter with the Native Minister. It proposed that some of the reserves would have to be omitted, and that the boundary lines of areas being used by Māori would need to be incorporated into the plan. The council believed that public reserves could always be provided later, out of adjacent Crown lands or in another part of the township.

Then there was the fact that, under the 1902 Act, the land council was entitled to plan the township itself. Land council members Wilkinson, Ormsby, and Eketone lobbied Mueller, the assistant surveyor-general in Auckland, and submitted their own plan for the layout of the township. Following this, Mueller informed Cussen that the land council was legally entitled to lay the town out as it saw fit. He asked Cussen to instruct assistant surveyor James Simms to carry out a new survey ‘with all possible speed.’ Cussen, though not pleased with the land council’s lack of provision for public reserves and their demands about the width of the streets, did concede that they had adopted his own plan ‘to a certain extent.’

At this point, some land council members were expressing reservations about the speed at which matters were proceeding. On 25 June, a notice was gazetted informing the public that a ‘plan of the Native Township of Te Kuiti’ would be exhibited at the Government Survey Office there, for a period of two months.

752. Cussen to surveyor-general, 12 February 1903 (doc A62(a), vol 3, pp 334–335).
754. ‘Proclaiming Native Township of Te Kuiti’, 22 January 1903, New Zealand Gazette, 1903, no 7, p 254.
756. Sheridan to surveyor-general, 26 March 1903 (doc A62(a), vol 3, p 338).
759. Cussen to surveyor-general, 3 April 1903 (doc A62(a), vol 3, p 341).
starting on 29 June. The notice gave no identifying details for the plan and it is not clear, from the other available evidence, which one was to be put on display. On the latter date, a second notice was then gazetted, amending the description of the township that had been published in January. This time, the total area was given as just under 263 acres. This was more than the original figure of some 238 acres but less than Cussen’s 287 acres. The matter was one that would resurface, as will be seen below.

In early September, the land council sat to hear applications from beneficial owners regarding sections they wanted reserved. A majority of the applications related to block X, which was in the commercial area at the southern end of the township, between Rora and Taupiri Streets. Wilkinson twice queried the idea of allowing Māori to reserve such sections. On the first occasion, he commented that he thought the general intention was that reserved sections should be for the owners’ own occupation or cultivation. Later, in discussing another application, he said he thought it would be ‘spoiling that end of town to allow the Maori beneficial owners [to] reserve so much of it’ unless they were going to live on the sections themselves. The majority view on the council was against him, though, and they granted nearly all the applications, including those relating to sections where Māori were operating commercial activities. They only refused the applications for sections 4 and 19 of block 10, which were already leased out.

On 5 September, Wilkinson reported that no objections had been received and asked for the plan to be certified as correct. The surveyor-general’s response, though, revealed neither he nor the assistant surveyor-general in Auckland had at that point had the opportunity to examine it. In the circumstances, he did not see how the certification could be issued.

A year later, in September 1904, the matter of the town plan surfaced again. As noted above, the proclaimed boundaries of the township had been amended by the Gazette notice of 29 June 1903. The commissioner of crown lands had now noticed, though, that ‘the boundaries as surveyed do not agree with the last gazette’ so there would need to be another amendment. It transpired that the problem had arisen because the plan had been slightly changed after the description had been made out and ‘it was not noticed in the hurry of despatching to Wellington’. An amended description of the township was finally gazetted on 15 December 1904. It now gave the total area as being just over (rather than just under) 263 acres.

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767. Assistant surveyor-general, Auckland, to surveyor-general, 4 November 1903 (doc A62(a), vol 3, p 355).
The deposited plan shows the township as divided into 30 blocks, comprising 411 sections in total.\footnote{Document A62, pp 107–109.}

\subsection*{15.4.4.2 Administering Te Kūiti}

With the township plan awaiting certification, the council continued to be proactive. Towards the end of November 1903, it considered the need for a water supply to the railway station. From the wording of the minutes, it seems Wilkinson and Ormsby (presumably on the council’s behalf) had already granted the Railways Department permission to lay two-inch pipes through certain streets. The council decided to endorse the grant on the condition that it did not interfere with anything the council might want to do with the affected streets, and that the Department ‘remove [the pipes] when requested to do so by the Council.’\footnote{Maniapoto–Tuwharetoa Māori Land Council minutes, 26–27 November 1903 (doc A62(a), vol 13, pp 1549–1550.)}

The council also moved to give effect to some of the plan’s features, particularly concerning roads. One item had the potential to greatly affect owners and lessees of sections on the main street of Te Kūiti. On 6 May 1904, the council voted in favour of a motion put by Ekateone and seconded by Ormsby whereby ‘the owners of all buildings at present standing on Rora Street . . . be instructed to remove same within three months from the date of the notice.’\footnote{Maniapoto–Tuwharetoa Māori Land Council minutes, 6 May 1904 (doc A62(a), vol 13, p 1552).} The reference to ‘all buildings’ suggests that the decree was to apply to those owned by both Māori and Pākehā. The measure was presumably to allow for the widening of the road, as signalled on the plan it had drawn up. The evidence before the Tribunal does not reveal whether the council’s edict was carried out.

Meanwhile, on 12 November 1903, a Gazette notice had announced that leases for sections in Te Kūiti were to go under the hammer at Hetet’s Hall on 22 December. It listed 171 sections, giving their areas, low rental values, and an indication of the nature and value of improvements. Leases were to be for 21 years ‘with right of renewal for further terms’ of 21 years – that is, as in Ōtorohanga, they were to be perpetually renewable.\footnote{‘Lands in Te Kuiti Township, Auckland Land District, for Lease by Public Auction’, 13 October 1903, New Zealand Gazette, 1903, no 86, pp 2393–2394.} A separate notice for public display provided a plan of the township, showing the sections available.\footnote{Document A62(a), vol 3, pp 357–360.}

On the day of the auction, only 67 sections were taken up – less than half of the 171 available. Twenty-two sections, however, went for above the low rental price. Reporting the result to the premier, Sheridan described it as ‘a very good start.’\footnote{Sheridan telegram to premier, 23 December 1903 (doc A62, p 129).} The anticipated rental income was to be £256 8s (as compared with the £224 expected for the leased sections, had only the low rental prices been achieved).\footnote{Document A62(a), vol 3, p 361.}

In February 1904, the regulations governing native townships were amended to allow an extra six months to dispose of sections not taken up at auction (see
earlier at section 15.3.2). The following month a Gazette notice announced that the residual Te Kūiti sections could still be obtained at the low rental prices listed for the December auction. Applications were to be filed within six months of the auction date.\textsuperscript{776} The evidence submitted to the Tribunal does not indicate what response was received, if any. In any case, it appears likely that these leases could not have been registered until the registrar had issued certificates of title – and that in turn could occur only after the boundaries had been properly gazetted (which, as explained at the end of the previous section, did not occur until December 1904).\textsuperscript{777}

A second auction was held in January 1906. This time, as had occurred in Ōtorohanga, the available lots were divided into two categories: sections that were to be leased for 21 years with right of renewal, and larger sections of two acres or more to be leased for only five years with no right of renewal. These latter sections were intended for gardens or paddocks.\textsuperscript{778} It does not appear that all sections were taken up at the time, but a further auction in March 1907 was apparently more successful. Most of the sections went for well above the low prices, which had already trebled, in many instances, since the previous auction. The few sections that remained were taken up immediately afterwards at the low price.\textsuperscript{779} By mid-1907, when Stout and Ngata were reporting on their investigations into the state of Māori land-holding, about 360 Te Kūiti sections were listed as being leased out, yielding a total annual rental of £876 14s.\textsuperscript{780}

Meanwhile, at its meeting on 19 November 1904, the land council had resolved to pay rents to owners ‘as soon as possible’, noting that it was ‘now nearly a year since the township was sold’.\textsuperscript{781} Nonetheless, by April and May 1905, there were complaints that rents had not been so distributed. The New Zealand Herald carried an article, for instance, reporting that the beneficial owners had ‘not received one belated copper’ of the rents owing to them. The writer, identified only as ‘W B, Te Kuiti’, laid the blame on ‘the great “taihoa” factory at Wellington’.\textsuperscript{782} A month later, William Hall-Jones, then Minister for Public Works, advised Carroll that he had been told the land council could not disburse the rentals it had been collecting from township tenants ‘until authorised from Wellington.’ This surely could not be correct, he said, but it was nevertheless being much talked about.\textsuperscript{783}

Carroll’s response indicated that beneficial owners should probably not expect much by way of payment anytime soon. ‘If the whole of the first year’s rent has been collected the tenants must have been unusually punctual in their payments’,

\textsuperscript{776} ‘Notifying that Allotments in Te Kuiti Native Township not disposed of at Auction may be taken up at Upset Rentals’, 22 February 1904, New Zealand Gazette, 1904, no 22, p 840.
\textsuperscript{777} Document A62(a), vol 3, p 369.
\textsuperscript{778} Document A62(a), vol 3, pp 376–381.
\textsuperscript{779} King Country Chronicle, 15 March 1907, p 3.
\textsuperscript{780} AJHR, 1907, G1-B, p 15 (doc O19, pp 31–32).
\textsuperscript{781} Maniapoto–Tuwharetoa Māori Land Council minutes, 19 November 1904 (doc A62(a), vol 13, p 1557).
\textsuperscript{782} ‘Where the White Man Treads’, New Zealand Herald, 1 April 1905.
\textsuperscript{783} Hall-Jones to Carroll, 10 May 1905 (doc A62(a), vol 4, pp 446–447).
he said. Moreover, the cost of surveying and laying off the township could often absorb the whole of the rents for at least the first few years. He did, though, add that it was intended to recover these costs ‘by small annual instalments only’.

As we noted in chapters 12 and 13, the land boards took over the administration of the native townships with the attendant issues discussed above.

Sometime between 1917 and 1919, land in the township was revalued, along with that of all the other native townships in the district. The lessees registered ‘strong exception’ to the new, higher valuations, which would result in an increase in rent when the lease was renewed. Lessees from several townships had combined to take a case to the Assessment Court. When that court referred the matter to the Supreme Court, it was G P Finlay – the mayor of Te Kūiti – who appeared, in his professional capacity, as counsel for the objectors. The court found against them. Complaints about individual valuations were, however, dealt with by the Assessment Court and a considerable number of reductions resulted. Judge MacCormick, president of what was now the Waikato–Maniapoto District Māori Land Board, commented: ‘It may be said with some show of reason that the natives at present are getting a very poor income from their property.’ If that was already the case, then the failure to increase valuations would mean an even poorer return.

Lessees were also concerned about compensation for improvements. In February 1919, the mayor complained that under the current leases, an outgoing tenant had no guarantee of receiving the value of any improvements he might have carried out. In his view, money should be set aside from rental income so that the beneficial owners could ‘become purchasers of the improvements without injury to themselves.’ Judge MacCormick, writing to the Native Under-Secretary, clarified that the lease clause in question took effect only if the lessee was unwilling to renew his lease and no other person could be found to take it over loaded with the improvements. In such an instance, the improvements reverted to the lessor along with the land. The likelihood of such an event was in his opinion, though, ‘so remote as to be negligible’. Moreover, he said, until the mayor drew attention to the matter, no one else had registered any protest or objection.

Reference to the mayor raises another point, because by 1919 Māori influence had been sidelined still further by the creation of a second body with a say over what happened in the township. In 1908, Te Kūiti was declared subject to the provisions of the Native Townships Local Government Act 1905, meaning that it could now elect its own town council.

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784. Carroll to Hall-Jones, no date (doc A62(a), vol 4, p 445).
785. MacCormick to Under-Secretary, 24 April 1919 (doc A62(a), vol 1, pp 44–50); doc A62, pp 205–208.
787. MacCormick to Under-Secretary, 24 April 1919 (doc A62(a), vol 1, pp 49–50).
on the council for the first two-year term, to be nominated by the governor. However, the town’s residents rejected the idea of forming a town council, as they were anxious to become a borough and to elect a borough council instead. Borough status required a minimum population of 1,000 inhabitants. In August 1909 residents were accordingly urged to cooperate with a census that was about to be carried out. On 1 April 1910, Te Kūiti was duly constituted a borough. The boundary encompassed not only the native township but also part of the surrounding area. When elections were held on 4 May, the mayoral candidates included John Hetet but he failed to secure sufficient votes. The nine-member council, however, did include one Māori – Pepene Eketone. As it happens, Hetet also became a councillor later the same month, after a further poll to fill an unexpected vacancy that arose. Māori representation was nevertheless short-lived: there were no Māori among the 11 candidates that stood for council when another election was held the following year.

15.4.4.3 Selling township land

Right from the start, Pākehā residents of Te Kūiti had been anxious to acquire the freehold of land in the township. Soon after the township’s proclamation, and before leasing had even commenced, P R Colebrook and 50 others lodged a petition asking that sections in Te Kūiti township be sold with freehold tenure or else ‘under some system equivalent to the occupation with right of purchase under “The Land Act, 1892”’. The Native Affairs Committee recommended that the Government give the petition favourable consideration. Officials advised, however, that leasehold tenure gave sufficient security.

By 1906, some of the land in the township had been permanently alienated, but – from the evidence presented to the Tribunal – only for public purposes. In some cases, the owners had offered to sell other blocks for public purposes as well. For example, as the council was considering applications for reserves in 1903, Pohe

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791. Municipal Corporations Act 1900, s 5(3).
797. Colebrook and 50 others, petition no 120/03 (doc A62(a), vol 4, pp 465–466); doc A62, p 104.
798. AJHR, 1903, i-3, pp 2, 15–16.
Tawhana offered section 5 of block VIII as the site for a post office. Fronting onto Rora Street and just opposite the railway station – so well placed for the purpose – it measured a little under a quarter of an acre. His only condition was ‘that the Government build the post office within a reasonable time’. The council decided that the section should be reserved for the owners, pending a response from the Government.  

By October 1907, the Crown had still not responded to Tawhana’s offer: during parliamentary debate on native townships, William Jennings (member for Egmont) complained about lost opportunities in Te Kūiti. He referred to an instance, four years earlier, where some Māori owners had ‘very generously offered the Government a good site for a post-office’. However, he said, ‘the offer was allowed to go by default’. This complaint might have inspired some action, because the next year Tawhana’s section was taken under the Public Works Act 1908 for a post office.

J T Hetet also offered land (sections 11 and 13 of block XIV) fronting onto Queen Street, for ‘public reserve’. But by 1905, despite being occupied by the Roads Department, the Crown had still not paid for the sections. A valuation, asked for by Under-Secretary for Lands, valued the land at £250 – £150 less than Hetet was asking for. Hetet, however, indicated that he would be willing to part with an area about three times as big – namely all of sections 1 to 14, inclusive – for £700. Not surprisingly, Charles Pollen from the chief surveyor’s office in Auckland recommended the purchase of the larger area. The land council, though, recommended higher prices: £375 for just sections 1 and 13, and £840 for sections 1 to 14. The Crown agreed to the higher price for sections 1 to 14, but officials were confused about whether the payment should go to the Public Trustee, or direct to Hetet. The land board, for its part, was clear that the payment should be made to them in the first instance, for on-payment to Hetet. The evidence before the Tribunal does not show whether the purchase of the entire area went ahead and who received the purchase money. A later plan shows that part of section 11, block XIV was declared Crown land in 1952. This presumably would not have been necessary if the Crown had already purchased it.

In August 1909, a deputation of residents met with Carroll in Te Kūiti and urged upon him the importance of being able to purchase the freehold of land in the township. Carroll replied that a matter of principle was involved: if they said that the freehold must pass from Māori to them irrespective of whether Māori wanted to part with it, that amounted to compulsion, ‘and if they said compulsion was

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802. ‘Land in the Township of Te Kuiti taken for a Post-office’, 18 September 1908, New Zealand Gazette, 1908, no 73, p 2497.
necessary, then they must be prepared to live under the same conditions.’ The deputation’s response to that, if any, is not recorded. The possibility of freehold purchase did, however, become a reality with the passage of the Native Townships Act 1910, which provided for sale, both to the Crown and private parties.

By April 1919, ‘a considerable number’ of freehold sections had been acquired, and there were still one or two more in the pipeline despite what the land board president called ‘the present agitation’, which he said had ‘practically stopped further applications.’ In August, GP Finlay, the mayor of Te Kūiti, issued a 26-page pamphlet entitled Memorandum on Land Tenure in King Country Towns. It was addressed to the Prime Minister, members of Cabinet, and both Houses of Parliament. Finlay outlined problems arising from changes to compensation for improvements – something he described as ‘a very grievous injustice’ – and from the ‘enormous’ increases in government valuations of township sections. This increase, he said, had made it harder for lessees to purchase the freehold of their sections. He also cited the difficulties lessees experienced in gaining finance against their leasehold interests to develop township land. Finlay stated that he had no desire to ‘do the Native any injustice whatsoever’, but he urged the Crown to make it easier for tenants to buy the freehold of the land they were renting. He proposed that the Crown carry the cost of purchase and then on-sell. This would be better for both the lessees and the beneficial owners – who, he said, were currently getting a gross annual rental income of only £1,175 a year on land that was worth £105,000.

Finlay’s proposal formed the basis of the new regulations issued in 1920, which enabled lessees to trigger a Crown purchase of township land for subsequent on-sale to them, provided enough lessees signalled an interest in obtaining the freehold of their sections. There is no mention, in the regulations, of any need to consider how such purchases might impact on the overall landholding of beneficial owners, either as a group or as individuals. That said, they did reference section 19 of the Native Townships Act 1910 which in turn referenced the Native Land Act 1909. As discussed in chapter 12, that Act defined a landless person as being someone whose total beneficial interests in Māori freehold land were insufficient for his or her ‘adequate maintenance.’ No evidence has been adduced in this inquiry as to whether the question of landlessness was taken into account in the alienation of township land.

By February 1922, the commissioner of crown lands was receiving ‘frequent enquiries’ about the freeholding of Te Kūiti sections and was endeavouring to get

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808. File note on Te Kūiti deputation to James Carroll, 13 August 1909 (doc A62(a), vol 4, p 443); doc A62, p 145.
809. MacCormick to Under-Secretary, 24 April 1919 (doc A62(a), vol 1, p 44).
810. GP Finlay, Memorandum on Land Tenure in King Country Towns (Te Kūiti: King Country Chronicle, 1919) (doc A62(a), vol 8, pp 990–999); doc A62, pp 208–211.
up-to-date valuations. On 6 September of that year, the valuer-general provided 329 special valuations for Te Kūiti sections where the freehold was being sought.

Little more than a week later, the first of two notices was published calling for lessee requests for valuations of township lands – this being the signal that they were interested in purchasing the freehold of the land they were leasing. By early the next month, the solicitors in Te Kūiti were busy trying to get associated agreements-to-purchase signed. As at 20 October, the commissioner had received a total of 160 agreements to purchase, along with the associated deposits – 63 agreements short of the 212 required to reach the necessary 50 per cent. There were, however, several problems with the agreements at this stage: post-dated cheques, undertakings lacking the place and date of signing, and agreements signed by agents rather than lessees. In mid-December, the commissioner finally advised that the number of undertakings had surpassed the 212 needed. Even so, the exact area involved was still not clear: in some instances, it had been found that the area shown in the body of the lease document differed from the area shown on the accompanying plan.

Meanwhile, the Crown was taking steps to arrange purchase finance. Not yet having a figure for the actual area of land being sought, it had ascertained that the amount necessary to acquire the interests in all leased sections in the township would be £137,000.

On 19 December 1922, the Native Department was supplied with 334 valuation certificates and a request that the Native Land Purchase Board begin negotiations with the beneficial owners of land in the township. Further progress, however, was hampered by interdepartmental confusion over paperwork and problems with reconciling conflicting documentation – including the need to resolve the discrepancies between lease documents and plans.

All the while, pressure was building on the Crown to proceed with the purchases. That pressure was not only from Pākehā, though. In April 1923, for instance, the Native Minister received a letter from T Waeroa, on behalf of some of the beneficial owners in the township, asking when purchases would be completed and the money paid out. By May, the local member of Parliament, John

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813. Commissioner of crown lands, Auckland, to Hine Howarth and Vernon, 8 February 1922 (doc A62(a), vol 8, p 1027).
814. He said he had not, however, valued all the pieces of land for which valuations had been requested by the commissioner of crown lands, owing to some sections having already been freeholded and others being in the process of a division: F W Flanagan to commissioner of crown lands, Auckland, 6 September 1922 (doc A62(a), vol 8, p 1021).
815. Document A62(a), vol 8, p 1037.
Rolleston, had received ‘numerous inquiries . . . from both Europeans and Natives’ asking when purchasing was finally going to get underway. Lessees who had paid their 5 per cent deposits in November and December were ‘very anxious that some finality should be arrived at before they become liable for another half year’s rent’. As to the beneficial owners, some of them had been given credit on the basis of the expected sales.  

By August 1923, some lessees who had not originally requested a valuation were inquiring whether purchase might still be possible. The commissioner informed one such inquirer that he could still apply for freehold up to September 1925 (three years after the notice calling for applications for valuations). He also explained the terms on which sales were to be made: the price would not be less than the valuation, plus a certain margin for expenses and interest in the period between Crown purchase and re-sale. The lessee’s rental over the same period would, however, be deductible. The amount could be paid in cash, or by deferred payment over 19 years. 

Meanwhile, the native land purchase officer had been buying up interests as and where he could. This led to a series of notices being gazetted between late June 1923 and early March 1924, proclaiming various areas as Crown land. The majority were located in Pukenui 2A but there were others in 2B, 2D, 2Q, and 2T. The total area involved amounted to 163 acres. That represented 62 per cent of the amended township area of some 263 acres, gazetted in December 1904. As of June 1924, the Crown had apparently purchased five-sixths of the township sections.

By the middle of 1924, however, other problems were becoming evident. Because the Crown was purchasing entire blocks, even where all the lessees had not indicated a desire to freehold their sections, it was being left as lessor for some sections. Those lessees then attempted ‘to secure the renewal of their leases at low rentals’ which, as the commissioner for Crown lands explained, ‘would certainly not return to the Crown an adequate rate of interest’ on the money it had spent in purchasing the blocks. The position was ‘a grave one for the Crown’, said the valuer appointed by the land board. Further problem was that some of the lessees who had entered into contracts to freehold their sections were now trying to back out of their agreements, and to continue their leases at potentially lower rentals. The evidence reveals six specific examples of lessees ultimately opting not to purchase, but it is unclear how widespread the problem was.

In August 1926, the Lands and Survey office in Auckland reported that the Crown had spent £131,469 on purchasing 421 holdings in Te Kūiti (although for
seven holdings, only in part). There had originally been 411 township sections, so some must have been subdivided since the township’s establishment. Of the 421 holdings purchased by the Crown, 33 had been ‘surrendered or forfeited’ (including nine held under monthly tenancies), and six others were unoccupied.\(^{831}\) It is unclear how many leases the Crown was responsible for at this time, but by 1938 it was still responsible for 45 township leases in Te Kūiti.\(^{832}\) Whatever their status, however, the important point is that the sections were no longer in Māori ownership. Nor is there any indication, in the evidence, of any investigation being carried out into how this loss of ownership impacted on the former owners’ overall landholding.

In their summary of figures relating to permanent alienation in Te Kūiti, Bassett and Kay stated that Crown purchases accounted for a little over 199 acres and slightly over three acres went to private purchasers – these are the figures cited by the Crown in closing submissions. The total area alienated through purchase thus amounted to some 202 acres. Added to that, over 67 acres went for roads.\(^{833}\) Since the proclaimed area of the township was only a little over 263 acres, it is to be presumed that one or more of their alienation figures must include some land outside its boundaries.

15.4.4.4 The fate of the remaining leasehold sections

By 1936, only two Te Kuiti blocks were still being leased out by the Māori land board. For the six months from April to September, they yielded £51 13s 9d in rent.\(^{834}\) From later information it seems that the land board in fact held three sections at the time, but one (section 5, block XIX, on Ward Street) was not being leased out. It was revested in its beneficial owners at some point prior to 1952. The two sections still being leased out were section 13, block X (near the southern end of Taupiri Street), and part section 8 together with part section 14, in block IV (fronting on to The Esplanade).\(^{835}\)

By the time of the Sheehan commission’s investigation in 1974, the two Te Kūiti sections still under lease had been zoned ‘commercial B’. They were under the administration of the Māori Trustee and subject to a perpetual right of renewal.\(^{836}\) The first of the two (also known as Māori Land Court block Te Kuiti A6) had an area of 28 perches and was now yielding $144 a year – a considerable improvement on a rent of only $20 a year for the previous term. Of the current income, $125.18 was distributed to the 15 beneficial owners. The remaining amount went on commission and tax, except for $7.80, which was assigned to Māori Housing. The lease was due to come up for renewal on 30 November 1987.\(^{837}\)

\(^{831}\) Document A62, p 226; Lands and Survey office, Auckland, telegram to head office, 3 August 1926 (doc A62(a), vol 8, p 1050).
\(^{832}\) Document A62, p 226.
\(^{833}\) Document A62(b)(i), p 21; submission 3.4.291, p 40.
\(^{834}\) Document A62, p 222; doc A62(a), vol 11, p 1304.
\(^{835}\) Document A62(a), vol 12, pp 1498–1500; doc A62, pp 107, 286.
\(^{836}\) Document A62, pp 107, 286; doc A62(a), vol 12, pp 1498–1500.
The other leased section (Pukenui 2A15B) had an area of 22.2 perches and was yielding only $22.50 a year – although that was better than the $6.75 a year that had been charged for the previous term. Most of the income ($19.56) was divided equally between the two owners. The remainder went in tax ($1.60) and for the Māori Trustee’s commission ($1.34). The lease had expired in June 1974 and was in the process of being renewed.\footnote{838}

Both Te Kuiti A6 and Pukenui 2A15B were listed in the schedules to the Māori Reserved Land Amendment Act 1997 (as lot 13 block X DP 19501 and lot 1 DP S 73429, respectively).\footnote{839} A solatium of $533.33 was to be paid in respect of Te Kuiti A6, along with $51.17 for the delay in moving to market rentals and $206.91 to assist with buy-back. For Pukenui 2A15B, the corresponding figures were $547.61, $448.57, and $295.59.\footnote{840}

As of June 2002, Pukenui 2A15B was still being administered directly by the Māori Trustee, while Te Kuiti A6 had been revested and was in an ahu whenua trust. Researchers Bassett and Kay have implied that this was the only land still in Māori ownership within the boundaries of what used to be Te Kuiti native township.\footnote{841} If that is the case, it is not clear what happened to section 5, block 19, which had also been revested.

### 15.4.4.5 Treaty analysis and findings

As in Ōtorohanga, Māori rejected the idea of proclaiming a native township in Te Kūiti until the passing of the 1902 Act. The prospect of more Māori control via the local land council then saw local Māori requesting a township. However, we do not consider that Māori consent to the establishment of a township was unconditional. The Crown said in submissions that where Māori owners consented to native townships, they were accepting that those townships would be managed and administered by a third-party entity. It emphasised that, no matter which management structure was charged with administering the townships, ‘the fundamental terms of the trust remained the same’.\footnote{842} But in the case of Te Kūiti (as in Ōtorohanga), the evidence indicates that their consent was dependent on the ‘third party entity’ having a strong Māori component.

Māori determination to be involved in township planning and administration is evident from what happened at the time of the township’s proclamation. Although the district surveyor drew up the original plan for Te Kūiti, entirely omitting to make any provision for Māori reserves, the Māori land council quickly took control of the planning process, as permitted by the Act. In doing so, the land council tried to ensure that the boundaries of hapū landholdings coincided with those of township sections and streets. Crown officials were unhappy with the new plan's

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842. Submission 3.4.291, p 32.
provision for public reserves and street width but reluctantly acknowledged that the land council was legally entitled to lay out the township as it saw fit.

As in Ōtorohanga, the land council embraced its duties proactively, consciously aiming to ensure the town would be a commercial success, thereby benefiting both Māori and settlers. It moved to organise a water supply for the railway station, voted in favour of removing buildings on Rora Street so it could be widened, and offered a variety of lease types to meet different demand. As we saw in chapters 12 and 13, the substitution of the land councils with the boards and the gradual reduction of Māori representation effectively cut across the express requirements of the owners with respect to Te Kūiti.

Leasing uptake in Te Kūiti started reasonably well, though we saw very little evidence to indicate how much income accrued to Māori. There was evidence of the slow distribution of income to the beneficial owners, with contemporary accounts placing the blame on the Crown. The township appears to have been mostly leased by mid-1907. Government valuations increased significantly in 1917, which should have increased rental income. Instead, it seems to have triggered a lessee revolt. Thereafter, pressure for freeholding – always bubbling under the surface – continued in earnest. The mayor of Te Kūiti proposed that the Crown should purchase and then onsell to lessees. The idea received substantial backing from lessees in Te Kūiti and it became Crown policy in December 1920.

Until this point, permanent alienation of township land had been fairly limited. There were some early sales for public purposes. During the 1920s, however, the pace of permanent alienation increased considerably. The Crown initiated negotiations with the beneficial owners to purchase township sections for onsale to lessees in 1922. By March 1924, the Crown had purchased around 60 per cent of the total township area as gazetted in December 1904. A later record, dating from August 1926, gives the number of sections purchased as 421, for a total Crown outlay of £131,469. The evidence does not show how many beneficial owners there were by this time, nor how much of the proceeds were paid over to them.

The fact that so many owners sold their interests to the Crown in the 1920s is of concern. Evidence of how much of the sale proceeds actually reached the owners has not been produced, either by the Crown (who hold these records) or the claimants. As to Māori regaining direct control of the land themselves, there was little chance at that time of the land being revested.

Therefore, we find that, in substituting the land councils with the land boards (with their reconfigured membership), and in curtailing the management by the councils, and for failing to intervene to stop the practice of granting perpetual leases, the Crown acted in a manner inconsistent with the Treaty principles of partnership, reciprocity, and mutual benefit with respect to the manner with which the Te Kūiti township was administered. It also failed in its article 2 guarantee of tino rangatiratanga and its duty of active protection of the tino rangatiratanga of Te Rohe Pōtae Māori and of the land itself. Furthermore, in bowing to lessee pressure to acquire the freehold of their leased lands, the Crown acted in a manner inconsistent with the article 3 principle of equity.
15.5 Prejudice

We have found that the Crown acted in a manner inconsistent with the principles of the Treaty of Waitangi in enacting the native townships legislation without consulting Te Rohe Pōtae Māori to any significant degree, including the detail of the manner it would be applied in Te Rohe Pōtae. The evidence before the Tribunal indicates that while some Māori did consent to the establishment of some of the townships, they did not retain control over these lands as they had expected, nor did they receive the benefit from the townships that they had been led to expect. While we accept that a number of factors may have contributed to this outcome, we are of the view that the Crown’s regime – and particularly the later changes introduced to it – played a major part in the further alienation of their lands.

Te Rohe Pōtae Māori were prejudiced by the effects of the native township legislative regime. The most important collective issue was that the scheme did not deliver to Te Rohe Pōtae Māori their mana whakahaere, let alone their tino rangatiratanga. While they had some control during the era of the Māori land councils from 1900 to 1905, the five townships eventually became subject in all respects to the Crown’s legislative regime. That meant their lands were at the mercy of Pākehā-dominated land boards and later became subject to the total discretion of the Māori Trustee. This situation helped undermine the mana whakahaere of Te Rohe Pōtae Māori, and was aggravated by the fact that limited benefits flowed to the owners and those which did were poorly administered by the Waikato–Maniapoto District Māori Land Board.

Owners were left with limited options for their lands where perpetual or long-term leases were awarded by the land boards and pressure mounted from lessees and the Crown to sell township lands. After all, perpetually renewable leases were granted on terms unfavourable to the beneficial owners, and alienation of those lands was bound to be the result.

The Crown did finally move towards making amends in 1997 with the passing of the Māori Reserved Land Amendment Act, which (for those lands still remaining) provided for more frequent rent reviews and fairer annual rents. The Act also provided for compensation to be paid to lessors (for past losses), and to lessees (to ease the effect of the transition to the new regime). This was followed in 2002 by a deed of settlement relating to the compensation for lessors. The deed in question was not presented in evidence. However, the evidence before the Tribunal indicates that it did not cover losses on land no longer under lease as at 1997. Given that perpetual leases of township land were authorised from the early 1900s, and then gradually became the norm, there is the potential for many Māori beneficial owners to have been adversely affected, and over a number of decades. Thus, to the extent that the 2002 settlement with the Crown has not compensated Te Rohe Pōtae Māori for its actions, policies and legislation inconsistent with the principles of the Treaty of Waitangi and in terms of the impact of the native townships legislation, the claimants continue to suffer prejudice.
15.6 Summary of Findings

Our investigations in this chapter lead us to make the following overall findings with respect to the Crown’s native townships regime, as well as a number of specific findings on each of the townships in the district.

15.6.1 Overall findings on the Crown’s native townships regime

Our overall findings with respect to the Crown’s native townships regime were as follows:

- The two redeeming aspects to the native townships regime were that land would be leased, rather than sold, and that Māori would be entitled to reserves within the established townships.
- There were, however, numerous other aspects of the regime that undermined the ability of Te Rohe Pōtae Māori to maintain their mana whakahaere over their lands, which culminated in removing them altogether from the decision-making process affecting their land.
- The regime established under the 1902 Act was, initially at least, a distinct improvement over the 1895 regime in a number of respects, as we have detailed in this chapter.
- The enactment of legislation in 1905 and 1907, which replaced the Māori land councils with land boards, followed by a gradual reduction of specific Māori representation on these boards was problematic for Te Rohe Pōtae Māori once the native townships were vested in the boards, as their ability to influence the township’s governance decreased.
- The Native Township Act 1910 and its 1919 amendment, which gave the boards more powers, further undermined the ability of Te Rohe Pōtae Māori to manage their lands.
- The transfer of township land to the Māori Trustee after the boards were dissolved was a lost opportunity to return the control of their lands to Te Rohe Pōtae owners. This omission was aggravated by the enactment of the Māori Reserved Land Act 1955 and the Māori Affairs Amendment Act 1967, both of which only gave more power to the Trustee.
- In failing to consult with Te Rohe Pōtae Māori on the substantive nature of the native townships legislation as it affected them, we found that the Crown undermined the tino rangatiratanga of Te Rohe Pōtae and their mana whakahaere.
- We further found that, in adopting policies and legislation designed to once again open Māori land up for further Pākehā settlement and elevate the rights of lessees, the Crown acted in a manner inconsistent with a number of principles of the Treaty of Waitangi: partnership, reciprocity, mutual benefit, and equity.
- We note that we received evidence that the 2002 settlement has benefited some of the owners of at least the Kārewa and Ōtorohanga native township lands.
15.6.1 Specific findings on Parawai/Te Maika

Our specific findings with respect to Parawai/Te Maika were as follows:

- Establishing a native township on the Parawai/Te Maika site primarily addressed the Crown’s interests, rather than Te Rohe Pōtāe Māori, and provided an avenue for gaining the land when purchase attempts had failed.
- It appears that the Crown took more land for the township than was necessary and that there was very little, if any, consultation with Te Rohe Pōtāe Māori leading up to its proclamation.
- The township was poorly administered, both by the commissioner of crown lands up to October 1908 and then by the land board.
- When the township land was eventually transferred to the Māori King, something that Māori had asked for from the outset, it left them in a position of debt and with a raft of difficult administrative problems to solve. This occurred only when it was clear that the township was not going to thrive as the Crown had envisaged and after Kāwhia Harbour had lost its political and strategic importance to the Crown.
- In failing to consult adequately with the owners of Parawai/Te Maika and to gain their consent to the establishment of a native township on their land, for its administration of the township until 1908, and in failing to assist the land board we found that the Crown acted inconsistently with the Treaty principles of partnership, reciprocity, and mutual benefit, and the article 2 guarantee of tino rangatiratanga. It also breached its duty of active protection.
- The Crown ultimately transferred the ownership of most of Parawai/Te Maika to the Kingitanga in 1929. We consider this action mitigated some of the prejudice arising from its earlier Treaty breaches. At least, it meant Māori regained most of the land taken. The action did not, however, remove all the land’s associated problems, many of which had their origins in the period of direct Crown administration.

15.6.2 Specific findings on Te Puru and Kārewa

Our specific findings with respect to Te Puru and Kārewa were as follows:

- At least some owners requested that some form of township be established on their land at Te Puru and Kārewa. In both townships, the Crown acquired around one-third of the area while planning and surveying for roads and reserves. It did not pay the owners any compensation for these takings.
- We do not know if there was any discussion with the owners of Te Puru about the areas they wanted reserved for their own use, though 10 such reserves were included in the plan. There were no objections to the plan when it was exhibited.
- In Kārewa, around 13 per cent of the total township area was allocated for native reserves. There were several objections to the plan for Kārewa, but all were ultimately withdrawn or dismissed, and no changes to the plan were made.
- In their early years, neither Te Puru nor Kārewa were particularly successful in terms of generating an income for the beneficial owners. Payments to
beneficial owners were slow, and little action seems to have been taken to chase up defaulting lessees. It was not until the Crown decided to buy land that moves were made to re-enter the numerous sections on which lessees were in default of payment.

- Leased sections in Kārewa increased in the 1920s, though it does not appear to have had a corresponding increase to the owners’ income. From the mid-1950s onwards, some Kārewa sections were permanently alienated. From 1967 to 1975, between eight and nine acres were freeholded, yielding just over $29,000. By the mid-1980s, 50 sections – of a total 167 – had been sold.

- In proclaiming Kārewa as a township under the 1895 Act despite these views, we found that the Crown acted inconsistently with the Treaty principles of partnership, reciprocity, and mutual benefit and the article 2 guarantee of tino rangatiratanga. The Crown also acted in breach of its duty to actively protect the tino rangatiratanga of Te Rohe Pōtae Māori and their ability to retain this authority over their land. We make no similar findings with respect to Te Puru other than our general findings regarding legislation as outlined in section 15.3.8.

15.6.3 Specific findings on Ōtorohanga

Our specific findings with respect to Ōtorohanga were as follows:

- We found that the owners’ consent to Ōtorohanga being proclaimed as a native township was conditional on the nature and identity of the third-party entity charged with administering it.

- We do not have sufficient information to come to a general conclusion on the success or otherwise of the leasing regime in Ōtorohanga. As in other townships, many leases in Ōtorohanga were perpetually renewable. These leases not only depressed the income flowing to owners, but also made it much more difficult for the owners to regain direct control of their lands.

- Rather than being leased, a significant proportion of Ōtorohanga was ultimately sold. From the evidence presented to the Tribunal, it is clear that for far too long the Crown’s emphasis was on pushing Māori to sell.

- We found that the Crown acted in a manner inconsistent with the Treaty principles of partnership, reciprocity, and mutual benefit and it failed in its article 2 guarantee of tino rangatiratanga and its duty of active protection over the tino rangatiratanga of Te Rohe Pōtae Māori and of the land itself. Furthermore, in bowing to lessee pressure to acquire the freehold of their leased lands, and at times actively intervening to assist lessees to purchase their sections, the Crown breached the duty of active protection of the land, and the article 3 principle of equity.

15.6.4 Specific findings on Te Kūiti

Our specific findings with respect to Te Kūiti were as follows:

- Leasing uptake in Te Kūiti started reasonably well, though we saw very little evidence to indicate how much income accrued to Māori. There was evidence
of the slow distribution of income to the beneficial owners, with contemporary accounts placing the blame on the Crown.

- During the 1920s, the pace of permanent alienation increased considerably. By March 1924, the Crown had purchased around 60 per cent of the total township area as gazetted in December 1904. A later record, dating from August 1926, gives the number of sections purchased as 421, for a total Crown outlay of £131,469. The evidence does not show how many beneficial owners there were by this time, nor how much of the proceeds were paid over to them.

- The fact that so many owners sold their interests to the Crown in the 1920s is of concern. Evidence of how much of the sale proceeds actually reached the owners has not been produced, either by the Crown (who hold these records) or the claimants. As to Māori regaining direct control of the land themselves, there was little chance at that time, of the land being revested.

- We found that the Crown acted in a manner inconsistent with the Treaty principles of partnership, reciprocity, and mutual benefit with respect to the manner with which the Te Kūiti township was administered, and it failed in its article 2 guarantee of tino rangatiratanga and its duty of active protection over the tino rangatiratanga of Te Rohe Pōtae Māori and of the land itself. Furthermore, in bowing to lessee pressure to acquire the freehold of their leased lands, the Crown breached the article 3 principle of equity.
CHAPTER 16

TE HANGAHANGA TAITARA:
TITLE RECONSTRUCTION IN THE TWENTIETH CENTURY

We would like to wind back this entire system and have our land returned to us . . . [w]hat we have instead is completely opposed to what the Treaty of Waitangi promised.'

—Lamour Clark

16.1 Introduction
Te Rohe Pōtae Māori had been assured in the 1880s that, in allowing the Native Land Court to operate within their rohe, they could expect to receive a secure form of title that would let them continue to engage with the emerging colonial economy. Instead, as explored in chapter 10 of part II of this report, they received a title which commodified their land and rendered it practically useless except to alienate either by lease or sale. It was also a form of title that was subject to constant legislative change, creating much insecurity for the owners and for potential developers.

As examined in chapter 10, succession rules also meant that as the Māori population and alienation of Māori land increased in tandem, larger numbers of Māori owners were being concentrated within smaller blocks. At the same time, due to the effects of partitioning – frequently the result of Crown purchasing – these blocks were also owned in ever increasingly smaller and more fractionated shares.

With no effective models of collective governance available in terms of the Māori land legislation (other than the incorporated owner model and the short-lived land councils), Māori owners struggled to develop their lands. Thus, by the end of the nineteenth century it had become obvious to both Māori and the Crown that the native land tenure system was deeply flawed.

16.1.1 The purpose of this chapter
The previous chapters in this part of the report have examined the actions, policies, and legislation of the Crown during the twentieth century with respect to the establishment and operations of the Māori land councils and boards and how these entities managed Māori land titles on behalf of the owners with respect to

1. Claimant Lamour Clark said this whilst talking about the effect trusts and incorporations had on Māori land interests following the fragmentation of land: doc M23 (Clark), pp 7–8.
alienations (leases and sales) of their land. This chapter examines how successful, in Treaty terms, the Crown's policies and legislation that sought to reform and simplify titles were.

The Crown introduced a variety of title reconstruction measures in the twentieth century, including large-scale consolidation schemes. In Te Rohe Pōtae, for example, over 400,000 acres were placed under the Maniapoto Consolidation Scheme. In the second half of the century, the Crown's title reconstruction efforts turned towards cleaning up what it regarded as 'cluttered' titles, removing interests deemed 'uneconomic' from ownership lists (through 'conversion') and, in 1967, deeming Māori freehold land owned by four or fewer owners to be general land (a procedure known as 'Europeanisation').

This chapter examines efforts by both the Crown and Te Rohe Pōtae Māori to remedy title difficulties in the twentieth century. It considers both the extent to which these measures were Treaty-compliant and whether they accorded with expectations of Te Rohe Pōtae Māori to be able to develop their land as they wished.

16.1.2 How this chapter is structured
This chapter begins by setting out the issues as informed by previous Tribunal reports and the submissions of the claimants and the Crown. The chapter then considers the background to title reconstruction, examining the rationale for the dramatic title reconstruction measures taken by the Crown in the twentieth century. It proceeds to discuss these measures: first consolidation, which was the focus of title reconstruction efforts in the first half of the century, followed by the various measures employed to simplify titles in the second half of the century, with a particular focus on conversion and Europeanisation. The chapter concludes by briefly examining the gradual shift back to collective governance of Māori land in the second half of the twentieth century, primarily through the use of incorporations and trusts.

16.2 Issues
16.2.1 What other Tribunals have said
Only the Central North Island Tribunal has considered the complete range of title reconstruction measures undertaken by the Crown in the twentieth century, although others have addressed various aspects. The Central North Island Tribunal found that, by the 1890s, it was already apparent to the Crown that there were clear problems with the title system it had provided for Māori land.²

The Central North Island Tribunal considered, for example, that consolidation was an 'unusual' process on several counts:

the initiatives in such schemes lay with the Native Minister or the court, not with the Maori owners;
the process was an odd hybrid, involving executive approval and confirmation, with the right to seek amendment to a scheme resting with the Governor (and later the Native Minister);
there was no provision for the involvement or consent of landowners; the court was merely to prepare a scheme and 'make all necessary inquiries'.

The necessity for such provisions, the Tribunal considered, underlined 'the remarkable title problems which it [consolidation] was designed to address'. The Tribunal also found that: 'The Crown's failure to ensure that schemes were completed expeditiously, and to deploy sufficient staff to ensure that this happened, was inconsistent with its obligation of active protection.'

The Central North Island Tribunal acknowledged that the Crown made genuine attempts in the twentieth century to mitigate the prejudice caused by individualisation of title, and that its 'attempts to mitigate Treaty breaches through various forms of title simplification were well-intentioned and sustained.' However, the Tribunal was also clear that good intentions were not enough:

Solutions to title dilemmas like conversion and Europeanisation, where they removed choice from Maori owners, compounded rather than mitigated the original breach. A solution as drastic as the removal of property rights should have been a warning to the Crown that it was the wrong solution.

The Tribunal discussed the compulsory nature of the Europeanisation of land provisions in the twentieth century legislation, noting there were limited protections at the point of registration: 'if there were outstanding charges on the land, such as survey liens or charging orders, these had to be paid before a status declaration could be registered.' It therefore concluded that the provisions for conversion and Europeanisation contained in the Māori Affairs Act 1953 and its amendments were in breach of the principles of the Treaty of Waitangi under article 2 including the Crown's duty of active protection and, due to their discriminatory application, the article 3 rights of Māori.

16.2.2 Crown concessions
The Crown has made only one concession with respect to title reconstruction issues, which relates to its compulsory acquisition of 'uneconomic interests', acknowledging:

that between 1953 and 1974 the Māori Trustee was empowered to compulsorily acquire what were legally deemed to be ‘uneconomic interests.’ This resulted in some Te Rohe Pōtae Māori being deprived of their turangawaewae, and was a breach of the Treaty of Waitangi and its principles.\(^\text{10}\)

In addition, as outlined in chapter 10, the Crown has also accepted ‘that the individualisation of Māori land tenure provided for by the native land laws made the lands of Te Rohe Pōtae Māori iwi and hapū more susceptible to fragmentation, alienation and partition, and that this contributed to the undermining of tribal structures in Te Rohe Pōtae. The Crown has conceded ‘that its failure to protect these tribal structures was a breach of the Treaty of Waitangi and its principles.’\(^\text{11}\)

### 16.2.3 Claimant and Crown arguments

More than 60 claims in this inquiry contain grievances related to land development.\(^\text{12}\) The claimants and Crown agreed that Māori landowners faced a variety of issues with the titles they were awarded by the Native Land Court. They differed, however, on the degree to which the Crown was responsible for the range of issues facing Māori landowners in the twentieth century. Claimant counsel argued that the Crown was primarily responsible, submitting that: ‘[t]he twentieth century saw the slow playing out of the consequences of the Crown’s breaches of the Treaty and its principles throughout the nineteenth century in the District Inquiry.’\(^\text{13}\)

While the Crown accepted that its land title system resulted in title fragmentation and excessive partitioning, counsel argued that: ‘[o]ther factors, including a decreased land base, an increasing Māori population and wider societal changes such as urban migration, also contributed to the need for land title reform.’\(^\text{14}\) These factors, the Crown emphasised, were not within its control.\(^\text{15}\)

The parties in this inquiry disagreed about which of the objectives were the primary drivers of the Crown’s decision to implement consolidation in Te Rohe Pōtae. The claimants argued that ‘the issue of unpaid rates on Māori Land was

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12. Wai 1112, Wai 1113, Wai 1439, Wai 2351, Wai 2353 (submission 3.4.226); Wai 729 (submission 3.4.240); Wai 1469, Wai 2291 (submission 3.4.228); Wai 2014 (submission 3.4.208); Wai 784 (submission 3.4.147); Wai 1482 (submission 3.4.154(a)); Wai 1327 (submission 3.4.249); Wai 1448, Wai 1495, Wai 1501, Wai 1502, Wai 1592, Wai 1804, Wai 1899, Wai 1900, Wai 2125, Wai 2126, Wai 2135, Wai 2137, Wai 2183, Wai 2208 (submission 3.4.237); Wai 1588, Wai 1589, Wai 1590, Wai 1591 (submission 3.4.143); Wai 1995 (submission 3.4.144); Wai 2352 (submission 3.4.219); Wai 1974 (submission 3.4.192); Wai 1975 (submission 3.4.201); Wai 1147, Wai 1203 (submission 3.4.151); Wai 586, Wai 753, Wai 1996, Wai 1585, Wai 2020 (submission 3.4.204); Wai 1376 (submission 3.4.223); Wai 1500 (submission 3.4.160); Wai 1805 (submission 3.4.132); Wai 1823 (submission 3.4.178); Wai 399 (submission 3.4.159); Wai 762 (submission 3.4.170); Wai 928 (submission 3.4.175(a)); Wai 1640 (submission 3.4.191); Wai 993, Wai 1015, Wai 1016, Wai 1058, Wai 1115, Wai 1586, Wai 1608, Wai 1965, Wai 235 (submission 3.4.140); Wai 1992 (submission 3.4.173); Wai 1867 (submission 3.4.162); Wai 2270 (submission 3.4.133); Wai 2273 (submission 3.4.141); Wai 2345 (submission 3.4.139).
15. Submission 3.4.308, p.4.
at the forefront of the rationale behind the implementation of the Maniapoto Consolidation Scheme. Claimant counsel rejected the Crown’s argument in its initial statement of positions and concessions that consolidation was ‘remedial in nature and consistent with Treaty principles’.\(^{16}\) By contrast, the Crown emphasised that consolidation ‘was the main way of dealing with the legal and spatial fragmentation of Māori land ownership’, and was also intended to facilitate finance and development. Crown counsel acknowledged, however, that ‘Ngata considered local bodies’ demands for the payment of outstanding rates to be one of the most pressing issues’ in Te Rohe Pōtae. The Crown also ‘considered that making idle land productive was key to solving the non-payment of rates’.\(^{17}\)

The claimants submitted that what had happened in the hui held in Te Rohe Pōtae when the Native Lands Consolidation Committee visited in April 1928 ‘did not amount to consensus and collaboration on the implementation of consolidation schemes as required by a Treaty partnership of good faith’. Rather, they claimed that the Crown, particularly by suggesting that consolidation could provide a remedy to their historical grievances, ‘placed a significant amount of pressure on Te Rohe Pōtæ Māori to accept the proposed rates compromise and consolidation scheme’, which Māori opposed.\(^{18}\) Counsel further argued:

> [a]ccepting consolidation was the best of a number of options that Te Rohe Pōtæ Māori were unilaterally offered and forced to engage with. Although agreement was reached, Te Rohe Pōtæ Māori had to forego key demands that related to a number of historic promises that had been made to secure settlement in the district.\(^{19}\)

Counsel further argued:

> Crown counsel did not agree that Te Rohe Pōtæ Māori were placed under significant pressure, submitting that it was nevertheless ‘reasonable that the Crown required agreement to various conditions given the substantial investment of funds it was making’.\(^{20}\)

The claimants submitted generally that the Crown’s implementation of consolidation ‘significantly increased the costs involved and minimized the benefits to Te Rohe Pōtæ Māori’ and ‘amounted to a breach of contract’. The claimants were particularly critical of the amount of time it took to implement consolidation in Te Rohe Pōtæ.

Crown counsel accepted that there were delays, but cautioned that ‘the allegation of delay and the allegation the Crown was responsible for it need to be assessed with care’.\(^{21}\) The Crown emphasised that consolidation was a complicated and relatively novel endeavour.

The claimants further argued that one of the most significant reasons for the slow implementation of consolidation in Te Rohe Pōtæ was that it ‘required

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\(^{16}\) Submission 3.4.114, p 8.
\(^{17}\) Submission 3.4.308, p 14.
\(^{18}\) Submission 3.4.114, pp 14, 15.
\(^{19}\) Submission 3.4.114, p 15.
\(^{20}\) Submission 3.4.308, pp 15–16.
\(^{21}\) Submission 3.4.308, p 20.
extensive resourcing which was not forthcoming’. As a result, they submitted, its implementation was ‘delayed and frustrated’. Problems with resourcing, and a dispute over how to settle the Crown’s expenditure on the scheme and the associated rates and survey lien compromises were also an issue for claimants.

By contrast, the Crown submitted that, ‘on the whole’, the implementation of consolidation in Te Rohe Pōtae was ‘fair and beneficial’ to Māori. Crown counsel accepted that ‘some blocks remained in the Maniapoto Consolidation Scheme for a considerable period of time’ but emphasised that ‘consolidation proved to be a difficult and complicated exercise’. Despite those delays, the Crown submitted that ‘the implementation of the Maniapoto consolidation scheme nonetheless proceeded in a reasonable manner’. The Crown argued that it acted with good intentions and with the best interests of the landowners in mind, and could not have foreseen all of the factors complicating the implementation of the scheme. Some allowance should be made for the fact that this was a new endeavour and the Crown did not have the benefit or prior experience to assist it. Inevitably, it took time for officials to develop the necessary skills and expertise.

The claimants also criticised the methods by which the Crown attempted to address title issues, which they submitted prioritised ‘national interests’ over those of Te Rohe Pōtae Māori. They contended that the Crown ‘failed to address the issue of land loss that lay at the heart of the problem and instead continued to facilitate the individualisation and alienation of land’. Counsel submitted that, at best, the Crown’s efforts ‘provided some temporary relief from the array of difficulties Māori Land owners faced. However, on the whole they resulted in further losses, including further land loss and displacement.’

The claimants submitted that ‘Te Rohe Pōtae Māori saw very few, if any, positive outcomes from consolidation schemes’. Instead, the Maniapoto Consolidation Scheme ‘significantly eroded their land rights for an extraordinarily long period of time’. By contrast, the Crown submitted that the scheme ‘yielded some benefits for the landowners involved in it, including ‘the grouping of family interests, the creation of some individual holdings of an economic size, the facilitation of the transfer of land through lease and sale and the payment of rates’. Crown counsel acknowledged, however, that the scheme’s ‘modest results in terms of title reform

27. Submission 3.4.114, p 2.
30. Submission 3.4.308, p 25.
were compromised by the ongoing process of succession, exacerbated in part by an increasing Māori population’.  

The Crown argued that it introduced its title reconstruction measures in good faith, but ‘recognises that they sometimes had unintended, negative consequences’. Consolidation, Crown counsel submitted, was a ‘well intended’ initiative on the part of the Crown. Crown counsel emphasised, however, that not all of those consequences were ‘reasonably foreseeable’ and that the Crown’s conduct should be assessed on that basis.

In this inquiry, the Crown has conceded that provisions (such as those in the Māori Affairs Act 1953 and its amendments) allowing the Māori Trustee to compulsorily acquire uneconomic land interests breached the principles of the Treaty. The Crown argued, however, that there is insufficient evidence before the Tribunal for it to assess the extent and value of land compulsorily acquired through conversion in the district. The claimants contended that while the evidence does not distinguish between compulsory conversion and live-buying, it does indicate that ‘the Waikato Maniapoto District was the most active in the country’, thus conversion had ‘a disproportional effect’ in Te Rohe Pōtae. Furthermore, because the Waikato–Maniapoto district office only retained a small proportion of the interests it acquired, fewer shares ‘would have been returned to the original owners under the Māori Affairs Amendment Act 1987’. As a result, ‘more owners were permanently alienated from their land interests’.

The claimants pointed out that the Crown’s concession does not extend to the provisions which allowed live-buying of uneconomic interests. The claimants submitted that live-buying was inconsistent with the Crown’s duty of active protection as it was premised ‘on the assumption that some Māori no longer required land in their traditional rohe’. The Crown made no direct submission on live-buying.

In terms of the ‘Europeanisation’ of Māori land, the Crown noted the impact of the 1974 amendment authorising the voluntary conversion of the title back to Māori land. Crown counsel submitted that given the advantages conferred by general title, some Māori landowners wanted their land to remain general land. Crown counsel argued that an automatic return to Māori freehold land, ‘without consultation or notice, . . . would have removed the ability of owners to decide whether they wanted their land restored to Māori land’. As claimant counsel pointed out, such a change was not unprecedented: the original Europeanisation

32. Submission 3.4.308, p 1.
33. Submission 3.4.308, p 25.
34. Submission 3.4.308, p 2.
35. Submission 3.4.308, p 1.
36. Submission 3.4.308, p 36.
38. Submission 3.4.114, p 29.
40. Submission 3.4.308, p 43.
provisions in the 1967 Act had operated without the consent of Māori landowners. Furthermore, when the Crown moved in 1975 to change the status of lands held by Māori land incorporations back to Māori freehold land after they had been compulsorily Europeanised by the 1967 Act, it did so on an automatic basis.

Ultimately, the Crown argued that, while there was no obvious solution to the problems plaguing Māori land title in the twentieth century, the solutions that were used ‘have to some extent allowed Māori to control and manage the land they have retained’. The Crown therefore acted consistently with its obligations under article 2 of the Treaty.

16.2.4 Issues for discussion

Based on the arguments advanced by claimants and the Crown, previous Tribunal findings, and the statement of issues prepared for this inquiry, we have identified the following issues relevant to Crown efforts to address the problems of title in the twentieth century:

- What were the Crown’s motivations and objectives in pursuing title reconstruction measures in the twentieth century?
- Did the Crown adequately consult and gain the consent of Te Rohe Pōtae Māori prior to, and during, the implementation of title reconstruction measures?
- How was the Crown’s primary title reconstruction measure in Te Rohe Pōtae, consolidation, implemented and was its implementation and operation consistent with the principles of the Treaty of Waitangi?
- Did the Crown’s title reconstruction measures from 1953 to 1993 remedy the title issues of the native land tenure system introduced into Te Rohe Pōtae in the nineteenth century?

16.3 What was the Rationale for Māori Land Title Reform in the Twentieth Century?

As noted above, problems stemming from the titles awarded by the Native Land Court in the nineteenth century prompted reforms in the twentieth century. The individualisation of title without any effective provision for community ownership or governance of land resulted in prejudice for Māori landowners, encouraging alienation and impeding utilisation or development. In particular, fragmentation of titles and fractionation of interests due to excessive partitioning and the court’s succession rules were posing serious challenges for Māori who wished to utilise their land.

In 1906, Premier Ward acknowledged that the ‘large areas of Native land lying idle and uncultivated’ were ‘not entirely the fault of the Maori owners’. He

41. Submission 3.4.370, pp 23–24.
42. Māori Purposes Act 1975, s 17; doc A123, p 193.
43. Submission 3.4.308, p 1.
recognised the chilling effect that unstable titles could have on development: ‘what person would cultivate land on the off chance that he might afterwards get a title to it?’ He further acknowledged that individualisation was not possible in every case as ‘even small and worthless blocks are overloaded with owners’. Ward therefore argued that the solution was ‘to partition the lands according to family groups, or to consolidate the holdings by a system of incorporation under an efficient management’. The goal of such provisions would be ‘to put the Natives in a position to deal with their lands, or use them to the best advantage’.

As was demonstrated in chapter 14, the partitioning of land after purchasing individual interests was how the Crown (and for a time private purchasers) acquired Māori land for settlement and as such this procedure did not work to stem the alienation of land. Furthermore, where owners wanted to retain their land, it became too difficult to secure development finance to develop the blocks, regardless of whether they were incorporated (a matter we discuss in chapter 17). Thus, these measures did little to assist the issues the land tenure system had created.

Partitioning led to the further fragmentation of titles as was evident by the early twentieth century in Te Rohe Pōtae. The Native Land Commission, for instance, found in 1907: ‘We are not aware of any Native district, which until 1888 was closed to the law-courts, where the Native Land Court has been so active and where subdivision has proceeded so far as in this portion of the Rohe-Potae.’

The commission pointed to Kinohaku East, Hauturu East and West, Pirongia, and Rangitoto–Tuhua as areas that were particularly fragmented.

Alongside the fragmentation of titles, ownership interests were increasingly fractionating, due both to the succession rules adopted by the court and an increase in the Māori population in the early twentieth century. In practice, fractionation meant that more and more owners were holding interests in blocks. In addition, owners often held their (typically small) interests, known as shares, in multiple, geographically scattered blocks, making it even more difficult to put them to practical use.

Succession cases constituted the major part of the Native Land Court’s work after the completion of title investigations. Between 1911 and 1921, for instance, the Ōtorohanga court received 2,778 applications for probate, letters of administration, and intestate court succession orders. Each succession case had the potential to bring a number of new owners into a block.

Other issues facing Te Rohe Pōtae Māori included:

- **Survey debts and unsurveyed partitions**: The Native Land Court process left many Māori landowners saddled with survey debts. For the owners of small, inaccessible blocks, these charges could be a particular burden. While a large number of partitions were unsurveyed, this created its own problems, particularly for attracting finance. The Native Land Commission recorded in 1907, for instance, that 1,104 blocks were awaiting surveys in Te Rohe Pōtae, while

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44. AJHR, 1906, B-6, pp xiii–xiv (doc A146, pp 395–396).
45. AJHR, 1907, G-1B, p 2.
‘further partitions affecting 125 blocks or existing subdivisions have been lodged with the Registrar of the Native Land Court at Auckland and await hearing.’ As at 1930, Te Rohe Pōtai Māori still owed £19,294 of survey liens and accumulated interest – around 10 per cent of the national total.\footnote{A146, p 388; AJHR, 1907, G-1B, p 10.}

- **Unprocessed successions:** Although successions formed the bulk of the court’s work after the completion of title investigations, a large number of succession cases processed by the court occurred several years – and sometimes decades – after the death of the owner. Much of the early work undertaken in implementing consolidation in Te Rohe Pōtai was concerned with the preparation and processing of a large number of outstanding successions.

- **Access to finance and development difficulties:** As will be explored in chapter 17, Te Rohe Pōtai Māori landowners experienced considerable difficulty gaining access to finance and developing their lands. Lenders – both private and State – were reluctant to lend on Māori freehold land. Furthermore, because of the large number of unsurveyed partitions and significant outstanding survey costs, few titles were registered in the land transfer system, as the law required, further compounding the situation.

- **Outstanding rates:** The rating of Te Rohe Pōtai Māori land was a contentious issue in the early twentieth century. Based on assurances given by the Crown during the 1880s negotiations, Te Rohe Pōtai Māori largely refused to pay the rates imposed by local authorities. Over the five-year period between 1924 and 1928, Māori land in Waitomo county was charged an average of £4,616 in rates per annum, while the 34,289 acres of Māori land on the rating roll in Otorohanga county was charged an average of £1,273 per annum. The Waitomo County Council recovered, on average, just 1.32 per cent of this amount each year during this period; the Otorohanga County Council was slightly more successful, recovering an average of 3.06 per cent.\footnote{A69 (Hearn), p 58.} Local authorities became increasingly restive about the level of outstanding rates on Māori land during the 1920s. Te Rohe Pōtai local authorities were especially active in pushing central government to strengthen the legislative provisions which allowed them to recover outstanding rates. In particular, they wanted the power to take Māori land as payment for rates so that it could be ‘brought into immediate productivity’.\footnote{A69, p 33.}

- **Scale of alienation and quality of remaining land:** A substantial area of Te Rohe Pōtai Māori land was alienated after the Native Land Court was introduced to the district in 1886. By 1922, Te Rohe Pōtai Māori owned just 28 per cent of their original land holdings.\footnote{A21 (Douglas, Innes, and Mitchell), pp 129–132.} We found in chapters 13 and 14 that the Crown was responsible for the vast majority of land alienations in the
district, either through its purchasing activities, through its legislative regime, or through its failure to monitor and intervene in the operations of the land boards. The remaining lands in Te Rohe Pōtae Māori ownership, moreover, were generally low quality and had to provide for a growing Māori population, as Arthur Ormsby explained:

Of the two and a-half million acres acquired by the Crown in this district it would be a very liberal estimate to say that it was carrying a settled European population of one to the square mile at the present time, while the half-million or thereabouts, still owned by the Natives, is supporting a Maori population of five or six to the square mile...52

The following section examines in detail the consolidation schemes and exchanges that took place as a result, these being the major measure adopted by the Crown to ameliorate title difficulties in Te Rohe Pōtae.

16.4 Consolidation, 1928–53

While the primary policy for the Crown was Pākehā land settlement during the period from 1900 to the 1930s, it is clear that title reconstruction became a driver for Native Minister Sir Āpirana Ngata, who later wrote to the Minister of Lands in 1929:

[t]he operation of the Native Land Court in its ordinary jurisdiction has resulted by partition and succession in the scattering of interests and the accentuation therefore of the evils of communal ownership. These are at the bottom of rating and taxation difficulties, of the inability of owners to utilise their lands properly, of the difficulty and expense of acquiring land for settlement, and where the Crown has acquired comparatively small scattered areas the waste of loan moneys.

In Ngata’s opinion, the blocks defined by the court had ‘not been governed by considerations of boundaries suitable for fencing lines or of sections economically large enough for farming’. Rather, he argued, the court had been swayed by custom and individual demands for partitions.53 In other words, Ngata believed that economic title would never be attained via the route the Native Land Court had offered.

Consolidation schemes, along with development schemes (see chapter 17), both driven by Ngata, became the primary Crown policies (outside of promoting leasing and sale) to deal with Māori land title issues in the first half of the twentieth


53. Native Minister to Minister of Lands, 16 September 1929 (doc A69(a) (Hearn document bank), vol 8, pp 116–117); doc A69, p 57.
century. For Ngata, the purpose of consolidation, he explained in 1931, was ‘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.’ He also said it was ‘the most comprehensive method of approximating the goal of individual or, at least, compact family ownership.’ The reasons behind the Crown’s implementation of consolidation schemes are discussed further in section 16.4.2.

What is important here is that Ngata trialled the first consolidation scheme, in the township of Waipiro on the East Coast, during the decade from 1910 to 1920. This was followed by a much larger scheme in Te Urewera in the early 1920s. By late 1927, encouraged by the operation of these schemes and by Ngata, the Crown settled on such consolidation schemes as the solution to problems both with the titling and rating of Māori land in Te Rohe Pōtae.

Native Minister Coates announced the Maniapoto Consolidation Scheme in the House in November 1927 and directed the Native Land Court to prepare a consolidation scheme on 23 March 1928. A hui was held the following month at which Te Rohe Pōtae Māori present agreed to, among other things, the consolidation scheme for their lands.

The Maniapoto scheme operated on-and-off from 1928 until 1953. It encompassed an area of 407,125 acres, and included 6,122 titles and 26,580 owners. After an initial burst of activity, work slowed in the mid-1930s and ceased entirely for long periods afterwards. Most consolidation orders were made in a series of eight instalments between 1930 and 1941, though very few were completed due to the expense of conducting the necessary surveys. By January 1939, only 18 of the 593 consolidated titles in Te Rohe Pōtae had been completed and signed by the court.

After the Second World War, the Crown expressed some interest in reviving consolidation to meet growing demands from Māori to complete the existing schemes and from Pākehā to open up ‘idle’ Māori land. Limited consolidation work resumed in Te Rohe Pōtae in 1951–52, confined to a small number of blocks, largely to assist housing subdivisions and development. However, the resumption was short-lived: by 1953, the Crown had decided to abandon its large-scale consolidation schemes, although it turned to other methods to simplify title which sought similar results. Applications to the court regarding incomplete schemes were withdrawn, and consolidation efforts were redirected ‘to lands which had been or were being developed and to those cases in which consolidation was necessary to allow the “effective settlement” of the land once developed.’

54. AJHR, 1931, G-10, p ii; doc A69, p 22.
55. AJHR, 1931, G-10, p ii; doc A69, p 23.
56. Document A69, pp 44, 47.
57. Document A69(b) (Hearn summary), p 5.
61. Document A69, p 120.
16.4.1 Overview of legislative provisions for consolidation and the Maniapoto consolidation scheme

As early as 1894, native land legislation had allowed the court to effect exchanges of land interests between Māori and, on application of the governor, the Crown.\(^{62}\) The purpose of such provisions (and others allowing the court to intervene in partitions) was ‘to mitigate the effects of multiple ownership, by translating owners’ undefined shares in blocks into an equivalent section of land.’\(^{63}\)

Consolidation schemes were essentially ‘exchanges’ on a much larger scale. They were first provided for under the Native Land Act 1909. Sections 130–132 allowed the Native Minister to apply to the court ‘to prepare a scheme of such consolidation with respect to any specified area or areas of Native land.’ After producing the scheme, the court was to submit the scheme to the governor for approval, who was to assess whether the scheme was ‘just and equitable and . . . in the public interest’. If approved, the court was to make ‘all necessary orders’ to affect the scheme. In doing so, the court had what the Central North Island Tribunal characterised as ‘absolute discretion’: it was not required to ‘proceed judicially or in open court’, and there was no provision for appeal.\(^{64}\)

The 1909 Act also gave the court the power to treat land, where landowners of adjoining blocks of land were the same, as a ‘single area owned by them in common’ and thereby make a partition order.\(^{65}\) If some landowners’ undivided interests were too small to partition and the court considered it ‘inexpedient’ or impractical to partition the land, the court could award owners a parcel of land that was of either greater or lesser value to that to which they were entitled.\(^{66}\) However, an owner could not be awarded a parcel of land that was less than two-thirds of the value to which they were entitled.\(^{67}\)

The legislative provisions for consolidation schemes were amended several times in the first half of the twentieth century.\(^{68}\) When the Maniapoto consolidation scheme began, the operative provisions were contained in the Native Land Amendment and Native Land Claims Adjustment Act 1923. These provisions were subsequently superseded by largely similar provisions in the Native Land Act 1931. Under these later Acts, the Native Minister was responsible for both initiating and approving consolidations schemes. The schemes were also, by then, no longer limited to Māori land, and could include ‘any other Native land or any land or interests owned by the Crown or by any European.’

The following section considers five aspects of the Maniapoto consolidation scheme: the rationale and objectives, the extent of consultation with Māori prior to the implementation, the fairness to Māori of the implementation, the outcomes of consolidation, and alternatives to consolidation schemes.

\(^{62}\) Native Land Court Act 1894, ss 14(3), 44–45.
\(^{63}\) Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 727.
\(^{64}\) Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 729.
\(^{65}\) Native Land Act 1909, s 119.
\(^{66}\) Native Land Act 1909, s 120(1).
\(^{67}\) Native Land Act 1909, s 120(2).
\(^{68}\) Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 729.
### 16.4.2 Why did the Crown implement consolidation in Te Rohe Pōtae?

Consolidation was intended to serve multiple purposes. By concentrating geographically dispersed interests within single blocks, the Crown hoped that consolidation would encourage and facilitate the alienation and productive utilisation of land. Development was a particular focus; Ngata believed that consolidation offered the opportunity ‘to make the new holdings conform to modern requirements, practicable fencing boundaries, water supply, aspect, and so forth: also to adjust the roading of the area; and, with the consent of the Crown and private owners, to effect exchanges of mutual benefit.’

Ngata added that the Crown and ‘private owners’ also stood to benefit: the Crown by having its undivided interests consolidated, and private owners by ‘improving their boundaries or in collecting round their holdings isolated Native interests purchased by them.’ Local authorities would also benefit: improved productivity of Māori lands would increase the rateability of those lands, while more certain ownership would make it easier for local authorities to secure payment of rates.

Rating clearly was a significant factor in the Crown’s decision to proceed with consolidation in Te Rohe Pōtae. In the mid-1920s the Crown was under increasing pressure from local authorities in Te Rohe Pōtae concerned about unpaid rates on Māori land. In introducing the Native Land Amendment and Native Land Claims Adjustment Bill to the House in November 1927, Prime Minister Coates described the issue of rating as the ‘most important question.’ He presented consolidation as the solution. It was intended to provide at least some relief to local authorities from rating difficulties in the future. In a letter to the Waitomo County Council in May 1928, Coates explained that consolidation would ‘give the Natives workable and negotiable titles under which they cannot have any legitimate excuse for not paying rates in the future.’ In addition, as will be detailed in section 16.4.3, the issue of outstanding rates was a particular focus of the Crown’s hui with Te Rohe Pōtae Māori and local authorities in April 1928. Jane Luiten pointed out that, at those hui, ‘the threat of future local body prosecution for rates was used by the [consolidation] committee to persuade Ngati Maniapoto into accepting the scheme; and, conversely, . . . the prospect of guaranteed rates once consolidation was effected, was held out to local bodies for the same purpose.’

However, rating was not the only factor driving consolidation in Te Rohe Pōtae. For the Crown, consolidation also offered the opportunity to solve not only the problem of outstanding rates, but also the perceived problem of ‘idle’ Māori land. Even when the Crown was talking up the benefits of consolidation to local authorities in terms of rating, Ministers and officials were also careful to emphasise that,

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69. Document A69, p 571.
70. AJHR, 1931, G-10, ii; doc A69, p 22.
71. AJHR, 1931, G-10, ii; doc A69, p 22.
73. Native Minister to chairman, Waitomo County Council, 2 May 1928 (doc A24 (Luiten), p 144).
74. Document A24, p 144.
in order to improve the rateability of Māori land, it was first necessary to make Māori land titles usable so that the land could be settled and developed. In a 1928 letter to John Rolleston, the Member of Parliament for Waitomo, for instance, Coates explained that consolidation was set up ‘with a view to the better utilisation of their lands.’ This did not necessarily mean that it should be Māori who utilised those lands. Several months earlier, Coates had told the 1927 deputation of local authorities that: ‘Consolidation embraced everything. The ultimate object was to get the land settled and if the Maori would not settle then someone else would have to take it up.’ As time went on, however, officials came to view consolidation explicitly as a way to assist Māori to retain their land. In 1941, for instance, the Under-Secretary of the Native Department described consolidation as a means of awarding Māori ‘compact and economic areas suitable for their own occupation but not for sale.’

16.4.3 The Maniapoto consolidation scheme

16.4.3.1 Did Te Rohe Pōtae Māori consent to the consolidation scheme?

Under the Native Land Amendment and Native Land Claims Adjustment Act 1923 (as well as earlier provisions), the Crown was not required to consult with Māori before consolidation began, nor to gain their consent. In practice, of course, consolidation of individual blocks could not easily proceed without involving the relevant owners. However, this did not mean that all individual owners were consulted when schemes were first mooted. The Crown accepted that, in Te Rohe Pōtae, individual owners were not consulted prior to the commencement of the Maniapoto Consolidation Scheme. But it argued that ‘the process it adopted ensured that there was a considerable level of consent, including consent at the level of tribal leadership.’

For Te Rohe Pōtae Māori, the primary consultation on consolidation was at a hui held at Te Tokanga-nui-a-noho in Te Kūiti on 12–13 April 1928. By this time, however, the Crown had made several key steps to initiate consolidation in the district. The Crown had actually decided to proceed with consolidation in Te Rohe Pōtae in October 1927. This decision followed that year’s rating conference and the subsequent deputations to Wellington by both Te Rohe Pōtae Māori and local authorities. The Te Rohe Pōtae Māori delegation included Peter Barton, Wehi Te Ringitanga, Mokena Patupatu and Thomas Hetet, presenting their petition to Native Minister Coates in the same wheelbarrow Stout had used at the sod-turning ceremony for the North Island Main Trunk Railway in 1885. Their petition drew on John Ballance’s promises made to Te Rohe Pōtae Māori at Kihikihi in February 1885, and went on to elaborate:

75. JG Coates to Rolleston, 27 March 1928 (doc A24, p 144).
76. ‘Deputation to the Right Hon the Prime Minister on the subject of Native Ratings’, 19 October 1927, p 7 (doc A24(a) (Luiten document bank), p 914).
77. Under-Secretary to Native Minister, 13 August 1941 (doc A69(a), vol 10, p 158); doc A69, p 571.
78. Submission 3.4.308, p 15.
We firmly believe, Sir, that the Government of New Zealand will not fail to protect and promote the Welfare of the Native People by a just administration of the law and by a generous consideration of all our reasonable representations as promised by the British Government to our fathers in 1884 – Our great trouble today is the question of Rates on our lands and the treatment of the Treaty of Waitangi as a ‘joke’ by the Pakeha.\textsuperscript{79}

The local body delegation was led by W J Broadfoot, mayor of Te Kūiti borough. Broadfoot, along with other representatives, highlighted their concerns regarding the non-payment of rates from Māori land and the utilisation of ‘idle’ Māori land. They put the resolution of the Te Kūiti conference to the Government, being the classification of Māori land into that used by the owners and that which could be ‘taken over’ by the Crown and made available for settlement, with Māori and Pākehā given equal opportunities to apply and get finance for balloted land.\textsuperscript{80} Ngata informed the delegation that title difficulties prevented Māori from using their land, and that inaccuracies in valuation rolls needed to be taken into account before charging orders were made. Following these two deputations, a series of meetings throughout October occurred between local body delegates and Ministers to discuss the final remedy to these issues: title consolidation.

In the end, Coates announced the Government’s intention to undertake consolidation in Te Rohe Pōtae in the House in November 1927, and introduced the Native Land Amendment and Native Land Claims Adjustment Act 1927. It allowed for rates to be liquidated by the Crown as part of consolidation proceedings.\textsuperscript{81}

In the following months, the Crown took a series of other steps:

- In November 1927, Coates established the Native Lands Consolidation Committee, tasked with causing ‘consolidation schemes of Native lands’ in Te Rohe Pōtae and Te Tai Tokerau.\textsuperscript{82} Ngata was subsequently appointed chairman of the committee.\textsuperscript{83}

- In December 1927, Coates directed the Native Department to ‘perfect an organisation qualified and competent to perform the necessary clerical work devolving upon the Native Land Court in undertaking and completing these Consolidation Schemes’.\textsuperscript{84} Staff – including Pei Jones and his brother Michael Rotohiko Jones, both of Ngāti Maniapoto – were transferred to Te Rohe Pōtae in the following months.

- Once he was transferred to Te Rohe Pōtae, Pei Jones prepared a schedule of blocks to be included in the Maniapoto consolidation scheme.

- On 23 March 1928, based on the schedule prepared by Jones, Coates directed the Native Land Court to prepare a consolidation scheme for Te Rohe Pōtae.

\textsuperscript{79} Document A24, p 130.
\textsuperscript{80} Document A 24, p 132.
\textsuperscript{81} Document A24, pp 133–135.
\textsuperscript{82} King Country Chronicle, 10 November 1927 (doc A69, p 44).
\textsuperscript{83} Document A69, p 45.
\textsuperscript{84} Native Minister to Under-Secretary, 14 December 1927 (doc A69(a), vol 1, p 238); doc A69, p 45.
The true extent to which Te Rohe Pōtae Māori had any input into these developments is unclear, although we do know that Pei Jones and Michael Rotohiko Jones were active in in establishing the consolidation schemes. Nevertheless, the significance is clear: before Te Rohe Pōtae Māori were formally consulted about the consolidation of their lands, much of the machinery of the consolidation was already in place.

The hui held at Te Tokanga-nui-a-noho in Te Kūiti on 12 April 1928 was several weeks after the Minister had instructed the court to begin preparing the scheme. There are, unfortunately, only very few accounts of this meeting. The hui was attended by a ‘very large and representative gathering’ of Te Rohe Pōtae Māori, as well as by representatives of Ngāti Tūwharetoa and the Native Lands Consolidation Committee. The latter group included Ngata, Sir Maui Pōmare, Tau Henare, Henare Whakatau Uru (Members of Parliament), Henare Balneavis (private secretary to the Native Minister), Pei Jones (consolidation officer), Darby (Lands and Survey), and W L J Cahill (Waikato–Maniapoto District Māori Land Board).85

According to Coates, the Native Lands Consolidation Committee endeavoured ‘to persuade the King Country Natives to inaugurate a Consolidation Scheme in their territory with a view to the better utilization of their lands’.86 In order to do so, their consent would also have to be gained to achieve the ‘creation of a local organisation to assist in details of the consolidation’ and to ‘[t]he settlement of outstanding rates and survey liens’. The New Zealand Herald reported that, at the outset of the hui, Ngāti Maniapoto were opposed to consolidation and rating, but agreed to pay survey liens.87

Ngata began the hui by explaining why, before undertaking consolidation, it was first necessary to achieve a rates compromise and to write off survey liens:

The basis of every such [consolidation] scheme was the nett individual freehold value of each Native land-owner, which could not be ascertained until the liabilities encumbering such interest were completely and finally assessed. The liabilities to be immediately defined were rates and survey liens. Later mortgages and leasehold interests would be taken into consideration.88

Ngata reminded the attendees that ‘local bodies of the King Country district had taken a leading part in the agitation regarding Native rates’ and that many ‘had obtained charging orders and were now pressing for vesting orders’. He proposed a compromise payment to local authorities of 25 per cent of the outstanding rates. The Crown would make the payment from the Native Land Settlement Account and would be reimbursed in the form of land. As for survey liens, he noted that

85. Document A69, p 47.
86. J G Coates to J C Rolleston, 27 March 1928 (doc A24(a), p 932); doc A69, p 47.
88. ‘King Country Consolidation Scheme’, Te Kuiti conference minutes, 12 April 1928 (doc A69(a), vol 9, p 210).
the Government was prepared to write off a substantial amount, leaving only £5,000 of the £21,763 originally owing to be paid off.\textsuperscript{89}

Ngata then warned the attendees:

[n]either rates nor survey liens, however, could be compromised in the manner suggested until the meeting accepted the proposal to undertake a consolidation scheme and only under such a scheme was it possible to effect the complete stock-taking of titles, adjustment of leases and the wholesale overhaul of other problems relating to Native lands and interests in the district.\textsuperscript{90}

Ngata emphasised that the matter was urgent: the consolidation committee was intending to meet the Waitomo County Council on the evening of the thirteenth to discuss a rates compromise, followed by similar meetings with the other local authorities the next day. Those meetings ‘would be abortive’ without a mandate from the hui.\textsuperscript{91}

Although newspaper accounts of the first day of the hui reported that Ngāti Maniapoto were opposed to consolidation, it appears that most discussion – and opposition – was focused on the issue of rating.\textsuperscript{92} According to the Crown’s notes of the hui, Ngāti Maniapoto representatives ‘expressed their hostility to the proposals regarding rates’, and reminded the committee of the commitments Ministers had made during negotiations over the railway in the 1880s. They also raised a range of other grievances, related to both local authorities and the management of vested lands.

The Native Lands Consolidation Committee pressed back against Ngāti Maniapoto’s interpretation of the Te Ōhākī Tapu commitments the Crown had made in the 1880s, and particularly those made by Ballance at Kihikihi in February 1885. Discussing Māori opposition to the Native Lands Rating Act 1882 and the prospect that Te Rohe Pōtae land ‘along the line of the railway or along the roads leading up to the railway’ might come under it, Ballance had stated that although the Government had the power to bring this land under the Act, ‘I think it is unfair to rate land that it is not in the condition of being used’. ‘In my opinion’, he noted, the Act should only apply ‘to land which has been leased, sold, or is in actual cultivation and therefore there is no danger to be apprehended that the land referred to will be brought under the Rating Act’.\textsuperscript{93} Members of the Lands Consolidation Committee asserted at the Te Kūiti meeting that ‘Ballance’s so-called promise meant no more than the policy now recognised, that lands in

\textsuperscript{89} ‘King Country Consolidation Scheme’, Te Kuiti conference minutes, 12 April 1928 (doc A69(a), vol 9, p 210).

\textsuperscript{90} ‘King Country Consolidation Scheme’, Te Kuiti conference minutes, 12 April 1928 (doc A69(a), vol 9, pp 210–211).

\textsuperscript{91} ‘King Country Consolidation Scheme’, Te Kuiti conference minutes, 12 April 1928 (doc A69(a), vol 9, p 211).

\textsuperscript{92} ‘King Country Lands: Native Commission Meets’, New Zealand Herald, 13 April 1928, p 13.

\textsuperscript{93} AJHR 1885, G1, p 17.
profitable occupation or capable of production should contribute toward local taxation’.94

Once again, the committee warned that ‘Maniapoto should . . . seriously consider the rates compromise suggested by the Committee, as the moment for making such adjustments might pass and the future would indeed be most difficult. Similarly, survey liens could only be remitted in the context of consolidation. ‘Most of their other grievances’, the committee emphasised, ‘could also be dealt with more satisfactorily under such a scheme’.95 Henare told the attendees that ‘the members of the commission had not come armed with rifles and ammunition to fight, but had come to assist the Maniapoto tribe, if possible, to adjust their difficulties’. He talked of his own experience, where Ngāpuhi, ‘through the able assistance of Sir Apirana, [had] been able to satisfactorily settle their rates with the Bay of Islands and Hokianga Counties’.96

After the conference adjourned at the end of the first day, Ngāti Maniapoto – accompanied by Pei Jones – met for ‘the greater part of the night’. When the hui reconvened in the morning, they presented the committee with a motion largely focused on rating. Consolidation was not specifically mentioned in the motion, nor by Ngata, who reemphasised the importance of gaining ‘a clear mandate’ for a rates compromise prior to meeting with local authorities.97 Following a further adjournment, the Māori attendees returned and ‘announced that they had agreed to the Consolidation Committee’s proposals’. They agreed to offer £13,000 to eight local authorities for outstanding rates, and accepted a survey lien compromise with the Crown. They also expressed their support for ‘the carrying out of the Consolidation Scheme’.98

The evidence available suggests that rating (and not consolidation) was a particular focus of the hui. For the Native Lands Consolidation Committee, gaining consent for the rates compromise in advance of its meetings with the local authorities was the key goal. Luiten concluded that: ‘The brevity of the concluding moments of this hui conveys the impression that Ngata was primarily interested in obtaining tribal sanction for the rates compromises’.99 Indeed, Ngata’s account of the hui to Te Rangi Hiroa (Sir Peter Buck) a month later focused almost entirely on the issue of rating:

The tribe true to its traditions put up a stubborn fight the elders as usual forming the vanguard. The fight raged the whole of one day and the greater part of a night,

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94. ‘King Country Consolidation Scheme’, Te Kuiti conference minutes, 12 April 1928 (doc A69(a), vol 9, pp 210
95. ‘King Country Consolidation Scheme’, Te Kuiti conference minutes, 12 April 1928 (doc A69(a), vol 9, pp 211–212).
96. ‘King Country Rates: Māoris Claim Exemption’, Auckland Star, 13 April 1928, p 3.
97. ‘King Country Consolidation Scheme’, Te Kuiti conference minutes, 12 April 1928 (doc A69(a), vol 9, pp 212, 213); see doc A24, pp 139–140, for Luiten’s translation.
98. ‘King Country Consolidation Scheme’, Te Kuiti conference minutes, 12 April 1928 (doc A69(a), vol 9, p 213).
at the end of which they conceded that in future they would pay half rates, but that outstanding rates should be paid by the Government – a great concession judged in the light of past tradition & history! It was then time to appeal to the young folk behind, who had been peering curiously over the shoulders of their elders. They were told that it was time for them to save the tribe from disaster – for them to break down the conservatism of the kaumatua. The youngsters led by Tony Ormsby, Tom Hetet, young Moerua [Moerua of Te Kumi], Tom King’s [Kingi Wettere’s] boys & others grasped the situation & empowered us to compromise with the local bodies. With this mandate we met the assembled local bodies, seven of them, and at a cost of £16,000 to be recouped to the Crown in land, squared outstanding rates (& gained two years’ respite) amounting to £75,000. That was the immediate result of the meeting, but the psychological effect on the rising young Maniapoto was tremendous.

But the extent to which consolidation (rather than rating) was discussed as a discrete issue at the hui remains unclear. The Native Lands Consolidation Committee held out the prospect of consolidation – and its benefits – as the justification for Māori to accept a compromise on rates and survey liens, something they were clearly reluctant to do otherwise. Clearly nothing more specific about consolidation and its implementation was discussed. Such issues that should have been canvassed included the timeframe in which the scheme would be completed, the necessity for orders prohibiting alienation of lands under consolidation, and the impact that the process of implementing consolidation might have on the ability of Māori owners to use their land in the meantime. Nor is it readily apparent how Te Rohe Pōtai Māori viewed consolidation as a proposal separate from the issue of rating.

16.4.3.2 Implementation of the Maniapoto consolidation scheme

16.4.3.2.1 The three phases

The Maniapoto consolidation scheme was a group – or comprehensive – scheme, meaning that it encompassed a large area of land and involved the interests of numerous whānau, hapū, and individual owners. It included five counties – Kāwhia, Waitomo, Ōhura, Ōtorohanga, and part of Taumarunui – and Te Kūiti and Taumarunui native townships. Group schemes, Hearn pointed out, 'involved a great deal of painstaking negotiation and often involved the re-location of substantial numbers of [people’s interests].' The other main approach to consolidation used various provisions of the native land laws to rearrange interests on a much smaller scale, usually within whānau.

Comprehensive consolidation schemes consisted of three main phases:

- **The data stage:** This stage involved searching titles and the records of the court, board, Land Transfer Office, Valuation Department, and Lands and

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Survey Department. From these records, lists were created of owners and their interests, and the value of those interests and any outstanding liabilities (typically, rates and survey liens). Further investigations were then conducted to gauge the extent of any unprocessed successions.  

The fieldwork stage: Consolidation officers, in consultation with owners, grouped ‘individual owners either in family groups or according to what was termed [the] ‘community of interests’ or ‘individually’, as well as the locations of their interests in composite areas.  

The confirmation stage: This stage was when trial locations were prepared. These would need to be confirmed by the court and approved by the Minister. This stage ended with ‘the preparation of final consolidation orders, surveys, and the issue of new titles.’

16.4.3.2.2 STAFFING

All three phases involved a significant amount of highly technical work, necessitating dedicated staff and resourcing, both in the field and the office. For field work in particular, a very specific set of skills and expertise was required:

The men required for field work are matured men, preferably Maoris, with a knowledge of the locality, the owners and their genealogies and land interests. They can be trained to have some knowledge of titles, Maori land laws and other aspects of the work provided they possess the initial qualifications referred to, but this training cannot be accomplished in a short time.

The difficulties are apparent if it is realised that a capable consolidation officer, in addition to possessing wide local knowledge, must be a competent Court clerk with some knowledge of land valuation, subdivisional principles and draughtsmanship to enable him to plan new boundaries and new allocations of interests reasonably equivalent in value to existing interests. He must also have more than ordinary tact and patience.

Field staff in particular had to work in close collaboration with the owners affected by consolidation schemes. Ngata regarded field work – conducted ‘in meeting houses and halls at irregular hours to meet the conditions of the community’ – as ‘the most important work of consolidation’, enabling consolidation officers to ascertain the owners’ views as to where their interests should be located. As will be explored further below, finding and retaining skilled staff for consolidation work proved to be a consistent difficulty with consolidation.

105. ‘Consolidation’, typescript, no date (doc A69(a), vol 6, p 221).
106. ‘Consolidation of Titles’, extract from notes of representatives to Minister, 6 February 1950 (doc A69(a), vol 6, p 224).
Pei Te Hurinui Jones

Pei Te Hurinui Jones was born to Paretekorae Poutama, of Ngāti Maniapoto, in September 1898, and was brought up by his mother’s grand-uncle, Te Hurinui Te Wano. When his mother married David Jones, he took his stepfather’s surname as well. As a child he attended Ōngārue primary school, later continuing on to Auckland’s Wesley College.

Jones started his working life as an interpreter at the Native Department, but over the years came to hold many other roles. As discussed in this chapter, for example, he played a significant role in the consolidation of Māori lands in Te Rohe Pōtae. He was also a staunch supporter of the Kīngitanga, becoming an adviser to Te Puea Herangi, King Koroki, and Queen Te Atairangikaahu. He also helped in the preparation of the Waikato–Maniapoto Claims Settlement Act 1946, and was Koroki’s nominee on the Tainui Māori Trust Board.

In the early 1940s, Jones again worked as a licensed interpreter and consultant, but later became involved in setting up and managing the Puketapu Incorporation. By 1960, the incorporation had returned more than £480,000 to its Māori shareholders from the profits of its logging and milling operation on a large land block.

schemes, including in Te Rohe Pōtae. This affected the pace at which consolidation proceeded.

In Te Rohe Pōtae, a range of field and office staff undertook consolidation work. Pei Jones, appointed as consolidation officer in early 1928, was one of the most longstanding, working on consolidation on and off for much of the 1930s. As of mid-1929, he was joined in the field by Thomas Hetet, and supported in the office by W L J Cahill (formerly of the Māori Land Board staff), R C Benson (formerly of the Gisborne Native Land Court), H P Taituha, and V V de Thierry.107

16.4.3.2.3 PROHIBITIONS ON ALIENATION

To facilitate its consolidation work, the Crown issued several orders in council prohibiting the private alienation of lands under consolidation schemes.108 While in place, these orders significantly impacted the ability of Māori owners to deal with their lands, and suspended many of their rights of ownership. Under the Native Land Act 1909, ‘alienation’ was defined widely, and included:

the making or grant of any transfer, sale, gift, lease, license, easement, profit, mortgage, charge, encumbrance, trust, or other disposition, whether absolute or limited, and

107. P H Jones, ‘The King Country Consolidation Scheme’, typescript, no date (doc A69(a), vol 9, p131).
108. Native Land Act 1909, s132(1).
between Taumarunui and Tokaanu. That same year, the incorporation sold the business to the Kauri Timber Company for over a million dollars.

Over the years, Jones also became a prolific writer in both te reo and English. A particular interest of his was recording Tainui genealogies and traditions. In 1968, he received an honorary doctorate from the University of Waikato. His history of the Tainui tribes was published posthumously as *Nga Iwi o Tainui* in 1995.

Alongside all this, he was widely recognised as a Māori leader. He was the second president of the New Zealand Māori Council, a member of the Maniapoto District Māori Council, served on a number of other Māori boards and committees, and was a member of the Taumarunui Borough Council. He played leading roles at young Māori leaders’ conferences in 1939 and 1959 and was awarded an Order of the British Empire in 1961.

Pei Te Hurinui Jones died at Taumarunui on 7 May 1976. He is buried beside Te Hurinui Te Wano in the cemetery at Te Tokanga-nui-a-noho Marae in Te Kūiti.¹

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whether legal or equitable (other than a disposition by will), of or affecting customary land or the legal or equitable fee-simple of freehold land, or of any share therein; and includes a contract to make any such alienation.¹⁰⁹

Orders in council prohibiting such alienations were not applied over every block under a consolidation scheme. Rather, they were 'generally employed where alienations, particularly those contemplated by absentee owners, were considered to hamper consolidation proceedings.'¹¹⁰ For the purpose of enabling any scheme of consolidation to be prepared and carried into effect, section 132 authorised the governor by order in council to prohibit, for a period not exceeding 12 months, any alienation of Native land in respect of which an application had been made to the Native Land Court for the preparation of a scheme.

The first order made under section 132 of the 1909 Act prohibiting alienations in Te Rohe Pōtae was made in October 1928 over five subdivisions of Te Kuiti and Rangitoto–Tuhua, covering an area of 5,404 acres.¹¹¹ The order was renewed for another year in respect of the three Rangitoto–Tuhua subdivisions in September

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1929. A further order was issued in March 1931 under section 132 of the Native Land Act 1909 over 446 blocks, covering 30,887 acres. They included subdivisions of Hauturu East, Hauturu West, Kinohaku East, Kinohaku West, Te Kumi, Mangarapa, Marokopa, Peitawata, Piha, Pukeora-Hangatiki, and Tapuiwahine. These blocks formed the bulk of the second instalment of consolidation, discussed in section 16.4.4.3.

This order was replaced in April 1932 by an order under section 167 of the Native Land Act 1931. That provision authorised the governor-general to make similar orders in council but did not specify a 12-month time limit. This particular order in council was ultimately revoked 20 years later. A final order was made under section 167 of the 1931 Act in May 1937 over 55 additional blocks, covering 9,245 acres. This order was not revoked until 1950.

16.4.3.2.4 THE CROWN’S APPROACH TO CONSOLIDATION IN TE ROHE PŌTAE

In total, 26,580 ownership interests were included within the Maniapoto consolidation scheme as at 1932; these interests were held in 6,122 titles covering an area of 407,125 acres (see table 16.1). Although the scheme encompassed a wide swathe of the district, in practice consolidation efforts generally focused on particular areas covering considerably smaller acreages. This ensured that consolidation could be ‘completed as it advanced and was capable of being closed at any stage if necessary.’ To facilitate this approach, the area covered by the Maniapoto consolidation scheme was divided into four divisions comprising 26 series: Waitomo (13 series), Otorohanga (eight series), Kawhia (three series), and Hauaroa (two series). Most consolidation efforts were focused in the Waitomo and Otorohanga series.

The Crown first targeted valuable areas of land where consolidation could also be proceeded with relative ease. Thus, in 1929, the focus was on the B series of the Waitomo division. These lands, Jones reported, ‘comprise some of the most valuable lands in the scheme and the Native population still form a fairly compact community’, being largely Ngāti Kinohaku. There were 380 subdivisions covering

112. ‘Extending Prohibition of Alienation of Certain Native Lands other than Alienation in Favour of the Crown’, 30 September 1929, New Zealand Gazette, 1929, no 66, p 2574; doc A69, p 68 n
118. Judge Beechey to Under-Secretary, Māori Affairs, 27 April 1949 (doc A69(a), vol 1, p 285); doc A69, p 111.
119. Document A69, p 64.
an area of about 29,300 acres and with 880 owners. Valued at approximately £140,000, the lands were subject to annual rates of £2,080, survey liens of £2,000, and mortgages of £4,600. Most of the blocks submitted to the Minister in June 1931 for approval as part of the second instalment (and subsequently approved in November 1931: see table 16.2) were part of the Waitomo B series.

Table 16.1: The Maniapoto Consolidation Scheme – series
Source: Document A69 (Hearn), p 64

<table>
<thead>
<tr>
<th>Series</th>
<th>Acres</th>
<th>Number of titles</th>
<th>Number of owners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waitomo</td>
<td>270,422</td>
<td></td>
<td>15,409</td>
</tr>
<tr>
<td>Otorohanga</td>
<td>91,600</td>
<td>6,122</td>
<td>6,871</td>
</tr>
<tr>
<td>Kawhia</td>
<td>33,313</td>
<td></td>
<td>3,314</td>
</tr>
<tr>
<td>Hauaroa</td>
<td>11,789</td>
<td></td>
<td>986</td>
</tr>
<tr>
<td>TOTAL</td>
<td>407,125</td>
<td>6,122</td>
<td>26,580</td>
</tr>
</tbody>
</table>

Table 16.2: Maniapoto Consolidation Scheme – instalments, 1930–41
Sources: doc A69 (Hearn), p 73; doc A69(a) (Hearn document bank), vol 10, p 164

<table>
<thead>
<tr>
<th>Instalment</th>
<th>Area (acres)</th>
<th>Confirmed</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>1,450</td>
<td>13 February 1930</td>
</tr>
<tr>
<td></td>
<td></td>
<td>21 February 1930</td>
</tr>
<tr>
<td></td>
<td></td>
<td>29 November 1930</td>
</tr>
<tr>
<td>Second</td>
<td>39,278</td>
<td>11 November 1931</td>
</tr>
<tr>
<td>Third</td>
<td>6,072</td>
<td>11 November 1931</td>
</tr>
<tr>
<td>Fourth</td>
<td>711</td>
<td>1 December 1933</td>
</tr>
<tr>
<td>Fifth</td>
<td>439</td>
<td>20 August 1936</td>
</tr>
<tr>
<td>Sixth</td>
<td>38,139</td>
<td>28 October 1936</td>
</tr>
<tr>
<td>Seventh</td>
<td>88</td>
<td>28 October 1936</td>
</tr>
<tr>
<td>Eighth</td>
<td>8,481</td>
<td>13 June 1941</td>
</tr>
<tr>
<td>TOTAL</td>
<td>94,658</td>
<td></td>
</tr>
</tbody>
</table>

120. PH Jones, ‘The King Country Consolidation Scheme’, typescript, no date, p 6 (doc A69(a), vol 9, p 135); doc A69, p 64.
121. Two blocks – Hauturu East 1B2B and 1B3A – were inadvertently omitted from the second instalment; they formed the seventh instalment submitted in October 1936.
As table 16.2 indicates, only the sixth instalment came close to dealing with as much land as the second instalment. The sixth was, in contrast, also spread over a much wider area, encompassing blocks located in nine of the Waitomo series and seven of the Otorohanga series.122 Other instalments dealt with much smaller acreages and were generally advanced for a specific purpose. The fourth instalment, for instance, involved a block – Mangauika 1B Section 2B – which had been acquired by the Crown. Approval for consolidation was sought ‘to enable the Crown to take title’.123 The third instalment, which was submitted alongside the second instalment and was one of the larger instalments at 6,072 acres, dealt primarily with lands in which the Paretekorae whānau were interested.124

When Thomas Hetet – acting as a consolidation officer but himself a member of the whānau – was seeking final orders for the instalment in 1931, he told the court how the consolidation had come about:

1. Judge MacCormick to Native Minister, proposed consolidation orders, 13 February 1930 (doc A69(a), vol 9, pp 119–120).

As table 16.2 indicates, only the sixth instalment came close to dealing with as much land as the second instalment. The sixth was, in contrast, also spread over a much wider area, encompassing blocks located in nine of the Waitomo series and seven of the Otorohanga series.122 Other instalments dealt with much smaller acreages and were generally advanced for a specific purpose. The fourth instalment, for instance, involved a block – Mangauika 1B Section 2B – which had been acquired by the Crown. Approval for consolidation was sought ‘to enable the Crown to take title’.123 The third instalment, which was submitted alongside the second instalment and was one of the larger instalments at 6,072 acres, dealt primarily with lands in which the Paretekorae whānau were interested.124

In general, consolidation in Te Rohe Pōtāe did not interfere with existing block boundaries. Instead, where possible, interests were reallocated within blocks as originally partitioned by the court.125 This helped reduce the necessity for new surveys and thus new survey costs. The major exception to this practice was the

122. Judge MacCormick to Native Minister, proposed consolidation orders, 28 September 1936 (doc A69(a), vol 10, p 8).
123. Judge MacCormick to Native Minister, proposed consolidation orders, 17 November 1933 (doc A69(a), vol 9, p 324).
124. Judge MacCormick to Native Minister, proposed consolidation orders, 10 June 1931 (doc A69(a), vol 9, p 5).
125. Document A69, p 111.
When the consolidation scheme first came into effect in the King Country, Henare Matengaro Ruihi, Tukuteihu Matengaro and other members of the family expressed a desire to consolidate their respective holdings, farms and township sections.

Several meetings of the family were held and considered the proposals put forward and unanimously agreed upon.

The Consolidation Officers prepared a scheme and took out figures showing relative values, and on the 13th February, 1930, the scheme thus prepared was submitted and duly approved of by the Native Minister…

The instalment proposed creating 18 consolidation blocks from the original 23 blocks. Hetet explained that no awards of land to the Crown had been necessary. Instead, one block – Rangitoto–Tuhua 60f2 – which was owned in common by the whole whānau was to be used as a ‘balancing block’, with its rent being used to pay for rates and survey charges.

As part of consolidation, the Crown reimbursed itself in varying ways for its expenditure on the rates compromise and outstanding survey charges. These methods included awards of land (either sole ownership of block or an undivided interest), charging orders, or payments in cash from the Waikato–Maniapoto District Māori Land Board (or some other source). Thomas Hetet, who had worked on the Maniapoto consolidation scheme in the 1930s, preferred to issue charging orders to satisfy the Crown’s interests while Pei Jones preferred awards of land. The evidence reflects Hetet’s assessment of the Crown’s practice in Te

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3. (1931) 69 Otorohanga MB 93 (69 WMN 93).
4. (1931) 69 Otorohanga MB 93 (69 WMN 93).

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126. Commissioner to Native Minister, proposed consolidation orders, 17 November 1940 (doc A69(a), vol 10, p 164).
127. Document A69, p 89.
128. Thomas Hetet to T Ropiha, 1 March 1955 (doc A69(a), vol 8, p 310).
Rohe Pōtae. Of the 39 blocks within the Waitomo A series that were consolidated in 1936, for instance, the Crown received six blocks solely, interests in 14 blocks, and charging orders over 13 blocks. In 1937, meanwhile, the Crown was awarded sole ownership of 11 blocks, totalling 1,173 acres, and interests in 44 other blocks, totalling 3,582 acres. The average size of these undivided interests was 81.4 acres.

Once approved by the Minister, consolidation schemes returned to the court so that the orders necessary to effect them could be made. This could be a prolonged process and, indeed, in Te Rohe Pōtae it appears that the orders for instalments two through seven were not made until 1936. Such delays in issuing orders had been the subject of some complaint from Te Rohe Pōtae Māori. In 1935, they urged the Native Minister to press forward with consolidation, complaining that ‘the incompleteness of their Titles’ was ‘most unsatisfactory’ and an impediment to the development of their lands. By September 1936, Jones was reporting that ‘All outstanding consolidation orders ... are now being finalised’. Later that month, on submitting the sixth and seventh instalments for approval, Judge MacCormick noted that they carried ‘the Consolidation Scheme to a point where it may be left for the present without any inconvenience as it will enable Consolidation Orders already made provisionally to be completed and remove certain troubles that have arisen owing to the doubtful position of a number of titles’. MacCormick cautioned, however, that the Crown’s awards remained outstanding. On 10 November 1936, the court made consolidation orders for blocks from instalments two through seven, with adjustments to take account of subsequent partition orders and alienations.

It appears that these orders were not actually completed at the time, however. The Native Department reported in 1937 that, due to the ‘lack of experienced staff’ it had been decided to:

complete the schemes [in Te Rohe Pōtæ] up to a point where they could be conveniently halted. This has been done and the necessary orders made during the year. Actual completion of the orders will have to await survey in many instances, and this is held up pending a final determination of departmental policy on this point. The work is now in a position where all interests dealt with have been accounted for and is in such a state that the process of consolidation may be recommenced when the time is considered to be opportune.

According to the registrar, rather than being completed, the orders were initialled by the judge, pending endorsement of ‘the relative diagrams’, at which point

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129. Document A69, pp 91–92. The remaining blocks were not subject to any liability.
131. Acting Under-Secretary to registrar, 24 June 1935 (doc A69(a), vol 8, p 329).
132. Registrar to Under-Secretary, 10 September 1936 (doc A69(a), vol 10, p 41).
133. Judge MacCormick to Under-Secretary, 28 September 1936 (doc A69(a), vol 10, p 36).
134. (1936) 71 Otorohanga MB 6 (71 WMN 6).
135. AJHR, 1937, G-9, p 7; doc A69, p 88.
they would be capable of registration. It had been agreed that ‘endorsement of the diagrams would have to stand over until the titles were actually required and the owners taking under Consolidation were able to pay for the necessary work.’

As at 1940, the department reported that: “The necessary surveys are being made from time to time, and final orders are being drawn wherever possible.”

16.4.3.3 Complications with implementing the consolidation scheme

In order to create the data lists that would form the basis of consolidation, the multiple land interests of thousands of owners had to be processed, sorted, and valued. Once completed, data lists required constant revision to take account of successions, alienations, and any other changes in ownership, and could quickly be rendered out-of-date. In the field, careful negotiations were required to allocate interests, and to ‘create vacancies’ – that is, to convince owners to vacate their present holdings and accept interests in other blocks. Some owners already had economic interests and were reluctant to give them up. Other owners, Jones reported in 1929, ‘look upon the areas out of which they are being asked to vacate as surplus lands which they consider to their advantage to dispose of for cash rather than have them added to the areas which they are retaining.’

There were also what Ngata referred to as ‘discordant human factors.’ Although it does not appear that opposition to consolidation in Te Rohe Pōtae was widespread, there were some who did not welcome the work of consolidation staff. In 1929, for instance, Jones alluded to ‘subtle propaganda by persons who no doubt see in the introduction of consolidation into the district the curtailment of their activities.’ In 1930, Ngata relayed a message from a consolidation officer whose work in Waimiha had been delayed by ‘George Turner our worst anti-consolidation agitator’, who had ‘persuaded N Mahuta that our work was not in their interests’. The consolidation officer reported that it took him ‘two days to convince them that they were being misled.’

The extent to which such opposition caused any more serious delay is unclear. Early into consolidation proceedings, staff also ran into a range of other complications – some specific to Te Rohe Pōtae – including:

- a number of uncompleted exchange orders, which either needed to be completed or cancelled before consolidation could proceed;
- a number of registered leases had been abandoned, while a number of informal leases and transfers had not been registered;
- inconsistencies between Native Land Court partitions and land transfer divisions;

136. Registrar, Auckland, to Under-Secretary, Native Department, 9 March 1937 (doc A69(a), vol 10, p 332).
137. AJHR, 1940, G-9, p 6; doc A69, p 73.
139. AJHR, 1932, G-10, p 16.
errors in the rating rolls: some rates were owed by lessees rather than owners, while others charged on lands designated as being Māori owned were in fact general and Crown lands;

- a large number of unprocessed successions;
- the work of the Native Leases Commission, the recommendations of which some owners were waiting for before deciding on what to do with their interests;\(^{142}\) and
- delays in remitting survey liens.\(^{143}\)

### 16.4.3.3.1 RESOURCING

Resourcing – particularly of staff – was one of the most frequent difficulties facing consolidation in Te Rohe Pōtae. It emerged as early as July 1928, when it was found that staff from the Waikato–Maniapoto court district had not been diverted to consolidation duties as instructed.\(^{144}\) Resourcing problems became more acute in the 1930s, particularly as the Māori land development programme gained steam. The evidence before the Tribunal was that the ‘rapid growth’ of this programme ‘so soon after efforts had been made to initiate consolidation proceedings placed immense pressures on the staff of the Department of Native Affairs and of the Native Land Court’. Staff were increasingly diverted from consolidation to development.\(^{145}\) According to the Auckland registrar, by 1935 the Maniapoto consolidation scheme was ‘practically at a standstill’ owing to the diversion of Jones to ‘other duties’.\(^{146}\) In response, the Acting Under-Secretary requested that ‘Mr Jones does all that is possible to proceed with the preparation of the King Country Consolidation Scheme pending the provision of additional staff to enable the work to be pushed to completion.’\(^{147}\)

Jones himself complained several times about the level of resourcing dedicated to consolidation in Te Rohe Pōtae. In 1935, he said ‘the lack of adequate assistance’ was his ‘principal handicap’ – and one that he had ‘mentioned more than once’. He called for ‘modest’ assistance: an assistant field consolidation officer, and two staff to update data lists and complete the distribution of interests. Without such assistance, however, he cautioned that ‘little or no progress will be made towards finalising any of the consolidation work in this district.’\(^{148}\) In 1936, after Judge MacCormick also appears to have complained about resourcing, Jones again expressed his frustration: ‘It is difficult for others to conceive how much I am hampered here, and sometimes it appears to me that my representations on account of pressure of work have not been properly appreciated.’\(^{149}\)

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142. P H Jones, ‘The King Country Consolidation Scheme’, typescript, no date (doc A69(a), vol 9, pp132–133, 135, 137); doc A69, p 65.
144. Document A69(a), vol 1, p 212.
145. Document A69, p 86.
146. Registrar to Under-Secretary, 28 June 1935 (doc A69(a), vol 8, p 327); doc A69, pp 88–89.
147. Acting Under-Secretary to registrar, 15 July 1935 (doc A69(a), vol 8, p 326); doc A69, p 88.
149. P H Jones to registrar, 21 April 1936, p 2 (doc A69(a), vol 10, p 91).
That year, a determined effort was made to issue final consolidation orders for the consolidation instalments already completed in Te Rohe Pōtae. However, this does not seem to have been accompanied by any sustained increase in resourcing: the Native Department reported in 1937, 1938, and 1939 that consolidation efforts in the district had been affected by a scarcity of staff.

16.4.3.3.2 SETTLING THE SURVEY LIENS AND RATES
Consolidation was also delayed by a protracted dispute between the Department of Lands and Survey and the Native Department over how the Crown should settle outstanding survey liens and recover its expenditure on the rates compromise and lands purchased for consolidation. The Crown accepted that this dispute was ‘a principal cause of delay’, but noted that both the issues were later addressed and consolidation had been completed.

Section 32 of the Native Land Amendment and Native Land Claims Adjustment Act 1927 empowered the court to recommend, where reasonable, the remission of survey charges, subject to the approval of the Minister of Lands. The effect of this provision was that ‘[e]ach block had to be considered separately and separate recommendations had to be issued by the Native Land Court.’

Right from the beginning, however, consolidation officers and Survey Office staff disagreed about how this provision should be applied, and particularly what proportion of the outstanding survey liens should be remitted. This uncertainty prompted a Cabinet decision on 17 March 1928 to remit the whole or any portion of survey costs, with details to be settled by the Prime Minister and the Minister of Finance. Recovery of more than one-third was seen as unlikely, but each case was to be treated on its merits.

Once again, however, little progress was made to implement this decision. In November 1930, Treasury, Native Affairs, and Lands and Survey held a conference to reach a settlement over the survey liens incurred in the 20 years since the Native Land Act 1909 had come into force. They found that a total of £199,044 (including interest of £91,224) remained outstanding nationwide (the total sum for the period was £611,481). In Te Rohe Pōtae, £19,294 of liens and accumulated interest were owing. A sub-committee of the conference recommended remitting £12,863 of that sum, recognising that most of the land remaining in Te Rohe Pōtae Māori ownership was poor quality yet burdened with survey liens.

In all, the conference recommended writing off £82,103 from the total £115,372 owing on lands subject to consolidation. The balance would be met in cash or in ‘poor quality land’ – what Ngata later described as ‘hill tops, forest lands, sand dune[s]’. These were, he pointed out in a telling remark, ‘areas unfit for settlement but . . .

150. AJHR, 1937, G-9, p 5; AJHR, 1938, G-9, p 3; AJHR, 1939, G-9, p 7.
151. Submission 3.4.308, p 22.
152. Document A69, p 56.
nevertheless assets in the hands of the Crown."\(^{155}\) Cabinet approved the conference’s recommendations on 2 December 1930.\(^{156}\)

But by 1934 little had happened. The chief surveyors for Auckland and Taranaki (the latter responsible for part of the Waitomo series) had assumed a particularly obstinate stance, not considering themselves bound by the recommendations of the 1930 conference.\(^{157}\) It appears that Lands and Survey was reluctant to

accept payment in the form of land in scattered and possibly legally inaccessible parcels, and . . . [was also resistant] to the imposition of a new set of liens covering rates and survey charges. Moreover, the Department was determined that the Crown’s interests should not be imperilled by local authorities pressing to have lands on which rates remained unpaid vested in the Native Trustee for sale.\(^{158}\)

It is notable that the Crown did not itself want ‘scattered and possibly legally inaccessible parcels’, particularly given that the title system had created many such blocks for Māori landowners.

The dispute continued for several more years, with Lands and Survey requesting a ‘complete schedule’ indicating how the Crown’s interests were to be satisfied in consolidation – something that Pei Jones described as ‘a formidable undertaking’.\(^{159}\) In September 1935, the court recommended that the survey charges owing on lands in the Maniapoto consolidation scheme be remitted by £13,130, leaving £6,722 to be paid in cash or land.\(^{160}\) However, little action was taken. By 1936, Treasury had intervened in the dispute, concerned over the delay. The impasse was finally broken in 1937 when the Native Department agreed to take over the Crown’s assets in land within consolidation schemes; the transfer occurred in July of that year. The court’s recommendation to remit the survey charges was finally approved by the Minister of Lands, with some adjustments, in June 1939.\(^{161}\) Collection of the Crown’s outlay, however, was still ‘a matter of contention between the Departments of Native Affairs and Lands and Survey in 1958’.\(^{162}\)

### 16.4.3.4 Releasing lands from orders prohibiting alienation

Throughout the 1930s the Crown issued several orders in council prohibiting the alienation of lands under consolidation. Two of those orders – issued in 1932 and 1937 – remained in place until the early 1950s. These orders suspended many of the owners’ rights of ownership, including the ability to mortgage their land. However, owners could apply to the Minister directly to have these orders lifted

\(^{155}\) Document A69, pp 60, 61.
\(^{156}\) Document A69, p 61
\(^{157}\) Document A69, p 74.
\(^{158}\) Document A69(b), p 6.
\(^{159}\) Document A69, p 76.
\(^{160}\) Document A69, p 79.
\(^{161}\) Document A69, pp 92–93, 94.
\(^{162}\) Document A69(b), p 6.
for individual blocks. In assessing whether the implementation of the consolidation schemes in Te Rohe Pōtae was fair, it is therefore important to examine the way in which the Crown responded to such requests.

From the mid-1930s, increasing numbers of Te Rohe Pōtae Māori sought to have their land released from the orders prohibiting alienation. Although these requests were often made in order to allow sale or lease, this was not always the case. In September 1933, for example, Whare Hotu made a request on behalf of his mother, Rautahi Te Roha, to lift the prohibition in respect of Piha 1B3A3. Doing so would ‘enable her to sell the timber so that with the money she would be able to buy food and clothing’. He emphasised that ‘[t]he land is not being sold, nor the timber’.163

Other requests were from owners wishing to make consolidation and exchange arrangements in the absence of Crown action. In 1937, for example, an exchange of 28 acres was sought between Taharoa A6D2 (covered by the 1932 order) and Onewhero 99M2B2B (under development). This proposal was intended to eliminate absentee owners and consolidate their shares in the remaining owners.164 The owners’ solicitor noted that: ‘No attempt has been made to introduce any scheme of consolidation and the Native Owners and the occupants of surrounding Crown Lands are in the process of making the land productive’.165

Hearn explained the Crown’s typical response to such requests:

In general, where applications were made for the release of land from orders prohibiting private alienation, consolidation staff, where there was any possibility of the lands concerned being developed and used by Maori, normally recommended rejection. Conversely, where consolidation had been completed, or where no Crown charges were owed, or where consolidation proceedings were unlikely, revocation was usually recommended. Where alienation was permitted, the Crown attempted to make sure that the vendors applied their purchase monies to the payment of any survey liens and outstanding rates. The Crown also took care to ensure that the land the release of which from an order prohibiting private alienation was sought was not required in lieu of any rates compromises and survey liens.166

In the case of Whare Hotu’s request (cited above), Jones reported that, although Piha 1B3A3 had been consolidated, there was ‘no objection to the revocation to enable the timber agreement to be proceeded with’.167 The prohibition was duly lifted under section 167 of the Native Land Act 1931.168 Many such applications

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163. Whare Hotu to Native Minister, 22 September 1933 (doc A69(a), vol 9, p 328).
165. See, for example, A G Ward to Native Minister, 9 December 1937, p 2 (doc A69(a), vol 10, p 291).
167. P H Jones to registrar, 26 August 1933 (doc A69(a), vol 9, p 332).
Case Study: Removing the Prohibition on Alienations of Taharoa A1C5

In 1931, following a 'bitterly contested' partition, resident owners of Taharoa A asked the Crown to either impose an order prohibiting private alienations or help them purchase the interests of absentee owners. The owners were concerned that absentee owners would sell or lease their interests to Pākehā. Jones noted: 'Mrs Gibbons (store keeper at Te Maika) is already in occupation of part of the block, and will no doubt take steps to secure herself by getting a lease or buying as soon as the orders mature.'

Following a formal request from the owners, an order in council prohibiting alienations was issued under section 132 of the Native Land Act 1909 in March 1931 over an area of 13,411 acres. The order was renewed in 1932 under section 167 of the Native Land Act 1931 and was thus without term.

Two years later, as Jones had predicted, Jean Gibbons requested that the order be lifted in respect of Taharoa A1C5 so she could finalise her lease of the block. That request was refused because, as Jones explained, the prohibition had been made on representations made by the resident Taharoa Maoris that it will only be a matter of time, if Europeans were allowed to get a footing in the Taharoa area, before their holdings would be 'grid-ironed' with European holdings. If this were to happen the next step would be the breaking adrift of the various communities now living in Taharoa.

Two similar requests in 1934 were also refused. Jones noted that: 'What is now being advanced as justification for the removal of the restrictions in favour of Mrs Gibbons is not exceptional: The result, he emphasised, would be 'the breaking up of the Maori community and their dispersal without in any way improving their economic or social welfare.'

Jones’s reasoning was the subject of some criticism from solicitor Fred Phillips,

4. Jones to registrar, 25 August 1933, p 1 (doc A69(a), vol 9, p 333).
5. Jones to registrar, 20 July 1934, p 2 (doc A69(a), vol 9, p 307).
who argued that the order should not be in place. He pointed out that the block was not under consolidation, and rejected the suggestion that ‘it is not in the interests of the Native to alienate’ as a question for the Native Land Court, ‘not the ground for the issue of an order-in-Council’.6

Jones was eventually persuaded to revoke the prohibition in 1935 after one of the owners, Mekerei Kirika, made the request directly. Jones had contacted Kirika in 1934 to gauge his views on the revocation proposed by Gibbons. At that time Jones was convinced Kirika would prefer not to lift the order if some other means of gaining finance was possible.7 But in 1935, Kirika conveyed a different impression. Kirika explained that he had lived at Taniwha for some time, and was attempting to purchase land there to live on. His purchase had been confirmed by the Māori Land Board and he wished to lease Taharoa A1C5 in order to pay the balance. He explained:

The land is of no use to me as I cannot work it as it is now. I am prevented from leasing because a proclamation has been issued prohibiting alienations of the block. This proclamation was issued in 1932 and since then the land has been tied up. I do not know why the proclamation was issued. It was not done at my request. I do not wish to sell the land to the Crown or to any one else and the land is not subject to any consolidation proceedings so that the issue of the proclamation is not doing any good. It is simply preventing me from leasing the land.8

In response, Jones suggested that Kirika did indeed ‘know why the proclamation was issued’, despite his claim to the contrary, and attached their previous correspondence as evidence. However, he reported that, given that Kirika’s purchase at Taniwha had been confirmed and was awaiting payment, there was ‘no alternative but to lease’ the Taharoa block.9 The order in council prohibiting alienation of Taharoa A1C5 was subsequently revoked on 8 August 1935 under section 167 of the Native Land Act 1931.10

6. Phillips to Native Minister, 1 November 1934, p 1 (doc A69(a), vol 9, p 288).
were approved, and the orders revoked: by September 1952, restrictions had been lifted on 126 of the 446 blocks originally covered by the 1932 order.  

Officials were concerned at the rate at which requests were flooding in to lift the orders. In 1935, for instance, the Under-Secretary noted:

it would appear that alienations of King Country lands are on the increase and it is feared that if the completion of consolidation is not expedited that the piecemeal release of blocks from the Scheme to permit of alienation will defeat the object of the Scheme or at least introduce further complications.

The possibility of a general revocation of the prohibitions on alienation was discussed amongst officials several times throughout the 1930s and 1940s. There was some acknowledgement that the orders were also an inconvenience for Māori owners. Judge MacCormick noted, for instance: '[t]he present position is causing a good deal of heart burning, solicitors, relying upon the practice in the past, have incurred considerable expense on behalf of their clients in bringing applications for confirmation before the Court.' However, these proposals to lift the prohibitions often 'had much more to do with bureaucratic convenience than ... with restoring the rights of the owners of Maori freehold property.'

Judges and officials rebutted such requests for a general revocation of the prohibitions on alienation, usually on the grounds that consolidation titles were incomplete. Until the consolidation titles were completed and registered in the land transfer system, there was a risk that different titles would be used to deal with the same blocks of land. Keeping the prohibition order in place allowed officials to control this risk to some degree. The expense of surveys, as discussed above, was the principal reason why consolidation titles remained incomplete, and would remain so for the foreseeable future. Judge MacCormick concluded in 1939 that: 'It is ... out of the question to complete the consolidation Orders and register them. The cost of survey and the necessary Land Transfer fees would probably run into the best part of £1000.'

In addition to the state of consolidation titles, officials also raised concerns that a general revocation would facilitate increased alienation. This, the Under-Secretary pointed out in 1938, would go against 'the purpose of consolidation [which] is to facilitate settlement and not to enable Natives to obtain compact areas and thereby facilitate alienations, especially by way of sale.' He noted that the Native

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170. Under-Secretary to registrar, 10 April 1935 (doc A69(a), vol 9, p 253); doc A69, p 96.
171. Judge MacCormick to Under-Secretary, 11 January 1939, p 1 (doc A69(a), vol 10, p 247).
174. Judge MacCormick to Under-Secretary, 11 January 1939, p 2 (doc A69(a), vol 10, p 248); doc A69, p 97.
Minister was wary of ‘undue alienation by Natives of their lands, recognising, of course that in many cases, alienation might be advantageous to the Natives’. Judge MacCormick was also not in favour of a general revocation ‘unless some other safeguard is imposed’ – namely, a prohibition on all alienations of Māori land generally, with provision for the Native Minister, governor-general, or court to approve them on a case-by-case basis. The possibility of a general revocation was raised again in 1944, but rejected for the same reason.

By 1952, the Under-Secretary was less inclined to accept these reasons; he called for the preparation of a schedule of blocks over which the orders could be lifted. Responding in April of that year, the Auckland district officer explained that ‘the necessity for continuing the restriction on alienation of these lands still remains’ as ‘to complete the Consolidation Orders would require considerable survey work.’ Many blocks, he pointed out, would ‘not be able to bear’ the resulting costs. He did not believe that the restrictions were ‘causing any great inconvenience.’ After discovering, however, that the 1937 order had already been ‘inadvertently’ revoked two years earlier, the district officer concluded in September 1952 that ‘the notice of April 1932 might now be wholly revoked’, particularly as ‘the Title position has settled down, and any alienations of the lands affected will be subject to confirmation by the Court’. The 1932 order was finally revoked in October 1952 under section 167 of the Native Land Act 1931.

16.4.4 What were the outcomes of consolidation in Te Rohe Pōtae?

Although large-scale consolidation was not abandoned until the early 1950s, many of its problems had already been recognised two decades earlier. In 1931, Ngata stated that consolidation, ‘while the most effective and enduring method as a solution of Native-land difficulties’ was simply too complex and ‘too slow to keep pace with the demand that lands should be brought into use.’ In his view, ‘[i]t was necessary to resort to a more speedy and elastic method which would promote settlement of desirable areas pending the permanent adjustment of titles’ – that is, the Crown’s development schemes. Ngata’s assessment of consolidation was echoed by the Native Affairs Commission in 1934.

Assessing the outcomes of the Maniapoto consolidation scheme requires an examination of several factors, which are outlined below.

175. Under-Secretary to Judge MacCormick, 20 December 1938 (doc A69(a), vol 10, p 249); doc A69, p 97.
176. Judge MacCormick to Under-Secretary, 11 January 1939, p 1 (doc A69(a), vol 10, p 247).
178. District officer to Under-Secretary, 22 April 1952 (doc A69(a), vol 11, p 138).
179. District officer to Under-Secretary, 19 September 1952 (doc A69(a), vol 11, p 123).
181. AJHR, 1931, G-10, p iv; doc A69, p 86.
182. AJHR, 1934, G-11, p 41.
16.4.4.1 Did consolidation create suitably sized and economically viable blocks?

According to section 130 of the Native Land Act 1909, one of the purposes of consolidation was to group interests into ‘suitable areas’. Although no definition of ‘suitable’ was provided in the legislation, ‘the general expectation on the part of the politicians, including Native Minister Coates, was that consolidation would allow owners to turn their land to productive account.’ The Maniapoto consolidation scheme encompassed 407,125 acres. Just under one-quarter of this area – 94,658 acres – was eventually consolidated. According to Hearn, in Te Rohe Pōtæ, ‘consolidation produced both individually owned but mostly small holdings, and larger but still modestly sized blocks owned by families.’

It appears that consolidation blocks were, in general, considerably smaller than the average size of holdings in the district. Table 16.3 shows that the average size of holdings in local counties in Te Rohe Pōtæ as at 1935–36 was between 264.5 acres and 541.8 acres. According to the 1934 Dairy Industry Commission, dairy farms in South Waikato were, on average, 126.4 acres. Paula Berghan’s block histories provide full details of ownership and acreage for 272 consolidation blocks. Of those blocks, 13.9 per cent – 38 blocks – were more than 250 acres in size; 81 blocks (29.8 per cent) were more than 125 acres. Similarly, Hearn’s examination of 10 parent blocks in the Maniapoto consolidation scheme revealed that only 9.6 per cent of the 302 consolidation blocks created were more than 250 acres in area.

This comparison suggests that, by itself, consolidation was not enough to provide an adequate basis for commercial development. This was acknowledged by the Under-Secretary for Māori Affairs in 1952, when he observed that ‘the vast majority of Maoris have not sufficient interests which, when gathered together, would provide an economic holding.’ As will be explored further in section 16.5, the Under-Secretary made this comment at a time when the Crown was refocusing its title reconstruction efforts on ‘simplification’ measures, such as the compulsory acquisition of uneconomic interests.

In addition, because consolidation blocks in Te Rohe Pōtæ generally conformed to existing block boundaries, they carried with them some of the problems affecting the original blocks. In at least one instance, there was later criticism that consolidation blocks were not suitable areas for ‘practical utilisation’. When a proposal to amalgamate the Whenuatupu consolidation blocks came before the court in June 1966, the deputy registrar told the court that ‘from the point of view of practical utilisation the consolidation boundaries were unrealistic and

185. AJHR, 1934, H-30, p.196; doc A69, p.156.
186. Document A60 (Berghan). These consolidation blocks were created from 20 parent blocks, including: Arapae, Hauturu West, Kokomiko, Otewa, Otootika, Pakeho, Patiti, Piopio, Tarapounamu, Te Ahoroa, Te Kopua, Te Tarake, Te Tawai, Turoto, Te Uira, Te Waro, Te Whenuatupu, Te Whetu, Waitomo, and Whiroroa.
188. Document A69(b), pp.7–8; ‘Memorandum: Consolidation’, no date (doc A69(a), vol 6, pp 214–215); doc A69, p.118.
there should never have been nine separate titles.189 Similarly, despite Ngata’s hope that consolidation would allow the creation of blocks that conformed to ‘modern requirements’ some consolidation blocks were created with the question of road-ing left open, and thus inaccessible.190

16.4.4.2 Did consolidation create blocks held in individual or compact family ownership?

One of the other objectives of consolidation was to group the interests of Māori owners into one area, therefore reducing the number of owners in each block – preferably, in the Crown’s view, to one owner, or at least to small family groups. The evidence presented to the Tribunal does not indicate how interests were redistributed during consolidation, but it does reveal the number of owners in each consolidation block. While consolidation did not create individually owned blocks in every instance, it did create a reasonable number of such blocks. Of the 272 consolidation blocks for which ownership numbers as at the date of their creation are available, 109 were awarded to one owner, 35 to two owners, and 15 to three owners. The remaining 113 blocks were awarded to four or more owners.191

Not all owners received a block held solely or by a small whānau group: those who held particularly small interests, even after their interests had been grouped together, were reallocated to ‘sinker’ blocks along with a large number of other small interests.192 Arapae A3, for instance, consolidated in November 1936 with 149 owners, was marked as an adjustment block.193 Some of the other consolidation blocks with very large ownership lists had been set aside for communal purposes, as was the case with three Te Tarake consolidation blocks. When consolidated in

<table>
<thead>
<tr>
<th>County</th>
<th>Average size of holding (acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kawhia</td>
<td>491.3</td>
</tr>
<tr>
<td>Otorohanga</td>
<td>264.5</td>
</tr>
<tr>
<td>Waitomo</td>
<td>541.8</td>
</tr>
</tbody>
</table>

Table 16.3: Average size of holdings in Kawhia, Otorohanga, and Waitomo counties in 1935–36

Source: Document A69 (Hearn), p 156

189. Extract from Tokaanu minute book 46, 16 June 1966, p 33 (doc A69(a), vol 6, p 325); doc A69, pp 418–419.
191. These figures have been compiled from the data available in document A60 for the following blocks: Arapae, Hauturu West, Kokomiko, Otewa, Ototoika, Pakiho, Patiti, Piopio, Tarapounamu, Te Ahoroa, Te Kopua, Te Tarake, Te Tawai, Turoto, Te Uira, Te Waro, Te Whenuatupu, Te Whetu, Waitomo, and Whiroroa.
October 1941, the blocks each had 121 owners; they were set aside as ‘endowment[s] for the maintenance of the social activities of the community’.\textsuperscript{194}

In the case of Te Ahoroa consolidation blocks, the number of owners in the blocks had little correlation to the size of the block, suggesting that grouping interests was a greater priority than ensuring that consolidation blocks were economic farming units.\textsuperscript{195} However, an examination of the same 272 consolidation blocks considered above indicates that while many of the 109 solely owned blocks were rather small, 25 were more than 100 acres in size, and another 20 were 50 acres or more. Generally, as the number of owners increased, so too did the size of the block. Moreover, most of the smaller blocks with especially large ownership had some kind of communal purpose, or were adjustment blocks.

\textbf{16.4.4.3 How were consolidated blocks affected by partitions and successions?}

In the wake of consolidation, partitions and successions continued. As a result, many of the modest gains which consolidation had secured were progressively undermined by continued fragmentation and fractionation. By 1960, Jack Kent Hunn was complaining that consolidation was ‘a treadmill effort, endless and hopeless’ and that, because of succession, it was ‘never really completed at all’.\textsuperscript{196}

As partitions were excluded from the legislative definition of alienation, prohibitions on alienation did not prevent partition. Partitions of consolidated blocks therefore occurred relatively quickly. Table 16.4, for example, illustrates how some Arapae consolidation blocks were being partitioned by the early 1940s, just five years after consolidation in 1936. While two of the partitioned blocks – Arapae A4 and A8 – were several hundred acres in size, the other block to be partitioned – Arapae A6 – was already quite small at 41 acres. That block was also partitioned several times subsequently, ultimately creating a number of even smaller blocks. Similarly, Te Kawa, Pehitawa 2, and Pukeroa–Hangatiki were also blocks in which partitions continued soon after consolidation.\textsuperscript{197}

Alongside partitioning, the court’s succession rules continued to increase the number of owners in consolidated blocks. In 1953, the Auckland district officer reported on the state of the consolidation titles in Te Rohe Pōtāe. He said that ‘many’ consolidated blocks ‘have remained in sole ownership’. He cited as examples Kokomiko 2, Kokomiko 4, Waitomo A5, and Pukenui B14B. The number of owners in other blocks, however, had increased due to successions. He gave the example of nine Pukenui blocks (B30A to B41): ‘Four of these were solely owned, four had two owners and one had five. A succession order made for each of these blocks to the same deceased brought twenty-four successors into each.’ But these blocks, he argued, were outliers. He ‘estimated that about 20% of solely owned blocks have now passed by succession to one or more successors according to

\begin{footnotes}
\footnotetext[194]{Document A60, p 1091; ‘Schedule Hereinbefore Deferred to: Maniapoto “N” Series’, typescript, [November 1940], p 4 (doc A69(a), vol 10, p 170).}
\footnotetext[195]{Document A69, p 155.}
\footnotetext[196]{AJHR, 1961, G-10, p 55.}
\footnotetext[197]{Document A69, p 156.}
\end{footnotes}
the size of the families. Unsurprisingly, many successions had occurred in ‘sinker blocks’ – Hauturu West 5B4, for example, ‘was finalised at 258 owners. Since then 51 succession orders have been made bringing in over 200 more owners.’

By the late 1960s and early 1970s, only a small number of consolidation blocks with only a small number of owners remained. Under part I of the Māori Affairs Amendment Act 1967, by which all blocks of Māori freehold land owned by four or fewer people were converted to Pākehā land, 70 original consolidation blocks were compulsorily Europeanised. In addition, 123 partitions of consolidated blocks

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198. District officer to Under-Secretary, 5 May 1953 (doc A69(a), vol 6, p 203).

<table>
<thead>
<tr>
<th>Blocks</th>
<th>Acres</th>
<th>Owners</th>
<th>Partitions</th>
<th>Alienations</th>
</tr>
</thead>
<tbody>
<tr>
<td>A1</td>
<td>930</td>
<td>32</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A2</td>
<td>270</td>
<td>85</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A3</td>
<td>1863</td>
<td>149</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A4</td>
<td>215</td>
<td></td>
<td>1943 − A4A</td>
<td>1943 − A4B</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1952 − A4A1</td>
<td>1952 − A4A2</td>
</tr>
<tr>
<td>A5</td>
<td>26</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A6</td>
<td>41</td>
<td>1</td>
<td>1941 − A6A</td>
<td>1941 − A6B</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1942 − A6A1</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1942 − A6A2</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>? − A6A1A</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>? − A6A2B</td>
<td>Sold</td>
</tr>
<tr>
<td>A7</td>
<td>228</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A8</td>
<td>409</td>
<td>20</td>
<td>1951 − A8A</td>
<td>1951 − A8B</td>
</tr>
<tr>
<td>A9</td>
<td>179</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A10</td>
<td>118</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A11</td>
<td>29</td>
<td>65</td>
<td></td>
<td>Sold</td>
</tr>
<tr>
<td>A12</td>
<td>30</td>
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<td></td>
<td>Sold</td>
</tr>
<tr>
<td>A13</td>
<td>121</td>
<td>3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A14A</td>
<td>38</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A14B</td>
<td>298</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A15</td>
<td>196</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A16</td>
<td>319</td>
<td>27</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 16.4: Subdivisions of Arapae under consolidation, 1936, subsequent partitions and alienations

Sources: Document A69 (Hearn), p 160; doc A60 (Berghan), p 123.
were Europeanised.\textsuperscript{199} It seems likely that, by this period, all other consolidation blocks either had more than four owners or had been otherwise alienated.

Although it is clear that successions continued in consolidated blocks, it is less clear whether the corresponding increases in owner numbers occurred at a rate comparable to blocks which had not been consolidated. On a district level, successions added a considerable number of owners to titles each year. In 1960, the average increase in the number of owners per succession order in the Auckland district (including the Waikato–Maniapoto Māori Land Court district) was 8.1, resulting in a net yearly increase of 7,522 owners for the district.\textsuperscript{200}

16.4.4.4 Did consolidation assist Te Rohe Pōtae Māori to retain their land?
The claimants argued that, rather than help Te Rohe Pōtae Māori retain their land, ‘consolidation schemes assisted the transfer of land out of Māori ownership.’\textsuperscript{201} Hearn presented evidence that, at least in the blocks he had considered closely (Te Kawa, Mangarapa, Pakeho, and Pehitawa 2), ‘alienations, largely sales, continued after consolidation.’ While cautioning that the link between consolidation and alienation was unclear, he suggested that, because ‘consolidation involved the grouping of owners’ various interests into a single block’, it was likely that consolidation could encourage alienation.\textsuperscript{202} He also pointed out that land sales, particularly to Pākehā, ‘rose appreciably’ in the Waikato–Maniapoto Māori land district between 1946 and 1965, and suggested that ‘consolidation fostered sale.’\textsuperscript{203}

Of the 18 consolidation blocks created as a result of the first instalment of the Maniapoto consolidation scheme, only two appear to still be Māori freehold land today – Pukenui A8 and Pukepoto A1. The latter seems to have been amalgamated, along with others, into Pukepoto A6 in 1991; that block is now governed by the Pukepoto Farm and Forest Trust.\textsuperscript{204} It is unclear whether the other consolidation blocks are still in Māori ownership as general land. Three of the blocks, along with four partitions of other blocks from the instalment, were Europeanised under part 1 of the Māori Affairs Amendment Act 1967 (see section 16.5.2). Two blocks – Pukenui B1 and Te Kuiti A1 – were alienated before consolidation was completed, and were excluded from the final orders. The fate of Mangarongo A1 is unknown.

16.4.4.5 Did the Crown and local authorities benefit from consolidation?
The evidence before the Tribunal was that the Crown benefited from consolidation in two ways: ‘in the form of blocks and charging orders for rates subsidies and survey liens, and by having its undivided interests concentrated’\textsuperscript{205} As for local authorities, Hearn noted: ‘consolidation improved their ability to identify owners

\textsuperscript{199} These figures are based on an examination of Paula Berghan’s block histories.
\textsuperscript{200} Document A69(b), p 8.
\textsuperscript{201} Submission 3.4.114, p 22.
\textsuperscript{202} Document A69, pp 156–157.
\textsuperscript{203} Document A69(b), p 8.
\textsuperscript{204} Document S29 (Haar), p 4.
\textsuperscript{205} Document A69, p 109.
and to sue for non-payment of rates, and it facilitated alienation, long regarded as the key means of widening their rating base and improving their ability to secure payment of rates.\textsuperscript{206}

Luiten agreed that in terms of the issue of outstanding rates on Māori land: ‘Local bodies had received a one-off payment, but no lasting remedy.’ Rating exemptions on Māori lands were lifted by most Te Rohe Pōtae local authorities by the end of March 1932. However, they then returned to ‘the familiar problems of non-collection’. To deal with this issue they resorted again to the charging order provisions of the relevant legislation. Their complaints about this state of affairs led to the establishment of a further commission of inquiry into the rating of Māori land in April 1933.\textsuperscript{207}

**16.4.4.6 What were the costs of consolidation for Te Rohe Pōtae Māori?**

While Te Rohe Pōtae Māori received some benefits as a result of the Maniapoto consolidation scheme, the process was not without its costs. Some were direct, such as charges for the new surveys that were sometimes required as a result of consolidation. Indirect costs included ‘delay, displacement, and dispossessions.’ The claimants argued that ‘Te Rohe Pōtae [Māori] land owners bore considerable costs’ as a result of consolidation.\textsuperscript{208} The Crown accepted that consolidation ‘had some negative consequences for some owners’, including ‘the dispossessions of some owners from land they owned, the length of time it took to complete some schemes and the inability in some cases to aggregate scattered interests into workable holdings, with attendant opportunity costs.’\textsuperscript{209}

Delays in implementing the scheme were brought about by its complexity, inadequate resourcing, and an inter-departmental impasse over the settling of the Crown’s interests. These delays were clearly frustrating for Māori. In 1937, for example, A J Ormsby, tired of waiting for consolidation to deliver him ‘a practical sized farm,’ instead sought exchanges – compulsory, if possible – in order to achieve the same goal.\textsuperscript{210}

In September 1935, as another example, E C Davis wrote to the Native Minister concerning Pukeroa–Hangatiki \textsuperscript{A54} and the ‘unnecessary delay’ in completing final consolidation orders. The 117-acre consolidation block, comprising Pukeroa–Hangatiki \textsuperscript{4C3A1} and \textsuperscript{4C3A2}, had been awarded to Davis’ wife Matatira Te Moerua as part of the second installment of the Maniapoto consolidation scheme in November 1931. The block was subject to a charging order to two individuals and the Crown for £50. Davis explained that he and his family had occupied the area since 1928, and by 1935 were milking 16 cows. But the incomplete state of the block’s title was a cause of concern.\textsuperscript{211} Davis told the Native Minister:

\begin{itemize}
\item \textsuperscript{206} Document A69, p 109.
\item \textsuperscript{207} Document A24, p 160.
\item \textsuperscript{208} Submission 3.4.114, p 23.
\item \textsuperscript{209} Submission 3.4.308, p 25.
\item \textsuperscript{210} Document A69, p 101.
\item \textsuperscript{211} Document A69, pp 101–102.
\end{itemize}
What is causing me anxiety is the position of the improvements which I have
effected on the area which are considerable.

Yet I am at a loss to know where I stand and at the moment I am still awaiting the
final settlement on this matter.²¹²

Asked to respond, Pei Jones told the Auckland registrar that the consolida-
tion orders 'are ready for duplicating.' He explained, however, that the Survey
Department had requested a schedule 'showing the various transfers of Crown
Survey liens and Crown Rates and where and how these amounts have been
secured.' This was, he said, 'quite a formidable undertaking and will require
concentrated attention, which, as you are aware, has not been possible with the
assistance available to me on consolidation.' Jones cited additional reasons for the
failure to make final orders: the delay in finalising the survey liens compromise,
data revisions caused by alienations, and inadequate assistance.²¹³

In 1952, the Under-Secretary for Māori Affairs recognised the cost to Māori
owners arising from the delays in completing the consolidation schemes, as well as
their impact on the overall effectiveness of the schemes. He noted particularly the
situation of owners who were likely to evacuate certain areas under consolidation,
and were therefore 'left with their interests suspended in mid-air.' They could 'do
nothing with their lands, while those who have only proposed locations are left on
tenterhooks.' He further argued that 'the longer the time taken to bring a scheme
to an end, the more complicated the business becomes.' Many of the agreements
relating to consolidation and the reallocation of interests were oral, meaning they
were vulnerable to being forgotten about: 'Parties to it die, and other people come
in who don't necessarily feel themselves bound by it.' ²¹⁴

Involving as it did the mass reallocation of ownership interests within a large
area, 'consolidation could and frequently did mean displacement.'²¹⁵ Owners
involved in consolidation schemes were asked to forgo their interests in certain
blocks in favour of others. For some owners, this meant that they were required
to vacate the land that they were occupying. As noted above, these arrangements
were to be carefully negotiated to ensure that owners consented to the manner in
which their interests were to be reallocated.

In such a context there was potential for forced displacement, particularly when
the interests of absentee owners were involved. Two examples are Te Rautahi Te
Roha and her home on Kinohaku East 1F27 (consolidated as Ototoika A12). She
and her late husband had lived outside the district for some time prior to her
return in 1933. She discovered that when the block, of which her husband was one
of 11 owners, was consolidated in 1931 it was awarded to Pakuwera Katu and seven

²¹². Davis to Native Minister, 25 September 1935 (doc A69(a), vol 10, p 127); doc A69, pp 101–102.
²¹⁴. 'Memorandum: Consolidation,' typescript, not date, p 1 (doc A69(a), vol 6, p 214); doc A69,
p 118.
other members of the same whānau, as they owned the vast majority of shares in the block. Pei Jones reported that, unable to contact Te Roha or her husband, the interests of her husband had been transferred to a leased block along with other absentee owner interests. Compensation for the house had been transferred to the Māori land board for distribution. Native Minister Ngata noted these details, and pointed out that as Te Roha had not succeeded to her husband’s interest she was not an owner at the time of consolidation. The award therefore stood.²¹⁶

The prohibitions on alienation in place as a result of consolidation proceedings prevented owners leasing, selling, mortgaging, or otherwise transferring the lands affected. They were also effectively denied any opportunity of turning those lands to productive account or of utilising the proceeds to support development elsewhere. The orders in council ‘forbade owners to exercise most of the key rights of private ownership.’²¹⁷ This was the opportunity cost due to the orders in council being imposed on the blocks. The Crown did lift the orders applying to individual blocks when requested to do so by owners. But that process could be time consuming, and depended on the discretion of the Native Minister, who in turn depended on the advice of officials. However, this procedure did offer some relief for owners whose lands were affected by the prohibitions. The extent to which owners were made aware of this process is not known.

What can be stated with certainty is that the Crown’s consolidation schemes imposed limitations on the rights of Māori land owners, which no other property owners in New Zealand had to endure.

16.4.5 Alternatives to large-scale consolidation schemes

Beyond the Maniapoto consolidation scheme, a number of smaller consolidations also occurred, often at the initiative of owners who utilised exchange, sale, and other methods to reallocate their interests. In addition, the court also had the power to make ‘combined partitions’.

16.4.5.1 Options available to owners

Māori landowners wishing to circumvent the Crown’s official consolidation schemes – and the associated delays – could use various methods to redistribute interests. These methods, such as exchange and sale, were not without their own difficulties. In 1938, for instance, the Auckland registrar wrote of ‘the difficulties and expense entailed if a native tries to carry out such adjustments himself with many Court orders and Court attendances for succession[,] exchange and the like.’²¹⁸ Nonetheless, there are several examples of owner involvement in interest redistribution, including by:

- **Sale**: Some owners purchased the interests of other owners in blocks, thus allowing them to acquire an economic holding. For example, in 1950, 33

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owners of Mahoenui 2 section 2B (223 acres) agreed to sell their shares at government capital valuation to Pairama Kearns, who owned 3/14 of one share out of 12 shares in the block. Similarly, in 1955, Ned (Huti) Waitere purchased the interests of the other owners in Moerangi 3A2A (143 acres), while John Paki did so in Moerangi 362 and 364 (198 acres in total).219

Exchange: Some owners used the exchange provisions of the Native Land Act. Pei Jones’ whānau, for instance, redistributed three blocks between four family members in 1931, with two taking over Rangitoto–Tuhua 77E2C3G (272 acres) and 77E4B (42 acres), and two taking over Rangitoto A42B1 (187 acres).220

Purchase: Some owners re-purchased the Crown’s interests in consolidation blocks. In 1951, for instance, the Punaruku whānau purchased 84 acres in Arapae A8 to create a single holding in combination with their other interests in the block. Owners also repurchased Crown interests in Taumatatotara A4 and Kaingaika A9 for similar reasons. Hearn noted that ‘[t]he Crown was not unhappy to dispose of small and scattered fragments of land.’221

Consolidation: In the late 1940s, the Wetere family employed a different approach, directly appealing to the Crown to use the consolidation provisions of the Native Land Act 1931 to effect a consolidation scheme that they had arranged amongst themselves. Because some blocks were under development and others were included in orders prohibiting alienations, the normal provisions for exchange or consolidated partitions were unsuitable. The owners therefore requested in 1949 that the Native Minister instruct the Māori Land Court to prepare a consolidation scheme. The proposed scheme included 24 blocks covering at least 18,080 acres in the Mahoenui district.222 In January 1950 the Under-Secretary recommended that the Minister grant the owners’ request.223 However, nothing appears to have happened until late 1951, by which time the court was already preparing the scheme. The Minister approved the application to the court on 8 November 1951.224

16.4.5.2 Combined partitions
The court also had power to effect something akin to consolidation on a smaller scale using combined partitions. Under section 146 of the Native Land Act 1931, the court could treat several blocks of land as a single area in order to partition the whole area between the relevant owners. The blocks did not need to be adjacent, but they did need to have some element of common ownership. The Auckland registrar recommended in 1938 that these provisions could be used to effect ‘much

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221. Document A69, p 130.
222. The acreages of three blocks was not given.
224. Under-Secretary, Māori Affairs, to Minisiter of Māori Affairs, 11 January 1950 (doc A69(a), vol 11, p 147).
good work’, particularly if they were extended.225 The extent to which combined partitions were used in Te Rohe Pōtai is unclear on the evidence before the Tribunal, though a 1952 report did record that combined partitions were ‘being used to effect “pockets” of consolidation wherever suitable and necessary’ in the district.226

### 16.4.6 Treaty analysis and findings

It is evident that large-scale consolidation was a Crown policy intended to improve the productivity and rateability of the remaining Māori land left in Te Rohe Pōtai. Its secondary purpose, championed by Sir Āpirana Ngata, was to improve the position of Māori owners to make it easier for them to utilise some of their land interests. Consolidation was, however, a dramatic response to the problems of the title issues plaguing Māori land, involving a vast reallocation of ownership interests. That such an effort was required just 40 years after the Native Land Court had arrived in Te Rohe Pōtai demonstrates the extent of the problem. Alternatives were available to owners that did not require the same level of Crown interference with their land rights guaranteed in article 2 of the Treaty of Waitangi.

We note the Native Land Amendment and Native Land Claims Adjustment Act 1923 (as well as earlier provisions) did not require the Crown to consult with Māori before implementing a consolidation scheme, nor to gain their consent. The evidence before us indicates that the level of consultation before the initiation of the Maniapoto consolidation scheme fell short of what is required for the Crown to obtain the informed consent of the affected owners.

By the time that the Crown arrived in Te Kūiti to meet with Te Rohe Pōtai Māori in April 1928, it had already put much of the machinery of consolidation in place. It was also aware, or should have been, through their petition to the Crown, delivered in the same wheelbarrow Stout had used at the sod-turning ceremony for the North Island Main Trunk Railway in 1885, that Māori were opposed to rating their lands.

Certainly, at the hui itself in 1928, much of the focus – both of the Native Land Consolidation Committee and Te Rohe Pōtai Māori – was on rating and the possibility of a rates compromise rather than consolidation itself. In the record of discussions at the time, the Crown employed an element of coercion to accept the deal concerning rating when engaging the Te Rohe Pōtai leaders in attendance. Conversely, there is no evidence that the nature and extent of the consolidation scheme were discussed – including the timeframes for its completion, the necessity for prohibitions on alienation, and the extent to which implementation of consolidation might affect land development.

The consent of the majority of individual owners of a block was also not required when the time came to actually implement consolidation on the ground. By declaring the scheme, the Crown gained broad powers, including the ability to

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issue orders in council prohibiting private alienation over areas under consolidation. Those orders committed the owners of the affected blocks to the process and limited their ability to utilise their land in the meantime.

Consolidation proceeded slowly in Te Rohe Pōtae and was largely abandoned after the eighth instalment was submitted to the Native Minister for approval in 1941. Consolidation staff encountered difficulties almost from the beginning, causing delays in the scheme. Some of these difficulties were, as the Crown submitted, the result of the inherent scale and complexity of consolidation. But the problems were not simply administrative. The Crown bore some responsibility for the delays in implementing consolidation. Resourcing of consolidation was sporadic and a source of frequent complaint from Pei Jones, one of the few consolidation staff whose presence was relatively constant. Even Jones was not immune from redeployment to other duties, a trend that reflected the Crown’s shifting focus – from the early 1930s on – to its land development schemes. A further cause of delay was the protracted dispute between the Native and Lands and Survey Departments over how survey liens and rates and other costs of the scheme were to be settled.

Consolidation ultimately produced only modest results. Some Māori received blocks in sole ownership, but many others had their interests concentrated in blocks with others, albeit with smaller ownership lists. In order to avoid the new blocks becoming burdened with new survey charges, consolidation blocks generally conformed to existing boundaries. This meant, however, that they shared many of the disadvantages of their predecessors, particularly in terms of small size and access. Consolidation blocks appear to have been, on average, considerably smaller than other holdings in the region, raising questions about whether consolidation produced economically viable blocks.

The biggest problem with consolidation was that some of its basic premises were fundamentally flawed. It quickly became clear, for instance, that many Te Rohe Pōtae Māori no longer retained sufficient land to create economic holdings even once their interests had been grouped together, let alone to create such holdings in sole ownership. This issue was exacerbated in subsequent decades as ongoing partitions and successions undermined many of the modest results achieved in consolidation blocks, further fragmenting blocks and congesting ownership lists.

The Crown took some steps to mitigate the impact of the delay in implementing the Maniapoto consolidation scheme. It seems that requests to lift prohibitions on alienation, for instance, were granted. But that process imposed its own costs and was dependent on the discretion of the Native Minister.

We find, as a result of all the above, that the Crown’s actions, policies, and legislation were inconsistent with the principles of the Treaty of Waitangi, namely, the principles of partnership, reciprocity, and mutual benefit and the guarantee of Te Rohe Pōtae rangatiratanga over their lands. By failing to obtain the informed consent of Māori leaders and landowners in Te Rohe Pōtae regarding the scheme and its implementation, the Crown also failed in its duty of active protection of its guarantee of rangatiratanga over the lands.

Once the scheme was implemented, the delays and the lack of resourcing of the Maniapoto Consolidation Scheme resulted in lost development opportunities for
some landowners, and land loss for others. As in other areas, Te Rohe Pōtae Māori were ‘disadvantaged by delays in completing the schemes, and it seems that little attention was paid to the impact of delay on their present and future land use, and the economic viability of their farms.’ Ultimately, we agree with the Central North Island Tribunal that: ‘The Crown’s failure to ensure that schemes were completed expeditiously, and to deploy sufficient staff to ensure that this happened, was inconsistent with its obligation of active protection.’

It is evident that consolidation would not have been needed but for the Crown’s Māori land tenure system in operation in the district. As Crown officials acknowledged at the time, the longer that consolidation took to implement, the more the problems with it compounded. These problems were multi-faceted, social, and economic, and their impact fell most heavily on Māori.

16.5 Title Simplification, 1953–74
By the early 1950s, the Crown recognised that consolidation had largely failed to achieve its desired objectives. In 1952, the Under-Secretary of the Native Department provided a damning report on the large-scale consolidation schemes initiated in previous decades. He concluded that they had not only caused ‘interminable delay, but [were] a real impediment to any effective use of the land.’ Furthermore, ‘[t]o the extent that consolidation fails to secure the ownership of land in severalty, its original conception is a failure. That statement, however, is subject to the important qualification that it is necessary to align the titles of land to farm holdings.’ Large-scale consolidation schemes simply did not, he considered, provide the best method of getting ‘Maoris on the land with single titles.’

While the Crown was beginning to doubt the efficacy of consolidation, it remained as concerned as ever about the state of Māori land titles. In the wake of the Second World War, the Crown sought increased land utilisation and productivity, both to settle returned soldiers and to sustain a ‘buoyant’ national economy dependent on agricultural exports. At the same time, the Government believed that the economic importance of Māori land as a source of subsistence was declining, ‘with social security, the urbanisation of a rapidly increasing Maori population and increasing full employment’ providing alternative sources of income.

Migration to urban areas was one of the most significant transformations affecting Māori in the mid-twentieth century. In 1926, 8.7 per cent of Māori had lived in urban locations. By 1951, this figure had risen to around 30 per cent. Ten years

228. Waitangi Tribunal, He Maunga Rongo, vol 2, p 740.
231. Document A69, p 118.
232. Document A123 (Belgrave, Deason, and Young), p 35.
later it was at 46 per cent, and by 1966 62 per cent of Māori were living in urban areas.\textsuperscript{234} While many at the time viewed this transition as an ‘inevitable’ development, a number of factors motivated Māori to move to urban areas.\textsuperscript{235} Increased employment in towns and urban centres, as New Zealand’s industrial economy expanded after the Second World War, were some of these factors (see chapter 17 and the socio-economic chapter in a forthcoming volume this report for fuller discussion of urban migration). Furthermore, a robust Māori birth rate, coupled with the fact that rural lands were plagued with title problems as a result of the operations of the Native Land Court, meant that rural lands were ‘increasingly unable to sustain the rising Maori population.’\textsuperscript{236} Remaining Māori land therefore became a target for the Crown’s efforts to improve land productivity. This desire that all Māori land be brought into production reflected not only economic ambitions to meet post-war demand for New Zealand primary produce, but also ideas regarding citizenship and national identity.

In order to improve the utilisation of Māori land, however, the Crown considered that title issues still had to be resolved. In July 1952, Bremner and Winkel, reporting on the state of Māori land titles and consolidation work, described the title position as ‘chaotic’, with multiple ownership posing a particular problem that necessitated immediate action. They argued strongly that: ‘No worth while result can be achieved until power is given to dispose of these [minor] interests simply and expeditiously.’ Such simplification of title was regarded as the key to obtaining ‘as quickly as possible the great benefits that will accrue both to the Maori people and New Zealand itself.’\textsuperscript{237} Abandoning large-scale consolidation, the Crown instead turned to title simplification – and the eradication of multiple ownership – as the cure to the state of Māori land titles for the next two decades.

One of the most controversial of the Crown’s title simplification measures was conversion, by which ‘uneconomic interests’ in Māori freehold land were compulsorily acquired and ‘converted’ into cash and transferred to the Māori Trustee for sale to larger shareholders or other Māori. An uneconomic interest was defined, depending on the period, as those interests valued at less than £25 or $50. Conversion could occur at a number of points in the Māori Land Court process, including at succession, partition, consolidation, amalgamation, and on the issue of consolidated orders. There was little provision for owner involvement in the conversion process, as it was compulsory. Together with the compulsory provisions for conversion, a voluntary form of conversion known as ‘live-buying’ also operated, by which owners could dispose of their interests directly to the Māori Trustee. In addition, the Crown also utilised a variety of other measures to achieve its goal of simplifying Māori land titles. These measures included provisions for


\textsuperscript{236} Hill, \textit{Māori and the State}, p 11.

the automatic Europeanisation of blocks owned by four or fewer owners, amalgamation, consolidated orders, the £10 rule, and arranged successions.

16.5.1 Conversion
Conversion was intended to solve the ‘problem’ of multiply owned land by reducing the number of owners in each block, particularly at the point of succession. It was also motivated by official concern about the impacts of succession on previous title reconstruction work, the difficulty of contacting absentee owners, and the administrative burden of distributing rentals and dividends on vested and leased lands to large numbers of owners.238

There was limited provision for conversion at the point of consolidation in the Native Land Act 1931, but it required the consent of the Māori owner whose interest was to be affected.239 During the 1940s, officials proposed that provision should be made for compulsory conversion. In 1944, Judge Seth Beechey advocated for an amendment to the 1931 provisions which would allow the court to ‘deal with these trifling interests which at the present time very often obstruct the work of Consolidation without, at the same time, yielding any real benefit to the owners of these small interests.’240

Judge Beechey’s suggestion was taken up by the Department of Māori Affairs the following year. The Māori Purposes Bill 1945 included provisions to allow compulsory conversion, intended to assist the court ‘in its endeavour to give each beneficiary something worth while.’241

The Māori members of Parliament objected to these provisions. On their behalf, Eruera Tirikatene called the provisions for compulsory conversion ‘bad, not British justice, and politically disastrous’. He argued that they hit ‘right into the heart and soul of Maori mental sentiment and Mana ie the alienation of his lands without his consent’. He considered the clauses to be contrary to both the Treaty and ‘Labour’s principle of equal rights and of the protection of the minority’.242

As a result of these objections, the provisions were dropped from the 1945 Bill.243 When the Native Department attempted to include them again in 1946, ‘the Prime Minister [Peter Fraser] made it clear that without the agreement of Maori Members of Parliament the proposed amendments would not be included.’244

Conversion re-emerged as a serious proposal in 1952 under the first National government that had taken office in 1949. A Cabinet paper that year charged that multiple ownership was the ‘outstanding problem in relation to Māori land’, preventing utilisation and hampering administrative tasks such as distributing rental income. The paper proposed the creation of a conversion scheme whereby, upon the death of an owner, their interests would vest in the Māori Trustee. The

238. Document A69, p 133.
239. Native Land Act 1931, s 162(5)(c); doc A69, p 132.
240. Judge Beechey to chief judge, 10 November 1944 (doc A69(a), vol 1, p 304); doc A69, p 132.
241. Registrar to Under-Secretary, 24 August 1945 (doc A69(a), vol 1, p 299); doc A69, p 133.
243. Document A69(a), vol 1, p 297.
244. Document A69, p 134.
trustee would then be responsible for ascertaining the value of those interests and transmitting the economic interests to successors. Uneconomic interests – to be set, it was proposed, at £100 – would be sold to a conversion fund established from the trustee’s accumulated profits.

It is evident from the paper that the Crown was at least aware that conversion was not simply title reform, but something that would directly impact Māori society and culture. The paper acknowledged that the proposal was ‘arbitrary’, cutting ‘right across the traditional rule touching the devolution of rights in Maori land’, and that it was likely to be opposed. But it was considered that ‘anything less than a radical course will leave the present evil practically untouched’. Ensuring that Māori retained sufficient land for their maintenance was no longer feasible: ‘with the thousands of minute interests now abounding [that] has become farcical’. The paper emphasised: ‘[t]he course followed to its conclusion would mean that, in time, farms, house sites and other economic interests would be finding their way back into the hands of Maoris – freed from the blight of sentimental attachment’.

Tribal reservations made for the named members of an iwi were proposed to address concerns regarding the loss of tūrangawaewae, and particularly of the right to be heard on marae.

The paper set out what the Crown envisaged achieving through conversion, a list that reveals:

(a) No more minute interests would be created on succession;
(b) As ‘live purchases’ went on, many Maoris would become entirely landless, without any hurt to them;
(c) In the course of time less and less Maori land owned by large numbers of owners.
(d) Similarly more and more land would be made available for production.
(e) In a generation or so the attitude of Maoris to land generally would be the same as that of Europeans.245

It is unclear what the authors meant by ‘hurt’ and what evidence supported the Crown’s belief that Māori landowners would not suffer by becoming landless. The focus of the proposal was squarely on land, its utilisation, and the number of owners, with only passing recognition of any wider consequences that conversion might have. But it is clear that – by acknowledging that ‘[i]n a generation or so the attitude of Maoris to land generally would be the same as that of Europeans’ – the Crown was contemplating a social and cultural revolution.

The proposed conversion scheme was included in the Māori Affairs Bill 1952. The 1952 Bill was distributed to tribal executives, the Māori Land Court judges, the Department of Māori Affairs, and other interested individuals and groups. It was also summarised in Te Ao Hou, a journal published by the Department of Māori Affairs.246 Criticism of the process, as initially proposed, resulted the 1952 Bill being withdrawn. The Māori Affairs Bill 1953 which followed took a ‘somewhat

different approach’ to uneconomic interests. It gave the Māori Land Court the discretion to decide whether to vest uneconomic interests in the Māori Trustee, and defined an uneconomic interest as one less than £25 rather than £50.247

Despite these changes, the passage of the 1953 legislation was contentious. The provisions for conversion attracted particular opposition from Māori both in and out of Parliament. Although there is no specific evidence about the Te Rohe Pōtae Māori response, the Māori Members of Parliament – all in opposition – were strongly critical of the Bill’s proposals. Tiaki Omana, member for Eastern Māori, charged that the conversion provisions were causing ‘the Maori people so much concern’:

Most of us know that the Maori guards jealously his traditions and customs, and that his life and his affiliation with his tribe are wrapped up in the ownership of land. No matter how small that interest may be, it gives him the right to stand on his marae. Once he loses the ownership of land he is nobody. He cannot take part in the work of his tribe.

Omana acknowledged that ‘something has to be done, but surely not to render him [the Māori landowner] landless.’248

Ernest Corbett, the Minister of Māori Affairs, acknowledged that conversion would alienate ‘some people’, but rejected the idea that it would result in wholesale alienation of Māori land.249 He acknowledged the importance of ‘sentimental attachment to the land’ but emphasised that ‘love of the land is shown by the way you use it’. He argued that something had to be done to address the ongoing issues with Māori land titles: ‘This is a case where it is necessary to face up to a problem and deal harshly with tradition, much as I deplore having to do so. It is inevitable, in the interests of the Maori people themselves, and to ensure the retention of the remaining areas of their land, that something should be done.’250

In 1960, Jack Hunn was charged with reporting on the state of the Department of Māori Affairs. When his report was released in 1961, it covered much more ground, including the state of Māori land titles. In the report, Hunn diagnosed the ‘core of the problem’ with Māori land titles as ‘multiple ownership, which proliferates in a minute division of interests in each Maori land title.’251 The problem, as Hunn saw it, was that ‘[e]verybody’s land is nobody’s land’, obstructing utilisation and leaving Māori land idle.252 He further noted that the state of titles was degenerating: in the Auckland district (which included Waikato–Maniapoto), succession orders added an average of 8.1 owners to titles, with the result that each year an additional 7,522 owners were added to titles across the district.253 Hunn noted

248. Omana, 18 November 1953, NZPD, vol 301, p 2314.
251. AJHR, 1961, G-10, p 22.
252. Document A123, p 94.
the significance of even the most minor land interests to Māori and drew on the example of how the ‘British version of turangawaewae’ had changed with time into universal adult suffrage. The assimilationist mentality pervading Pākehā thought was evident in the assertion that ‘[t]urangawaewae based on home ownership’ would be better than ‘ownership of an infinitesimal share in scrub country that one has never seen’.254 Home ownership would recognise those Māori ‘who have proved themselves of some consequence as citizens’ and demonstrated love ‘for a particular plot of land in a practical way’.255

Hunn made a series of recommendations designed to arrest problems related to Māori land titles and to encourage sole ownership. These recommendations included increasing the definition of an uneconomic interest from under £25 to

Legislative Provisions for Conversion: Māori Affairs Act 1953

Under the Māori Affairs Act 1953, the Māori Land Court could vest uneconomic interests – those valued at £25 or less – in the Māori Trustee at several points in its process. In particular, conversion was to apply at the point of succession. Upon the death of an owner, the court was required to determine the owner’s eligible beneficiaries and the value of their interests. If those interests were uneconomic, the court was to vest them in the Māori Trustee, unless an interest was specifically devised by will or was capable, whether by itself or in conjunction with other interests, of certain uses, such as use as a house site.1 Families could also circumvent conversion by coming to their own arrangements on succession, such as by electing one member to succeed to particular interests so that they did not get divided into uneconomic shares. In addition, the court could recommend that the Māori Trustee apply any uneconomic interests it uncovered during the consideration of a partition application, on giving effect to a consolidation scheme, or during the preparation of a consolidated order.

Upon acquiring uneconomic interests, the Māori Trustee could then sell the interests to other owners in the block (including a body corporate), or, if they did not wish to purchase the interests, to other Māori or the Crown (for the purposes of housing or development).2 The Māori Trustee could not dispose of uneconomic interests in Māori freehold land to Pākehā, though it could hold on to them as Crown land.

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1. Māori Affairs Act 1953, s 137.
2. Māori Affairs Act 1953, s 152.
under £50, increasing the scale of live-buying, and making more use of the conversion fund.\footnote{256}

The Hunn report was followed in 1965 by the Prichard–Waetford report, which focused specifically on Māori land law and the powers of the Māori Land Court. A committee comprising Ivor Prichard, former chief judge of the Māori Land Court, and Hemi Waetford, a Department of Māori Affairs member of staff, was appointed just as the Government and the New Zealand Māori Council had reached an impasse over the direction of Māori land law in the wake of the Hunn report. The Government saw the appointment of a committee as a way of potentially gaining favour from the council for proposals that it would not support if they were suggested by the Department of Māori Affairs. Accordingly, the committee’s terms of reference were highly prescriptive: multiple ownership was assumed to be a problem, and the committee was to evaluate a series of proposed solutions.\footnote{257}

The committee travelled widely, holding hui with Māori, local authorities, and other groups around the country. On the subject of conversion, the commissioners, like Hunn, recommended that pace of acquisition be accelerated, and that the value of an uneconomic interest be increased – but to £100, rather than £50 as Hunn had suggested.\footnote{258}

The Prichard–Waetford report led to another round of legislative amendments in 1967. Ralph Hanan, the Minister of Māori Affairs, introduced the Bill by stating that it ‘takes a great step forward to the point where a mass of special provisions affecting Maoris and their land can be eliminated from the statute book’. As with earlier measures, the 1967 legislation was intended to address the problems associated with Māori land title, namely multiple ownership and fragmentation. Hanan claimed that ‘things have got to the stage where the Government feels it has no recourse but to do something. Things cannot go on just as they are.’\footnote{259}

The Bill proposed a number of changes to the conversion programme to expedite its pace. Hanan noted in the House that the 1953 provisions had ‘not been frequently exercised’, blaming the lack of funding and the setting of the interest at £25, which had been ‘too small to be of any practical effect’ and observing that it had failed, once aggregated, to create economic units.\footnote{260} As a result, the Bill originally proposed to increase the value of an uneconomic interest to £50. After opposition from Māori, however, the final version of the Act ended up maintaining the figure at $50 (the decimal equivalent of £25). The Bill also provided that the conversion fund was to be financed by the Government, rather than by the Māori Trustee’s account. Finally, the Bill ‘cast the net of acquisition wider’ by allowing the Māori Trustee to acquire uneconomic interests on its own initiative – rather

\footnotesize{256. AJHR, 1961, G-10, p 59.  
258. Document A69, p 144.  
than on the court’s recommendation – at the point of partition, consolidation, amalgamation, or the issue of consolidated orders.\(^{261}\)

The Māori Affairs Amendment Act 1967 was the subject of widespread opposition from Māori. In the select committee process, only a small number of submitters supported the Bill. The New Zealand Māori Council, which ‘led a concerted campaign’ against the Bill, believed that conversion ‘violated basic property rights and discriminated against Māori’.\(^{262}\) In Parliament, the Māori members challenged the Minister’s characterisation of the ‘problem’ with Māori land title. Matiu Rata rejected the suggestion ‘that fragmentation created uneconomic units which debared utilisation of the land’ and blamed instead ‘a failure to use the powers in the present Act to bring about utilisation’.\(^{263}\) The 1967 legislation was criticised as the ‘last land-grab’ and sparked a series of street demonstrations.\(^{264}\) The backlash against the Act’s provisions, which allowed for the conversion of already-diminished Māori landholdings to Pākehā title as a means to facilitate alienation, was so strong that it is credited with inspiring an ongoing protest movement centred around the appropriation of Māori land.\(^{265}\) Though multifaceted, this movement is perhaps most commonly identified the 1975 Land March led by Whina Cooper (later Dame).

Following the election of a Labour government in 1972, Rata, as the new Minister of Māori Affairs, moved to repair ‘the invasion of the rights of the Maori people brought about by the legislation of 1967’ by repealing some of its more contentious elements.\(^{266}\) The Māori Affairs Amendment Act 1974 thus repealed the provisions allowing for compulsory conversion.\(^{267}\) Live-buying continued, but only where ‘the owner proposed to employ the proceeds for housing or meeting estate debts’.\(^{268}\) The Māori Affairs Amendment Act 1987 abolished the conversion fund and established a process for the Māori Trustee to return the shares it still held. All compulsorily acquired shares were to be returned to the original owners at no cost. For shares acquired through live-buying, those worth less than $1,000 were to be returned to the block’s existing owners free of charge, while those worth more than $1,000 were to be sold to the existing owners by way of interest-free advances.\(^{269}\) These provisions meant that owners who had sold their interests through live-buying would not receive them back.

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\(^{262}\) Document A123, pp 155–162.
\(^{266}\) Rata, 2 October 1974, NZPD, vol 394, p 4775 (doc A123, p 185).
\(^{267}\) Māori Affairs Amendment Act 1974, ss 23, 52.
\(^{268}\) Document A69, p 149.
\(^{269}\) Document A75 (Bassett and Kay), pp 413–414.
16.5.1.1 Was the implementation of conversion fair to Te Rohe Pōtae Māori?

The most relevant overview data is from the Waikato–Maniapoto Māori land district, an area that extends beyond the boundaries of this inquiry district and also includes the Tauranga and South Auckland districts. The data also does not, for the most part, distinguish between compulsory conversion and live-buying.

Conversion began relatively slowly in the Waikato–Maniapoto Māori land district. As at the end of March 1958, just 202 of the 7,961 interests acquired nationally by the Māori Trustee were located within the Waikato–Maniapoto Māori land district. During this early period, the Crown’s focus was on effecting title simplification through the use of consolidated title orders, at which stage conversion could operate to remove any uneconomic interests that were unearthed while preparing the order. Although this process did have notice requirements, it did not require consultation with affected owners. It was, as Bassett and Kay pointed out, ‘an administrative solution which could be implemented without any involvement with the owners who were to be dispossessed of their shares.’

After this slow start, the pace of acquisition of uneconomic interests in the district increased from 1960 on, urged by the Department of Māori Affairs. By March 1963, the district had completed the work of updating titles and ownership lists and by November 1963, the Department of Māori Affairs’ Waikato–Maniapoto district office had acquired 4,755 interests.

In Te Rohe Pōtae, the Crown particularly focused on acquiring uneconomic interests in land that was capable of being, or was already, included in development schemes. Under section 152(3)(c) of the Māori Affairs Act 1953, the Crown was able to purchase uneconomic interests acquired by the Māori Trustee for inclusion in a development scheme. According to Bassett and Kay, in Te Rohe Pōtae the focus of such purchasing was on coastal blocks. They cited examples such as the Māori Trustee acquiring uneconomic interests in Aotea South 3B2 and Kawhia E2B1. By June 1967, the Crown and Māori Trustee jointly owned 13.1 per cent of the 113,848.6206 shares in 11 Te Rohe Pōtæ development schemes.

The Waikato–Maniapoto district office was originally concerned that many of the uneconomic interests available for acquisition did not have ready buyers. Later, however, the district was prepared to set aside that concern if there were other benefits to acquiring uneconomic interests. In 1966, for instance, the Māori Trustee purchased the uneconomic interests of 144 owners (from a total of 153) in Aotea South 3C2. This was despite the fact that there were no ready purchasers. The purchase was justified because ‘[t]he block adjoined Okapu D which was under station development and Aotea 3C2 was considered a good area to amalgamate with D.’

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274. The 11 development schemes were Arapae, Pio Pio, Aramiro, Taumita, Oparau, Pukenui, Paewhenua, Tiroa, Waipuna, Aotearoa, and Trooper’s Road: see doc A69, p 148.
Alongside compulsory conversion, the Waikato–Maniapoto office was also live-buying land interests, especially after 1963, when the office had finished updating titles. The office’s live-buying efforts were apparently so successful that in 1966 it requested an additional £33,000 on top of its allocated £27,000 conversion fund in order to continue its purchasing work. In 1966, the district’s fund was increased from £27,000 to £47,000 with a commitment of more funding.\(^{276}\) In 1967, the Department of Māori Affairs’ Hamilton office reported that it received around 25 inquiries a month from Māori wishing to ‘realise [their] interests’.\(^{277}\) Not all interests acquired through live-buying were classified as uneconomic. In 1966, for instance, the registrar noted that there were ‘several owners with substantial interests very anxious to sell at the present time and it is considered the Maori Trustee should purchase these shares whilst available’ (emphasis added).\(^{278}\)

Sales of interests through live-buying were motivated by a variety of factors. Māori might opt to sell their interests in certain blocks in order to assist with housing costs or to fund other purchases. Henare Gray told the Tribunal of some of the owners in Aramiro, who ‘had to sell their shares to get money to move into town at Hamilton. There was no employment at Aramiro and these shares were the only thing they had and so some owners sold their shares to get some money to move into town to find work’.\(^{279}\)

The extent to which owners were consulted on the acquisition of uneconomic interests depended on how the interests were acquired. As noted above, the owners of uneconomic interests acquired as a result of the preparation of a consolidated title order were not consulted directly; instead, consolidated orders were notified and displayed for public inspection for a period. The Crown pointed out, however, that ‘when the Māori Trustee intended to acquire uneconomic shares as part of an amalgamation order, the proposal was discussed at the meetings of owners which approved the amalgamation’.\(^{280}\) However, few owners attended these meetings and it was not for people who did not own the shares to authorise they be acquired in this way. Due process should have required direct notification to the owners of the shares.

In 1968, I D Bell, the deputy registrar of the Hamilton office of the Department of Māori Affairs, raised concerns about the department’s notification procedures for acquiring uneconomic interests:

> Over the last twelve months, I have received several verbal complaints from Maori people whose interests have been acquired by the Maori Trustee over what they call the Maori Trustee's 'high-handed attitude' in this respect. They have usually stated

\(^{276}\) Document A75, p.400.
\(^{277}\) Yorke to Māori Affairs, telegram, 27 October 1967 (doc A75(a) (Bassett and Kay document bank), vol 1, p.130); doc A75, p.401.
\(^{278}\) Registrar to chief accountant, 12 August 1966 (doc A75(a), vol 2, p.146).
\(^{279}\) Document M7 (Gray), p.2.
\(^{280}\) Submission 3.4.308, pp.33–34.
that had they known that the Maori Trustee intended to acquire their interests, they
could have vested them in one or two members of the family and thus make them
economic. In most cases this, of course, would be possible.  

Bell suggested that the system of notification could be improved, though
he acknowledged that ‘the big trouble here would be in obtaining sufficient
addresses’. Head office responded that it ‘sympathises with the owners to some
extent but considers that no action should be taken’. It pointed out that complaints
were inevitable due to ‘the substantial number of consolidated orders being made
involving the conversion of uneconomic interests’ and the lack of contact details
for many owners.

It could be several years, even decades, before owners discovered that their
interests had been subject to conversion. In 1975, for instance, Tawhi Kingi com-
plained to the Minister of Māori Affairs that his sister’s interests in Tahere B
had been sold without her knowledge. Rangimonehu Po Kingi’s interest, along with
those of 121 other owners, had been declared uneconomic in 1966, after Whati
Tamati Potene – a major owner in the block who wished to purchase the une-
ocnomic interests in the block – asked the Māori Trustee to acquire the interests so
that he could purchase them. The Minister told Kingi that his sister had been paid
$11 for her interest, and that the purchase would have been notified in the Māori
Land Court pānui.

16.5.1.2 To what extent did the conversion of interests benefit or prejudice Te Rohe Pōtae Māori?

By the end of March 1975, the Waikato–Maniapoto district’s conversion opera-
tion had become the most active in the country. Over the preceding decades,
the district had acquired approximately 30 per cent of the uneconomic interests
acquired nationwide. The Hamilton office of the Department of Māori Affairs had
purchased 22,623 interests in 2,579 blocks, valued at $814,185. It had sold 17,877 of
these interests for $601,034 and retained 4,746 interests valued at $213,151.

These figures do not distinguish between the interests acquired by compulsory
conversion and those acquired through live-buying. However, some evidence
suggests that live-buying was a reasonably common occurrence in the district. As
discussed above, the district’s share of the conversion fund was increased several
times to allow it to continue purchasing interests. In addition, a majority of the
interests that the Māori Trustee still held as at June 1980 had been acquired by
live-buying. At that date, the Trustee still held interests valued at $25,253.88 in
blocks within the Te Rohe Pōtae inquiry district. Of that total, interests valued

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281. Deputy registrar to head office, 10 December 1968 (doc A75(a), vol 1, p 126).
282. Deputy registrar to head office, 10 December 1968 (doc A75(a), vol 1, p 126).
283. MacRae to Department of Māori Affairs, Hamilton, 7 January 1969 (doc A75(a), vol 1, p 125).
at $19,277.35 (1141.18675 shares) had been acquired through live-buying, while
terests valued at $5,976.53 (626.129163 shares) had been acquired by compulsory
conversion.286 An important caveat is that these figures do not include the interests
which the Trustee had acquired and subsequently sold.

The definition of an uneconomic interest was applied uniformly across the
country. As a result, areas in which the blocks remaining in Māori ownership
that were low quality were more likely to have interests meeting the definition of
uneconomic. This also meant that, when conversion occurred, a larger proportion
of lower-valued blocks were acquired. Bassett and Kay suggested that the ‘relatively
isolated and poor quality’ nature of blocks in Te Rohe Pōtae might explain why
‘conversion was implemented most heavily in the Waikato–Maniapoto District.287
Another factor may have been the amount of land remaining in Māori ownership
in the district.

The Tribunal heard claimant evidence about several specific instances of uneco-
nomic interests being acquired under the 1953 and 1967 Acts, including those
made by:

> Te Ihingārangi hapū (Wai 1016): This claim is concerned with the acquisition
of uneconomic interests in two blocks. In 1966, the Māori Trustee purchased
545 interests in Hauturu–Waipuna C, reducing the number of owners to 37
from the original 582. Three years later, in 1969, the Trustee acquired additional
uneconomic interests in the block, including those of William Harris’
tūpuna Mohiiti Moutere Rangitaawa and Rangitapua Terewai. Similarly, Mr
Harris told the Tribunal that shares owned by the Rangitaawa whānau in
Tokanui 1d2a2a were also deemed uneconomic at some stage.288

> Ngāti Hikairo (Wai 1058, Wai 1112, Wai 1439, Wai 2351, Wai 2353): The claim-
ants noted that, of the blocks in which the Māori Trustee still held interests
as at June 1980 (as listed by Bassett and Kay), Ngāti Hikairo had interests
in Kawhia M2P1, Kawhia M2P12, Kawhia R2C1B, Kawhia T2 section 2B2B,
Kawhia T2 section 4B2, Kawhia W2B, and Mangauika 1.289

> Ngāti Apakura (Wai 1469, Wai 2291): In 1959, the Māori Trustee acquired
some of the interests of Te Puhi-a-Hikairo Rauparaha in Kawhia E2B1.290
Ten years later, in 1969, the Māori Trustee acquired uneconomic interests in
Mangaora A, including 30 owned by Stephen Laing’s whānau.291

> Tuarau Te Tata Henare whānau (Wai 1500): This claim is concerned with the
acquisition of uneconomic interests in Te Kauri 2K1. In July 1968, following
the preparation of a consolidated order, the Māori Trustee acquired three
of the seven shares in the block, representing the uneconomic interests of

286. Document A75, pp 410–413. Bassett and Kay noted that these figures do ‘not include interests
held in development scheme land, so the total for the district would have been higher.’
289. Submission 3.4.226, p 90.
291. Submission 3.4.228, p 89; doc K21, pp 16–17.
22 owners. In September of the same year, the Māori Trustee sold the three shares it had acquired to a non-owner. After the Māori Trustee acquired and sold a further share in 1970, the block was left with two owners and was subsequently Europeanised in 1971. 292

- Ngāti Mahuta (Wai 1588, Wai 1589, Wai 1590, Wai 1591): Around 1970, the claimants’ interests in two Taharoa A blocks – Hikurangi and Mangatangi – were deemed uneconomic and acquired by the Māori Trustee. The claimants alleged that the Crown did not adequately notify their whānau that their shares were to be sold. 293

- Ngāti Urumumia and Ngāti Ngutu, Rangitaawa whānau (Wai 1823): This claim is concerned with the acquisition of the uneconomic interests of Te Aoterangi Pareteunga Te Tata in Hauturu–Waipuna A and Kawhia E2B2A.

These claimants told the Tribunal how they had been affected by the Māori Trustee’s acquisition of uneconomic interests, and particularly by compulsory conversion. Those owners whose interests were deemed uneconomic faced immediate disconnection from their ancestral whenua. But their loss was also the loss of their successors, who were similarly excluded from the ownership of these blocks. Loui Ru Reihana Rangitaawa, who was born at Waipuna and grew up on Hauturu–Waipuna C, has ‘always wanted to go back to my birthplace at Waipuna’, but has ‘been unable to because the majority of my parents and grandparents shares were taken as they were deemed uneconomic by the Crown.’ 294 For claimants, the disconnection from their whenua was – and continues to be – felt especially keenly when set against the rapid land alienation of the previous century. Stephen Laing, who recounted the history of his whānau’s struggle to retain their interests in Mangaora A, gave evidence that:

> [t]he alienation of our whanau interests has come at a huge loss to us. It deeply saddens me to know of all of the struggles Rihi Te Rauparaha and my mother went through, as well as other members of the whanau, to try and keep this land for their future generations and that now our rangatiratanga at Puti Point has been severely diluted or, as in my case, lost entirely. 295

In 1987, the Crown abolished the conversion fund and established a process to return the shares still held by the Māori Trustee. This was only a partial return: it did not include the vast majority of uneconomic interests that the Māori Trustee had already on-sold. According to Bassett and Kay, as of 2011, the Māori Trustee still held interests in three development scheme blocks – Aorangi B1A4, Pukenui J, and Rangitoto A49B1. The owners of these blocks had ‘refused to buy back the shares, arguing that they should be returned without payment’. 296

293. Submission 3.4.143, pp 60–61; doc J8 (Tuaupiki), pp 7–8.
16.5.2

There is no specific evidence about how many uneconomic interests were returned in Te Rohe Pōtae. The most contemporary data put before this inquiry is from June 1980, at which point the Māori Trustee still held interests in 112 blocks within the inquiry district (excluding interests held in development schemes). Most of the Trustee’s shares were valued significantly below $1,000 at that time. The Trustee had acquired interests in 54 blocks through live-buying; its interests were worth more than $1,000 only in six of these blocks. In the 72 blocks in which the Trustee had acquired interests through compulsory conversion, its share was worth more than $1,000 in just two.\(^{297}\) It is unclear how many more of these shares the Trustee had already divested by the time the 1987 legislation came into force, nor what the shares were eventually valued at under the special valuation provided by that Act. But these figures suggest that a significant proportion of the interests would have likely been returned at no cost to the owners.

16.5.2 Europeanisation

The Māori Affairs Amendment Act 1967 also introduced provision for the compulsory Europeanisation of some Māori freehold land. Both the Hunn and Prichard–Waetford reports had recommended that some Māori land should be declared Pākehā land and therefore removed from the jurisdiction of the Māori Land Court. Hunn recommended that blocks under five acres, or valued less than £500, or housing sites might be suitable for such a change; Prichard and Waetford recommended that all blocks ‘of two roods or less owned by one, two, three or four owners’ should become Pākehā land.\(^{298}\)

The 1967 Act went some distance further than these recommendations: its provisions applied to all ‘Maori freehold land beneficially owned by not more than four persons for a legal and beneficial estate in fee simple.’\(^{299}\) Thus, there was no limit on the size of the block (as recommended by both reports), only on the number of owners. The process was compulsory and administrative: the registrar was to check title records for eligible blocks; provided certain criteria were met, he would then make a status declaration then forward it to the district land registrar for registration.\(^{300}\) With very limited exceptions (discussed below), this occurred without the involvement of the owners of the affected blocks.

Europeanisation was intended as a step to bring the laws governing Māori and Pākehā land closer together. In Parliament, Hanan explained that the 1967 Act was ‘based upon the proposition that the Maori is the equal of the European, and that as far as possible he is entitled to the privilege of the jurisdiction of the Supreme Court in the handling of his affairs. The Bill removes many of the barriers dividing our two people.’\(^{301}\)

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299. Māori Affairs Amendment Act 1967, s 3(1).
301. Document A123, p 152.
The provisions for Europeanisation emerged from this wider goal. Hanan considered that ‘the day has come when the law must be overhauled to reduce to a minimum the cases where the law as applying to Maoris is different from that applying to Europeans.’ At the same time, Europeanisation was also an acknowledgement that Māori land title was hindering rather than helping the owners of Māori land. As the Tauranga Moana Tribunal concluded, Pākehā title was held out as ‘the solution to many of the problems associated with the system of Māori tenure that the Crown itself had created.’ In particular, the Crown viewed Europeanisation as a means of improving access to finance and easing alienation.

As with other elements of the 1967 legislation, Māori opposed the provisions for Europeanisation. Most opposition, such as that from the New Zealand Māori Council, was focused on the compulsory nature of Europeanisation rather than the actual change of land status. In Parliament, Māori members also focused on its compulsory elements in part I of the Bill. Matiu Rata challenged the Minister’s assertion that the provision would promote equality between Māori and Pākehā, asking: ‘Would any European tolerate legislation which made provision that, whether he liked it or not, the status of his property could be altered?’ Iriaka Ratana, meanwhile, pointed out that the Bill’s provisions went much further than the Prichard–Waetford report had recommended. She charged that ‘[t]he Minister has seized upon a small and modest recommendation in the Prichard report, and seeks to force it upon a large number of the Maori people who do not want it.’

Māori concerns prompted some minor changes to the provisions for Europeanisation in the final Act, but the process remained compulsory. Once it became law, the Department of Māori Affairs decided to prioritise Europeanisation, ranking it ‘above all other title improvement work except development amalgamations.’ This early focus on Europeanisation is evident in Te Rohe Pōtae (see table 16.5), where 1968 was the most active year for status changes under part I of the 1967 Act. According to Douglas, Innes, and Mitchell, in Te Rohe Pōtae at least 28,515 acres of Māori freehold land was Europeanised under that part of the Act. This figure does not include blocks which were Europeanised but subsequently changed back to Māori freehold land after the passage of the Māori Affairs Amendment Act 1974. On this measure, permitted by section 68 of the Act, Europeanisation affected 475 blocks. Douglas, Innes, and Mitchell noted that ‘europeanisation was the most significant way in which land ceased to be Māori land during the period in which the legislation allowed it to occur (1967–75).’ Of the land that was Māori freehold land in 1967, only 87 per cent still

had that status in 1975; 8 per cent had been Europeanised, and the remaining 5 per cent transferred out of Māori title by other means.\footnote{310}

There was no comprehensive evidence put before the Tribunal to indicate how much of the Europeanised land in Te Rohe Pōtae was subsequently alienated from Māori ownership. The Tribunal received some evidence of Europeanised blocks which still remain in Māori ownership. At least one of the two current owners of Mowhiti, which was Europeanised in 1969, appears to be Māori and a descendant of one of the original owners.\footnote{311} Stephen Laing confirmed to the Tribunal that Kaipiha 12, which was Europeanised in 1970, remains in the ownership of his whānau.\footnote{312} Similarly, according to Bruce Stirling, Mohakatino-Paraninihi 1c West 18B, which was Europeanised in 1969, is 'still owned by the same Māori'.\footnote{313}

As noted above, the legislation did not require owners to be notified before a status change order was made, nor were they given an opportunity to object. Instead, they were notified only once the status change declaration had been registered, provided the registrar had ‘a sufficient address’. Where a sufficient address was unavailable, the registrar was to take all ‘practicable and effective’ steps to inform the owners.\footnote{314}

In addition to being limited, the notification procedures were also imperfect in practice, depending heavily on the availability of owners’ contact details. It was not

\begin{table}[h]
\centering
\begin{tabular}{l|c}
\hline
Year & Number of acres \\
\hline
1967 & 491.76 \\
1968 & 10,497.36 \\
1969 & 6,870.83 \\
1970 & 4,619.80 \\
1971 & 4,815.22 \\
1972 & 832.78 \\
1973 & 341.36 \\
1974 & 0 \\
1975 & 45.88 \\
\hline
TOTAL & 28,514.99 \\
\hline
\end{tabular}
\caption{Table 16.5: Number of acres declared Pākehā land by year, 1967–75}
\label{table:16.5}
\end{table}

\footnotetext{310}{Document A21, p 50.}
\footnotetext{311}{Document A142(d) (Walker post-hearing evidence), pp 7–8.}
\footnotetext{312}{Transcript 4.1.10, pp 304–305 (Stephen Laing, hearing week 4, Mangakōtukutuku Campus, 8 April 2013).}
\footnotetext{313}{Transcript 4.1.15(a), p 72 (Bruce Stirling, hearing week 10, Maniaroa Marae, 3 March 2014).}
\footnotetext{314}{Māori Affairs Amendment Act 1967, s11.}
uncommon for owners to remain unaware that their land had been converted to Pākehā land for several years – and sometimes for decades. Kingi Pōrima of Ngāti Hikairo, for example, told the Tribunal about Kawhia T2 section 3B, a block solely owned by his father that was converted into general land in 1969.\textsuperscript{315} According to his counsel, Mr Pōrima became aware of the status change only while he was preparing his evidence for this inquiry.\textsuperscript{316} Similarly, Marge Te Maemae Apiti gave evidence that her whānau only became aware of the Europeanisation of Te Pirau in the early 2000s.\textsuperscript{317}

In 1972, the newly elected Labour Government quickly moved to repeal the provisions for compulsory Europeanisation. The Māori Purposes (No 2) Act 1973 repealed part I of the 1967 Act in its entirety.\textsuperscript{318} The next year, section 68 of the Māori Affairs Amendment Act 1974 made provision for the court, on application of the owners of Europeanised blocks, to ‘make an order declaring that the status of the land shall cease to be that of European land’. Owners were originally given two years from the commencement of the 1974 Act (1 January 1975) to make an application to change Europeanised land back to Māori freehold land. In August 1976, the Assistant Māori Trustee expressed concern that owners and successors might not be aware of the provisions of the 1974 Act, and raised the idea of extending or cancelling the two-year restriction on applications.\textsuperscript{319} The suggestion to cancel the two-year period was subsequently given effect to by section 21 of the Māori Purposes Act 1976.

The Tribunal received no comprehensive evidence evaluating the extent to which Te Rohe Pōtae Māori opted to change the status of their land back to Māori freehold land after the passage of the 1974 Act. Tangiwai Hana King gave evidence that about seven Taharoa blocks were Europeanised under the 1967 Act. Only three have been converted back to Māori freehold land; the other four blocks ‘remain general land to this day’.\textsuperscript{320}

It is unclear why the Crown chose to provide for an opt-in process for status change in the 1974 Act rather than an automatic change of status back to Māori freehold land, but to encourage a reversion of status would have been contrary to the intent of the Crown’s policies still embedded in the Māori Affairs Act 1953 and its amendments.

16.5.3 Other title simplification measures

The Māori Land Court had other tools at its disposal to simplify Māori land titles, but the Tribunal received only limited evidence about their application in Te Rohe Pōtae.

One way to simplify a title was for the Māori Land Court to exercise its power, under the Māori Affairs Act 1953, to amalgamate blocks. Unlike combined

\textsuperscript{315} Document N29 (Pōrima), pp 7–8.
\textsuperscript{316} Submission 3.4.226, p 88.
\textsuperscript{317} Document N45 (Apiti), p 3.
\textsuperscript{318} Māori Purposes (No 2) Act 1973, s13(3).
\textsuperscript{319} Assistant Māori Trustee to head office, 11 August 1976 (doc A123, p 189).
\textsuperscript{320} Document J1 (King), pp 10–11.
partitions, which allowed the court to treat existing blocks as one unit in order to create new partitions within the larger area, amalgamation cancelled existing titles in order to create a single, larger block. The blocks included within an amalgamation also did not have to share any element of common ownership. The court could make an amalgamation order provided it was satisfied that the blocks 'could be more conveniently or economically worked or dealt with . . . in common ownership under one title.' 321 Many amalgamations in Te Rohe Pōtae occurred in the context of development schemes; specific claims relating to such amalgamations are considered in chapter 17.

Consolidated orders were another title simplification measure available to the court. These allowed the court to update titles and ownership lists 'by listing each owner only once and by eliminating owners with uneconomic interests.' 322 During the preparation of a consolidated order, the court could recommend to the Māori Trustee that any uneconomic interests be acquired. In this way, consolidated orders could be combined with conversion and cut significant numbers of owners from titles. For instance, when a consolidated order for Hauturu–Waipuna C was made in 1966, the interests of 545 out of 582 owners were eliminated at the same time, leaving just 37 owners after the order was made. 323 For this reason, consolidated orders were regarded by officials as the best of all title improvement methods:

Consolidated orders following on from compiled lists are prescribed as the sovereign for title ills. Compilation is directed, in the first place, to the blocks which are revenue producing and which have a large number of owners. By itself, compilations can reduce the office work in a number of ways, but real improvement can be brought about only by letting in conversion at the point where the consolidated order is obtained. In the conversion of interests by this method, the bulk of the funds available for conversion should ordinarily be employed. 324

In 1958, the Department of Māori Affairs instructed district offices to focus their efforts on updating titles, though resourceing difficulties meant that this work 'was not pursued with the same conviction in all districts.' 325 The Waikato–Maniapoto Māori land district was one such district. By 1959, the district had only made 28 consolidated orders, though many more were awaiting field investigation. 326 It was not until March 1963 that the district office finished bringing ownership lists up to date. 327

The court also had the power to effect family arrangements at the point of succession. One example of these arrangements, made by Māori owners and

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323. Deputy registrar to Henare Iti, 7 June 1973 (doc O5(a), p 1).
324. Secretary to district officer, Auckland, 15 July 1958 (doc A75, p 396).
327. Document A75, p 400.
successors, was to divide up the interests of the deceased and distributed them block by block, with each successor taking their interests in one block rather than in all. All arrangements were customised and could differ markedly depending on the nature and organisation of the interests being succeeded. Such arrangements were intended to avoid the creation of uneconomic interests through succession, and were encouraged by the court and officials during succession hearings:

Sometimes, when entitlement has been established, the case is stood down while the family and the titles officer try to arrange the vestings. This is not always so; the officer may already have conferred with the family and prepared a draft arrangement, which can be submitted to the Court immediately after the determination. In either case, there is an element of working under pressure, as to time. This factor is not important, where the family is fully seized of the desirability of arranging succession and time does not have to be spent on explanation and persuasion. In other cases, the family requires more convincing, or is not convinced at all. Fully satisfactory work cannot be done under these conditions.  

Officials complained, however, that it was difficult to convince Māori of the efficacy of these arrangements, and that if the question was left to owners 'not one per cent of the cases would result in an arrangement'.

After 1957, the court had the power to apply the £10-rule at the point of succession. This allowed the court to 'vest the whole of the interest in any one or more of the beneficiaries to the exclusion of all or any of the other beneficiaries, without the consent of any person so excluded, and without payment being required therefor'. It could only do so, however, if the excluded beneficiary’s interest was less than £10 in value, and if the aggregate value of the interests was less than £10 above the value of the interests the beneficiary would have received normally.

The court also had a range of options to effect title simplification at the stage of partition. The 1953 Act gave the court the power, on receiving an application to partition a block, to direct the Māori Trustee to sell the land if it considered that partition ‘on an equitable basis would be impracticable’. The Trustee was to first offer the land to the owners of the block; if that approach failed, he could sell to ‘Maoris or the descendants of Maoris’ or, with the leave of the court, to a non-Māori. As with other title simplification methods, the court could also use the occasion of a partition to deal with uneconomic interests and recommend their acquisition by the Māori Trustee.

16.5.4 Treaty analysis and findings
Between 1953 and 1974, the Crown resorted to much more coercive measures to address issues with Māori land titles. The compulsory provisions for conversion

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328. Commissioner to district officer, no date (doc A75(a), vol 1, pp 138–139); doc A75, p 397.
329. Commissioner to district officer, no date (doc A75(a), vol 1, pp 138–139); doc A75, pp 397–398.
331. Māori Affairs Act 1953, s 175; Waitangi Tribunal, He Maunga Rongo, vol 2, p 747.
and Europeanisation introduced during this period gave decision-making powers over the future of Māori land interests to the Māori Land Court and the Māori Trustee. These measures were widely opposed by Māori. In this inquiry, the Crown has conceded that compulsory conversion provisions as enacted by the 1953 and 1967 Acts were in breach of Treaty principles. That concession is in accord with the findings of the Central North Island Tribunal.\footnote{332. Waitangi Tribunal, \textit{He Maunga Rongo}, vol 2, p 773.}

By March 1975, the Māori Trustee had acquired 22,623 interests in 2,579 blocks within the Waikato–Maniapoto Māori land district, an area which included the inquiry district. This represented a significant rearrangement of ownership in these blocks. Conversion would have benefited some Te Rohe Pōtae Māori, particularly those who were able to purchase the uneconomic interests of their co-owners and so improve their own holdings.\footnote{333. Waitangi Tribunal, \textit{The Hauraki Report}, 3 vols (Wellington: Legislation Direct, 2006), vol 2, p 880.} But many others lost their interests in ancestral land as a result of compulsory conversion, including successors who would have otherwise been entitled to ownership in affected blocks. Although small, these ‘interests might well represent the remaining links of many owners to their ancestral lands’.\footnote{334. Waitangi Tribunal, \textit{He Maunga Rongo}, vol 2, p 756.} The provisions for conversion failed to ensure that interests remained in the hands of those with ancestral connections to the land in question and potentially could result in alienation to people outside this class.

Similarly, live-buying of shares, the voluntary form of conversion by which Māori could dispose of their interests directly to the Māori Trustee further failed to protect the interests of Te Rohe Pōtae Māori. The Central North Island Tribunal found that Māori landowners in its district were prejudiced by a ‘climate in which it was expected that owners would divest themselves voluntarily of small shares in land, as being in their own best interests, and those of other owners’.\footnote{335. Waitangi Tribunal, \textit{He Maunga Rongo}, vol 2, p 773.} The same system was in place in Te Rohe Pōtae. That system gave individuals the right to alienate their land interests without recourse to the community of landowners with ancestral connections to the land and potentially could also result in alienation to people outside this class.

While the Crown conceded that compulsory conversion was a breach of Treaty principles, it has not provided a similar concession in respect of the part 1 of the Māori Affairs Amendment Act 1967 relating to the compulsory Europeanisation of Māori freehold land owned by four or fewer owners. In Te Rohe Pōtae, at least 28,515 acres of Māori freehold land was Europeanised under part 1 of the 1967 Act. Europeanisation did not automatically result in alienation, but it did enable it by removing Māori land from the court’s protections against alienation often without the owners’ knowledge.

There were certainly benefits to having land in general title, including easier access to finance— a perennial issue for the owners of Māori freehold land. But for the Crown to rely on this fails to recognise the deficit in its own policy framework,
namely that its Māori land legislation and title system did not facilitate development at all nor did it encourage investment. The decision to change the status of land and remove it from the jurisdiction of the Māori Land Court should have been one for owners to make, not the Crown. Māori objected to the compulsory nature of Europeanisation at the time, and the Crown should have taken account of their views.

In 1973, the Crown repealed the provisions for compulsory Europeanisation. The following year it provided a process for owners to change the status of their land back to Māori freehold land. It is unclear to what extent that process mitigated the prejudice suffered by Te Rohe Pōtae Māori as a result of compulsory Europeanisation, particularly as the process was opt-in. But it is clear that much of the damage had already been done. Europeanisation was not a long-drawn-out field exercise like consolidation, but a paper exercise which could be implemented relatively quickly – as indeed it was. By contrast, the opt-in process provided for by the Māori Affairs Amendment Act 1974 was much more involved.

While providing the Māori Land Court with a range of other powers to simplify titles, such as provisions for consolidated orders and amalgamation we received little evidence about how these powers were exercised in Te Rohe Pōtae.

We find that the Crown enacted in a manner inconsistent with the principles of the Treaty of Waitangi, namely, the principles of partnership, reciprocity, and mutual benefit and it failed to adhere to its guarantee of tino rangatiratanga in article 2 when it enacted the conversion and compulsory Europeanisation provisions in the Māori Affairs Act 1953 and its amendments, particularly the 1967 amendment. It also acted in a manner inconsistent with its duty of active protection of that rangatiratanga over land and in terms of the land itself. We also agree with the Central North Island Tribunal that, because such provisions would never be countenanced for the owners of general land, the provisions for compulsory conversion and Europeanisation were discriminatory, and were in breach of article 3 of the Treaty and the principle of equity.336

16.6 Provisions for Collective Governance

At the same time as the Crown was pursuing its title simplification measures, it also began to introduce more robust provisions for the governance of collectively owned Māori land. In the second half of the twentieth century, bodies such as incorporations and trusts rose to prominence, even as measures like conversion, the £10 rule, and Europeanisation worked to eliminate multiple ownership. Incorporations and trusts allowed Māori to manage their land under a corporate veil while avoiding the difficulties attached to collectively owned land such as limited ability to secure finance for development. By 1980, the Royal Commission on Māori Land Courts concluded that ‘contrary to a view widely held in the early 1960s, multiple ownership is not necessarily a bar to the economic use of land’.337

This section briefly explores the development of incorporations and trusts, particularly in the twentieth century, and their use in Te Rohe Pōtae.

16.6.1 Early provisions for incorporations and trusts
As outlined in chapter 8, incorporations were first provided for in the Native Land Court Act 1894, but were little used outside of the East Coast. It appears that only two blocks – Mangaora and Rangitoto–Tuhua 66A – were incorporated in Te Rohe Pōtae in the decades immediately following the passage of the 1894 Act. Similarly, early trust provisions – such as those allowing Māori to vest land in the Public Trustee, the local commissioner of crown lands, or the surveyor-general, and the provisions of the Māori Land Administration Act 1900 (discussed in chapter 12) – were not frequently used in this inquiry district. These trust provisions, the Central North Island Tribunal found, ‘were not capable of meeting Maori concerns regarding the land title system’.

16.6.2 Twentieth-century incorporations
Incorporations were the first form of corporate governance to be used on any significant scale in the second half of the twentieth century. Incorporations were used with some success for forestry ventures in the Central North Island during the 1940s, which ‘motivated the Crown to investigate them [incorporations] further.’ They became more prominent as land under development began to be returned to Māori in the 1950s, when Māori expressed a desire for such land to be returned to incorporations rather than on a settlement or unit basis.

In response to the growing demand for incorporations, the Māori Affairs Act 1953 introduced ‘a complete redrafting’ of the provisions governing incorporations. The old legislation, Corbett told the House, ‘was quite inadequate’ and had been completely reviewed. The new provisions, he stated, set out ‘fully a pattern of conduct and procedure that should serve all areas and all aspects of administration that can be deemed incorporation.’

Under the new provisions, the court could incorporate three or more owners of Māori freehold land. The new Act considerably expanded the range of objects for which an incorporation might operate to include: farming or any agricultural or pastoral business; growing, felling, marketing, and milling of timber, or granting licences to cut and remove timber; mining of coal and other minerals, or granting licences to do so; alienation by sale or lease; and ‘any other enterprise … specified in the order of incorporation.’ Committees of management were given wide powers in order to carry into effect the objects as set out in the order of incorporation. They were also – for the first time – given complete control of loan money.

342. Māori Affairs Act 1953, s 270.
Despite making these changes, the Crown continued to regard incorporations and trusts with some scepticism, and preferred to advance its title simplification efforts as far as possible. But in the Hunn and Prichard–Waetford reports there was, alongside the calls for strengthened title simplification measures, some acknowledgment of the benefits that collective governance mechanisms could provide. Hunn considered that ‘incorporation would usually be the appropriate method of holding land in sole ownership on behalf of the beneficial owners concerned’. He also raised the possibility of tribal incorporations as a means to ‘restore “turangawaewae”’ to all members of an iwi and keep Māori land in Māori hands.\(^{344}\) Prichard and Waetford, meanwhile, noted with approval that ‘[s]ome Incorporations can properly be called “big business” and own most valuable assets.’\(^{345}\) But they were also concerned with the fractionation of interests and the administrative burden that this was placing on the court and incorporations. They recommended that the owners’ beneficial interests should be ‘shares in the Incorporation and not in the land’\(^{346}\). They also wanted to see a stronger code instituted for incorporations, but considered that a special inquiry was needed first.\(^{347}\)

In 1967, the Crown made a series of further changes to the provisions governing incorporations. The explanatory note to the Māori Affairs Amendment Bill 1967 explained that ‘[t]he general tenor of the amendments proposed in this Bill is to assimilate the position of incorporations more closely to that of a company’\(^{348}\). Although the recommended special inquiry into incorporations had not occurred, the Government nonetheless adopted several of the Prichard–Waetford report’s recommendations. In particular, owners became shareholders in the incorporation rather than owners of an interest in land. Incorporations were also subjected to some of the Crown’s other preoccupations of the time: land vested in incorporations was automatically converted to Pākehā land, and committees of management were given the power to set a minimum share value and acquire all interests below that value.

By 1965, incorporations were actively managing 16,061 acres in the Waikato–Maniapoto land district, from a total of 416,092 acres held by Māori in the district. Nationwide, 537,868 acres were under active incorporation.\(^{349}\) Most of the incorporations in Te Rohe Pōtae had been formed from development scheme lands. One exception was the incorporation of three Manuaitu blocks in 1957, which was established in order to sell the timber on the blocks. Although cutting rights were issued to the North Shore Lumber Company, it is unclear how much timber was

\(^{344}\) AJHR, 1961, g-10, p 58.
\(^{346}\) Prichard and Waetford, Report into Laws Affecting Māori Land and Powers of the Māori Land Court, p 126.
\(^{347}\) Prichard and Waetford, Report into Laws Affecting Māori Land and Powers of the Māori Land Court, p 125.
\(^{348}\) Māori Affairs Amendment Bill 1967 (5–1), p iii.
\(^{349}\) Prichard and Waetford, Report into Laws Affecting Māori Land and Powers of the Māori Land Court, p 158.
actually felled. In 1964, the committee of management authorised the sale of the blocks, and the court confirmed the alienation in November of that year.  

As more development blocks were returned to owner control, the number of incorporations increased. As of 1971, 15 incorporations were managing 41,726 acres on behalf of 4,770 shareholders in the Waikato–Maniapoto land district. The deputy registrar recorded that six were ‘farming incorporations and in total they run 27,493 sheep and 2,295 head of cattle’. He noted that the district’s biggest incorporation – Mahoenui (4,045 acres) – had ‘not in the past been very well managed’, while the smallest incorporation – Mangaora A (733 acres) – was ‘one of the best run’. The ‘most financial incorporation’ was most likely the 975-acre Rangitoto A1A and A2B2 Section 7 Incorporation, owned by the Barton family. The incorporation ran 6,064 sheep and 461 cattle, and had returned $9,961 and $13,473 to the beneficiaries in 1969 and 1970 respectively. By March 1977, 15 incorporations within Waikato–Maniapoto Māori land district controlled over 40,000 acres, including nine incorporations in Te Rohe Pōtae holding 11,161 acres.

While incorporations have clearly been beneficial in some respects for Māori landowners, they are not, as some claimants told the Tribunal, without their problems. Aubrey and Marleina Te Kanawa, for instance, gave evidence that, while Te Kōpua Incorporation is successful and returning dividends to owners, the nature of the incorporation structure means that ‘there can no longer be [a] relationship with the whenua’ and, as such, ‘actually disenfranchises the ahikā’. They explained some of the problems that incorporations have to deal with, including managing successions, gifting to outsiders, accounting for the rights of whāngai, and unclaimed dividends. Other claimants, like Stephen Laing and Patricia Matthews, also emphasised that the incorporation structure had proved disappointing, alienating owners from their land and returning very little benefit.

16.6.3 Trusts

Trusts have been the more popular option for the collective governance of Māori freehold land in recent decades. The modern Māori land trust has its origins in section 8 of the Native Purposes Act 1943, which allowed the court to vest Māori land in a trustee

for the common use of the land by Natives for any purpose, or for the support or education of Natives for any purpose, or for the physical, social, moral, or pecuniary benefit of Natives, or for some purpose having for its object the benefit, betterment, or welfare of Natives or the promotion of any tribal of communal project.

351. Deputy registrar to head office, 3 August 1971 (doc A75(a), vol 16, p 2058).
353. Document M22(c) (Te Kanawa), p 5.
The extent to which Māori – including Te Rohe Pōtae Māori – used section 8 is unclear.

Section 438 of the Māori Affairs Act 1953, on the other hand, was widely used by Māori landowners to form trusts to manage their land. It does not seem that the Crown necessarily intended section 438 to be so widely used. The provision was only inserted into the final version of the Bill in 1953, and was not mentioned in parliamentary debates. Nonetheless, section 438 would come to assume a prominent role in the governance of Māori freehold land over the coming decades.

Section 438 allowed the Māori Land Court to vest customary land or Māori freehold land in trust ‘for the benefit of Maoris or the descendants of Maoris or for any specified class or group of Maoris or their descendants’. The court could appoint any person, including the Māori Trustee, as a trustee, and give them the powers ‘necessary for the proper administration of the trust property’. The section explicitly gave trustees the power to alienate land, subject to the usual process of court confirmation. The court’s discretion was not entirely unfettered. It could only make such an order if it was satisfied that there was no meritorious objection. The Minister of Māori Affairs also had to approve the trust order before it would come into effect.

The Māori Land Court appears to have played a significant role in the promotion of section 438 trusts as a mechanism for the collective governance of Māori land in the 1960s. In 1980, the Royal Commission on the Māori Land Courts reported:

> according to Judge Durie, the Court itself has been largely responsible for promoting the formation of trusts. The Court is thus in a powerful position in being able to influence the form and extent of corporate land management. Some judges who use this power see the Court as an agent in advising owners of land held in multiple ownership about ways of achieving optimum management of their land.\(^\text{356}\)

By the mid-1960s, the court was making hundreds of section 438 orders nationally each year: ‘62 orders were made in the year ended 31 March 1963; 373 in 1965; a drop to 241 in 1968; 491 in 1970; and 435 in 1973.’\(^\text{357}\)

As the use of trusts increased, the Crown moved to amend and strengthen section 438. The Māori Affairs Amendment Act 1967 introduced an entirely new version of the section. Trusts created under the amended section 438 were to be ‘[f]or the purpose of facilitating the use, management, or alienation of’ Māori-owned land. The court could also now make an order provided it was ‘satisfied that the owners of the land have, as far as practicable, been given reasonable opportunity to express their opinion’ on potential trustees – but not the constitution of the trust

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itself. A further amendment in 1974 allowed for the creation of trusts involving several blocks and for the appointment of advisory trustees.

Te Ture Whenua Māori Act 1993 significantly expanded the range of trust models available to Māori landowners. It provides five different kinds of trust under part 12 of the Act:

- **Ahu whenua trusts**: Under the 1993 Act, section 438 trusts were deemed to continue as ahu whenua trusts. Ahu whenua trusts are intended to promote and facilitate the use and administration of the land. Before making a trust order, the court has to be satisfied that the owners have met and discussed the proposal to establish a trust, and that there is no meritorious objection. Trustees can be empowered to apply trust income to ‘Maori community purposes’ or to distribute it to owners. The Māori Land Court’s normal succession process continues for interests vested in ahu whenua trusts.

- **Whenua tōpū trusts**: Like ahu whenua trusts, whenua tōpū trusts are established to promote and facilitate land use and administration. However, they differ in that they are established for the benefit of a hapū or iwi rather than individual owners. In general, successions to interests vested in a whenua tōpū trust cease. As the Central North Island Tribunal pointed out, ‘[t]his is the closest model of corporate management to a customary collective title held that exists’ under the Act.

- **Whānau trusts**: Where all owners agree, these trusts can consolidate the interests of a whānau into a trust in the name of a tipuna. Such trusts are to promote ‘the health, social, cultural and economic welfare, education and vocational training, and general advancement in life of the descendants of any tipuna (whether living or dead) named in the order’. There are no successions to the interests vested in a whānau trust.

- **Kai tiaki trusts**: These trusts can be established to protect and promote the interests (in land or in an incorporation) of minors or persons with a disability.

- **Putea trusts**: These trusts allow for very small interests to be pooled together on the application of the owners or by a trust or incorporation in which the interests are vested. Putea trusts are intended to be used where it would be ‘impractical, or otherwise undesirable’ to administer such shares, or where the identity or location of the owners is unknown. The land, money, and other assets of these trusts are held for Māori community purposes. There are no successions to the interests vested in a putea trust.

As of 2006, there were 972 ahu whenua trusts and 1,781 whānau trusts in the Waikato–Maniapoto Māori Land Court District. Many of the larger ahu whenua trusts in the inquiry district – such as the Arapae Trust, the Hauturu–Waipuna

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358. Māori Affairs Amendment Act 1967, s142.
c Trust, the Okapu f2 Trust, and the Ōpārau Station Trust – govern former development scheme lands.

16.6.4 Treaty analysis and findings

Incorporations and trusts have been one answer to Māori demands for collective governance in Te Rohe Pōtae. However, trusts and incorporations have not been a complete solution to the issues arising from the imposition of the Crown’s Māori land tenure system and they cannot undo the damage this system has already done. Some owners also claim that they prevent owners from occupying their lands. Lamour Clark, for example, told us:

[we are tangata whenua of this area, yet the incorporations and trust boards keep us from our lands while the laws claim they are protecting our lands. We would like to wind back this entire system and have our land returned to us to hold as Te Huaki and Ngāti Tahinga. What we have instead is completely opposite to what the Treaty of Waitangi promised.]

We acknowledge that incorporations and trusts are ultimately legislative solutions to the problems created by the Crown’s tenure system. They, therefore, operate within the limits created by that system. While incorporations and trusts provide a single entity for governance, they do not alter the underlying ownership of the land. That is a vast improvement on the history of Māori land administration from 1900 to 1953.

Incorporations and trusts have, despite the criticism of some owners, also been a largely positive development for the governance of Māori freehold land. After a century of individualisation, they proved that the problem was not collective ownership but the lack of an effective mechanism for collective governance.

Significantly, the Crown has now clearly accepted that collective ownership was not necessarily an impediment to the development and use of Māori land. In this inquiry, the Crown noted the ‘important and positive role’ that incorporations and trusts played in the governance of Māori land, and that they ‘evolved to allow an expression of Māori cultural concerns and elements of tikanga’. Crown counsel further submitted ‘that the legislative structures provided for today are well-suited to the management and administration of Māori land’. We would not go that far, but they have at least mitigated the otherwise tragic history of Māori land administration from 1900 to 1953 that this part of our report has highlighted.

While incorporations and trusts have had some successes in addressing the individualisation or overcrowding of titles, these successes have been limited. That is because lands vested in incorporations and ahu whenua trusts are still subject to successions, leading to further fractionation of ownership interests. Maintaining contact with these owners can be a difficult – if not impossible – task.

365. Submission 3.4.308, p 46.
for committees of management and trustees. Continuing fractionation also limits
the size of dividends that many owners are eligible to receive, adding to the ten-
sion that already exists for these entities between their responsibility to hold lands
in trust and the social and community functions that are expected by owners.

On balance, and even though there remain issues to be addressed through legis-
lative review of the relevant succession provisions, we do not find that the Crown
has acted in a manner inconsistent with the principles of the Treaty of Waitangi
with respect to governance of Māori land by incorporations or trusts.

16.7 Prejudice
Title reconstruction schemes, including consolidation and simplification, were
intended to help Māori, at least in part. The coercive nature of the Crown’s actions
and its legislation in forcing these measures on owners, motivated by the desire
to rectify rating arrears and simplify titles for development, as well as its pursuit
of the Europeanisation of Māori land, all combine to convince us that helping Māori
to develop their land was a secondary focus of its policies, as it only
assumed prominence from 1974 when most of these measures had already been
implemented.

However well-intentioned its policies might have been, the Crown’s various
attempts during the twentieth century to reconstruct Māori titles to enable land
development were inconsistent with the principles of the Treaty of Waitangi in
several ways.

Cumulatively, these breaches had demonstrably prejudicial effects on the live-
lihoods and cultural cohesion of Te Rohe Pōtē Māori, affecting their ability to
utilise their lands in accordance with their own preferences. The measures were
also discriminatory. Along with other title reconstruction methods, consolidation
and compulsory conversion resulted in many owners becoming disconnected
from their traditional whenua, the legacy of which continues to this day. Title
reconstruction made lands in the district vulnerable to fragmentation, alienation
and partition. This in turn prejudicially affected the ability of many Te Rohe Pōtē
Māori to reclaim their mana whakahaere over their lands.

We acknowledge that by the 1970s, the Crown was finally beginning to recog-
nise that collective ownership was not an impediment to utilising or developing
land. Provisions for trusts and incorporations were strengthened and they became
effective governance models for Māori land owners. However, these models are
a long way from the tribal mana whakahaere that Te Rohe Pōtē Māori sought
through Te Ōhākī Tapu and its various agreements.

16.8 Summary of Findings
Our key findings in this chapter have been:

- The level of consultation prior to the initiation of the Maniapoto Consolida-
tion Scheme fell short of what was required in order for the Crown to obtain
the informed consent of the affected owners.
Delays and lack of resourcing to facilitate completing the consolidation scheme disadvantaged Te Rohe Pōtae Māori and the Crown failed to recognise the impact that these delays had on their ability to utilise and develop their lands.

Between 1953 and 1974, the Crown resorted to coercive measures to address issues with Māori land titles. As the Crown has conceded, compulsory conversion as provided for by the Māori Affairs Act 1953 and Māori Affairs Amendment Act 1967 were contrary to the principles of the Treaty of Waitangi.

In respect to live-buying, this process was pursued between 1953 and 1993 because of a policy and legislative framework that did not prioritise retention of Māori land in the hands of the owners with ancestral associations with the land.

Regarding Europeanisation, we found that this policy removed Māori land from the court’s protections against alienation.

We found that for the various matters listed above the Crown acted in a manner inconsistent with several principles of the Treaty of Waitangi, that the measures adopted were discriminatory and that they would never be countenanced for the owners of general land.

We also found that Te Rohe Pōtae Māori suffered prejudice, both in terms of the loss of mana whakahaere or control over their lands at the owner level and tribal level. They also suffered the actual loss of further land, although the total amount is not quantifiable.

While incorporations and trusts have had some successes in addressing the individualisation or overcrowding of titles, these successes have been limited. More work remains to be carried out regarding successions and other relevant sections of the 1993 legislation.
CHAPTER 17

TE AHU WHENUA: LAND DEVELOPMENT SCHEMES

I remember many of my family crying. I remember life changing and nothing seemed to be the same after that. I remember noticing a change in my tupuna and that they were different people after the move.

—John Mahara

17.1 Introduction
During the early to mid-nineteenth century, Te Rohe Pōtae Māori were successful agriculturalists and traders. As they moved into the latter part of the nineteenth and early twentieth centuries, controlling and developing their land for farming was the obvious path for maintaining and advancing the mana whakahaere they sought through Te Ōhākī Tapu and associated agreements.

As chapters 12 to 16 have demonstrated, however, the system of individualised title imposed by the Native Land Court instead facilitated large-scale alienation from their whenua. Between 1889 and 1905, the Crown purchased close to 640,000 acres of land in the inquiry district. By the end of 1909, the Crown had alienated approximately 934,000 acres of Māori-owned land by government awards, and approximately 27,250 acres by private awards. By the end of 1910, Te Rohe Pōtae Māori retained roughly 960,000 acres. This was a little less than half of the inquiry district.

Despite their agricultural prowess, Te Rohe Pōtae Māori wanting to develop their farms were frequently refused finance from banks due to multiple ownership stemming from fragmentation of land court titles. They also had difficulty accessing the ‘Advances to Settlers’ scheme in comparison with non-Māori. In the early twentieth century, Te Rohe Pōtae Māori and national Māori political figures campaigned for the Government to provide Māori fair access to the development support that Pākehā farmers had long enjoyed. Despite their efforts, assistance for Māori landowners remained severely limited until the Native Land Amendment and Native Land Claims Adjustment Act 1929 enabled Native Minister Sir Āpirana

4. Document A21, p 44.
5. Document A21, p 34.
Ngata’s plan for land development. Under this programme, 17 major development schemes were established in Te Rohe Pōtae between 1930 and 1961. By 1953, approximately 21,500 acres in the inquiry district were part of Māori land development schemes. This chapter examines whether the policy framework, implementation, and operation of these schemes complied with the Treaty and its principles.

17.1.1 The purpose of this chapter
As discussed in chapter 8, Te Ōhākī Tapu provided Māori with access to new economic opportunities, and the Crown assured Te Rohe Pōtae Māori that their mana whakahaere would be respected. Such assurances, however, were soon cast aside, as the Crown pursued an assimilationist policy agenda that paid little regard to the expectations of Māori.

While the land development programme extended Crown development assistance to Māori, that support came after decades of Crown land acquisitions, which had removed the best land in Te Rohe Pōtae from Māori ownership. Moreover, access to the land development programme required Māori to accept a loss of control over their lands; a condition entirely absent from the criteria imposed on those who had access to other sources of state support. This chapter analyses claimants’ arguments concerning the land development programme in the inquiry district.

17.1.2 How this chapter is structured
This chapter opens with an assessment of previous Tribunal findings, the Crown’s concessions, and the arguments placed before this inquiry by Crown and claimant counsel. From these parties’ positions, a series of issues for discussion arise.

The chapter moves on to examine the land development programme established in 1929 and reformulated by a Department of Māori Affairs policy direction in 1949. It details the political origins of both the pre-1949 and post-1949 land development regimes, informed in part by the State’s assimilation paradigm, and considers the Treaty compliance of the programme’s legislative and policy platform. The chapter then examines the operation of land development schemes on the ground in Te Rohe Pōtae. Due to the large number of schemes in the district, we are unable to cover them all in this chapter. Rather, we have selected six schemes for close analysis: Waimiha, Kāwhia, Aramiro, Arapae, Ōpārau, and Okapu (each of which is discussed in detail in section 17.3.4). Of the six schemes this chapter highlights, two originated during the first phase of the land development programme that began in 1929, one was established after legislative changes during the mid-1930s and three emerged following the 1949 policy reformulation. The years they were established (ranging from 1930 to 1962) represent a rough span of the land development programme’s most active era of growth in the inquiry district. All claims relating to these and other local development schemes will be covered in the Take a Takiwā chapters in a forthcoming volume of this report.

6. Document A146(b) (Hearn summary), pp 5, 13; doc A69 (Hearn), p 201.
The final section of the chapter considers the adequacy of the Crown’s rehabilitation of Māori returned service personnel following the Second World War, which prioritised their settlement on Māori-owned land, specifically development scheme lands.

17.2 ISSUES
17.2.1 What other Tribunals have said
Due to a large number of schemes in the district, the Central North Island Tribunal did not make detailed findings on individual development schemes. It did, however, receive sufficient evidence to provide general observations on the Crown’s actions regarding land development ‘in the context of the Crown’s obligations to protect the Treaty rights of those whose land was included within the schemes’.

It found that Māori have a number of Treaty rights relevant to land development schemes, including a development right, which includes ‘not only a right to be able to utilise land in development opportunities, but also a right to retain reasonable control over how the land is utilised and for what objectives’. It found that the Crown had an obligation to ‘protect Maori in utilising their properties for development opportunities, including farming’.

Addressing the limitation on property rights imposed by land development schemes, the Tribunal acknowledged that ‘for development purposes, it may be necessary at times to agree to suspend some rights of property ownership for a period, or to use those rights as security’. It added a qualification, however, that the Treaty development right requires that any such suspension be ‘done only in so far as it is reasonably necessary’. The Tribunal further noted that owners and communities were ‘still entitled to participate in strategic decision-making over the direction of this development to the greatest extent possible’.

In assessing whether the Crown made a good faith attempt to protect Māori Treaty rights in the land development schemes, the Central North Island Tribunal cited a need to consider the broader environment the schemes operated in, including the ‘economic context, the state of scientific knowledge, and the widespread optimism that scientific advances would make even more marginal lands productive’. It observed that contemporary factors affecting the schemes, such as urbanisation and a decline in rural employment, were at least to some extent beyond the Crown’s control and noted that all parties to the inquiry agreed that in contributing significant funding, the Crown was entitled to a ‘reasonable measure of control over the operation of the schemes’.

Although it offered a high-level overview rather than commenting closely on the implementation of the schemes, the Central North Island Tribunal identified a duty to consult with Māori landowners as the Crown’s Treaty obligation. It concluded that, despite having ‘a number of mechanisms available to it to provide for adequate consultation’, the owner representation introduced from 1949 was ‘limited in scope and function’. The Crown did not give owners ‘a more meaningful say and participation in the management of the schemes’ until the 1970s and, even then, ‘the Crown retained authority over strategic decision-making’. The Tribunal observed that, while the Crown had a right to pursue its interests and objectives, ‘this could not justify it ignoring or overriding the rights of owners’. Accordingly, the Tribunal found that ‘[t]he Crown failed to take reasonable steps, in the circumstances, to provide for adequate owner consultation and participation’, and that this ‘was a breach of the Crown’s obligations to actively protect the Treaty development right of owners’.

The Tauranga Moana Tribunal considered early land development schemes in the district to be ‘genuine endeavours’ to help Tauranga Māori to farm their lands. The fact that the Crown had withheld this support earlier, it noted, did not minimise the import of the schemes. Nonetheless, the Tribunal observed that, ‘it is not clear that the Crown adequately involved local owners in the decision to establish the early development schemes in the Tauranga area’ and it seemed unlikely to the Tribunal that the ‘probable duration and impact of the schemes was fully explained to owners’. As a partial justification for this lack of transparent consultation, the Tribunal pointed to a ‘time of crisis’ – the Depression – in response to which Crown officials believed they were acting in the best interests of landowners. Once the Depression eased, however, this partial justification became redundant and the Tribunal considered that the Crown maintained a degree of control over the Kaitimako and Ngāpeke scheme land that was ‘not essential to achieving the purpose of developing these lands’ and that ‘hampered the training of their owners’.

In the Tribunal’s judgement, it was ‘arguable’, but not certain, that the Crown’s reluctance to give up control had unjustifiably extended the duration of the schemes. While the Crown’s exclusion of owners from the management of the schemes was not a ‘clear endorsement of the principles of partnership and options’, the Tribunal concluded that: ‘Nevertheless, we cannot find the Crown in breach of the Treaty for attempting to carry out a policy clearly aimed at assisting Tauranga

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17. Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 1038
Māori, however clumsily and ineptly some officials may have acted at particular times.\footnote{23}{Waitangi Tribunal, \textit{Tauranga Moana}, vol 1, pp 223–224.}

17.2.2 Crown concessions
The Crown did not make any concessions relating to the development schemes. It has conceded, however, that Te Rohe Pōtae Māori had difficulty accessing the Advances to Settlers scheme to the same extent as non-Māori before 1929, and that this was an impediment to their economic opportunities.\footnote{24}{Submission 3.4.292, p 21.} This policy, which occurred prior to the implementation of the development schemes, was discussed to a limited degree in chapters 13 and 14 and will be more fully addressed in the economic development chapter in a future volume of this report.

17.2.3 Claimant and Crown arguments
More than 50 claims in this inquiry contain grievances related to land development.\footnote{25}{Submission 3.4.126, pp 2–3.} Essentially, claimants alleged that, in relation to land development, the Crown failed to adequately consult or obtain consent from Māori landowners when proceeding with the schemes in Te Rohe Pōtae. They also alleged that the Crown failed to engage in an ongoing dialogue with Māori landowners over policy and legislative changes affecting them. The claimants said that the Crown took ‘more extensive control than was reasonable’ over the operation of the schemes and, as a result, many owners lost effective control of their land while it was under development.\footnote{26}{Submission 3.4.126, pp 8–9, 11.} They further questioned whether the benefits of the schemes outweighed the negative impacts on Te Rohe Pōtae Māori.\footnote{27}{Submission 3.4.126, pp 8–9, 11–12.} This question is considered through close analysis of the six schemes discussed in this chapter.

Claimants emphasised the Crown’s failure to adequately consult with, or involve landowners in decisions affecting their land. They submitted that land was included in development schemes with ‘limited negotiation and a great deal of pressure and sometimes outright compulsion’\footnote{28}{Submission 3.4.126, pp 8–9, 11.} and that the Crown failed to engage with Māori over significant changes related to the operation of their schemes and the land development programme overall. Claimants acknowledged that the Crown’s
consultation processes were more robust during the post-1949 period and that owners were allowed to be more involved in the schemes, such as through development committees (established after 1968). While the Crown placed greater emphasis on the improvement of its mechanisms for consulting owners during this time, claimant counsel emphasised that decision-making powers offered to owners remained non-binding.

With respect to the establishment of the Arapae land development scheme, the Crown submitted that it took reasonable steps to establish processes and policies that encouraged and protected the development rights of owners. Counsel argued that legislation prior to 1949 did not require the Crown to consult with landowners or obtain their consent with regard to land development schemes. Where consultation did occur, it was through ‘marae-style’ meetings in the early stages of land development, where implications of the schemes on Māori were ‘generally canvassed thoroughly’. However, the Crown submitted that, by the 1930s, it would have been difficult for it to contact the increasing number of landowners about these meetings, especially given the migration of Māori to other areas. The Crown pointed to the use of assembled owner meetings and the development committees post-1968 as a way of obtaining the formal consent of individual owners regarding land development schemes as examples of its loosening control of development scheme lands.

The claimants raised further issues around the loss of control over their lands and the limited opportunities available for landowner involvement in the schemes. Claimants spoke of a disconnection from their tūrangawaewae, an undermining of rangatiratanga over their whenua, and the loss of ownership resulting from the Crown’s title reconstruction. Claimants criticised the stipulation that Māori were required to hand control of their lands over to the Crown in order to access assistance through the land development programme. Claimant counsel noted that, while the Crown assumed all policy and management decisions over Māori land development, these conditions did not apply to Pākehā receiving State assistance, who retained full ownership rights. Counsel stated that ‘there is no 20th century equivalent where the Crown went into Pākehā communities and took such a substantial role in assuming ownership rights over lands as was done under development schemes.’

30. Submission 3.4.126, pp 12–17.
31. Submission 3.4.126, pp 8–9, 12–13.
32. Submission 3.4.310(e), p 157.
33. Submission 3.4.287, p 7.
34. Submission 3.4.287, p 7.
35. Submission 3.4.287, pp 7, 9.
36. Submission 3.4.204, pp 45–46; submission 3.4.226, p 72; submission 3.4.249(c), p 76; submission 3.4.170(a), pp 238, 244; submission 3.4.228, p 94; claim 1.1.259, p 42; claim 1.1.260, p 44.
37. Submission 3.4.154(a), pp 37–38; submission 3.4.147, p 62; submission 3.4.222, pp 7–8; submission 3.4.237, pp 23–26; submission 3.4.151, p 48; submission 3.4.226, pp 72–76; submission 3.4.279, pp 41–45.
38. Submission 3.4.126, p 6.
Conversely, the Crown emphasised that ownership rights were only suspended for a finite period; that only rights which would interfere with development activities were suspended; and that the suspension of such rights was a reasonable corollary to the significant State support the land development programme represented. The Crown pointed to an instance where it mitigated the effect on Māori landowners of suspending ownership rights, such as cultural associations to do with fishing on land in the Ōpārau land development scheme, by setting aside a 10-hectare reserve for owners to use for this purpose. Ultimately, the Crown submitted that the length of time in which schemes remained in its control depended on factors like the quality and productivity of the land, as well as fluctuations in input costs and commodity prices.

Claimants also criticised the Crown’s management of the land development schemes, as well as what they described as a lack of confidence in Māori being able to participate in managing their lands. Claimants pointed to several examples of Crown mismanagement, including: the lack of an ongoing dialogue with Māori landowners over the land and other matters relevant to the schemes; the failure to consider the productive capacity of the land before establishing land development schemes; the extended timeframe throughout which land remained under development; and the significant debt imposed upon the land without owner consent. Moreover, claimants emphasised the Crown’s failure to offer Māori adequate access to farming and management skills while their land was under development.

The Crown defended its management of land development schemes and submitted that ‘there is no evidence as to exactly what representations [it] made in any particular cases about the economic and social outcomes that would flow from participation in a land development scheme’. The Crown submitted that the operation of the land development schemes was reasonable in the circumstances, the imposition of arbitrary timeframes for the return of lands would have been unsuitable in the context of the land development programme, and that virtually all farming enterprises carried a level of debt. The Crown asserted that it was only fair that the owners should shoulder some of the financial burden of their land’s development. Furthermore, the Crown made some training and management opportunities available to owners through the development committees and on
the land itself, such as instruction in farm operations and financial management by Department of Māori Affairs’ supervisors.\textsuperscript{47}

Regarding the Māori returned soldier settlement scheme, claimants submitted that it was ‘disappointing’ Māori did not receive the same outcomes as Pākehā returned servicemen.\textsuperscript{48} In the wake of the Crown’s intervention into Māori land ownership through title consolidation and development schemes, the Rehabilitation Board’s insistence on having full individual title and perpetually renewable leases made it difficult to navigate the ‘policy mess and distrust’.\textsuperscript{49}

On the other hand, the Crown submitted that it made ‘adequate and equal’ provision for the rehabilitation of Māori returned service personnel.\textsuperscript{50} It went on to explain that this was the case even if the policies for acquiring land for settlement of returned soldiers were different between Māori and Pākehā landowners. Crown counsel argued that Māori were given an additional opportunity which was unavailable to Pākehā returned servicemen: an allocation of Māori freehold land that the Māori landowners wished to offer so that the returned soldiers could settle in their tribal area.\textsuperscript{51} However, the Crown accepted that it was possible that the ‘quantity of land acquired from Māori was less than that acquired from Pākehā for the same purpose.’\textsuperscript{52}

The claimants alleged a number of Treaty breaches. They argued that the requirement for Māori to agree to the suspension of their ownership rights, even though Pākehā were not subject to such conditions, breached the Crown’s duty to provide equitable treatment to Māori. The lack of owner consultation and opportunities for owner involvement were framed as breaches of the Crown’s duty to actively protect the Treaty development right of Te Rohe Pōtāe Māori, whilst the Crown’s mismanagement of some land development schemes was a failure of the Crown to actively protect the interests of Māori.\textsuperscript{53}

Overall, the Crown emphasised the success of the schemes at a district level, contending that when measured against their purpose, they achieved a laudable level of success. The Crown stated that they led ‘to land being developed and to that land being returned to the control of owners and occupiers. This developed land was, for the most part, capable of producing greater economic returns than it was before it was committed to development.’ The Crown also explained that, when ‘[y]iewed in the round, the district-wide outcome of the schemes was not prejudicial to Māori owners.’\textsuperscript{54}

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47. Submission 3.4.287, pp 21–24; submission 3.4.310(e), pp 164, 170.
49. Submission 3.4.126, p 21.
50. Submission 3.4.287, p 47.
51. Submission 3.4.287, p 49.
52. Submission 3.4.287, p 49.
53. Submission 3.4.126, pp 2, 4–6.
54. Submission 3.4.287, p 1.
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17.2.4 Issues for discussion
Based on the arguments advanced by claimants and the Crown, previous Tribunal findings, and the statement of issues prepared for this inquiry, we focus on the following questions in this chapter:

- Was the legislative and policy framework for the land development schemes consistent with Treaty principles?
- To what extent were Te Rohe Pōtae Māori consulted about the land development schemes in the inquiry district and legislative and policy changes related to these schemes?
- To what extent was the implementation of schemes fair and beneficial to Te Rohe Pōtae Māori and were they successful?
- How did Māori land development legislation and policies assist the settlement of Māori returned service personnel?
- Did the Crown's legislation and policies in acquiring land for the settlement of returned servicemen differ between Māori and Pākehā landowners in the inquiry district?

17.3 The Land Development Programme
The land development programme was introduced under section 23 of the Native Land Amendment and Native Land Claims Adjustment Act 1929, and amended throughout the 1930s. In 1949, the programme was significantly reformulated by the Department of Māori Affairs, acting on a Cabinet decision to expand Māori land development. This reformulation altered key aspects of the programme and, as a result, historians discussing land development schemes generally divide it into pre-1949 and post-1949 sections. This division is adopted in the following discussion.

This section outlines the political origins of the pre- and post-1949 phases of the land development programme and evaluates the policy framework that underpinned them.

17.3.1 Pre-1949 land development programme
17.3.1.1 Political origins
The land development programme was the product of numerous factors that finally prompted the Crown to extend State development assistance to Māori nationwide in the late 1920s. Prime among them was Sir Āpirana Ngata's sustained effort on behalf of the cause.

During the 1920s, a sharp economic recession and the collapse of the post-war land boom placed considerable economic pressure on local governments. In the early twentieth century, local authorities had invested heavily in roading and bridges to bring newly acquired land into the nation's economic framework. However, these authorities found it increasingly difficult to service their debts...
amidst the declining economic climate. As a result, they sought to expand their rating base and pressured central government to allow them to sell Māori land with outstanding rates.

While Prime Minister Gordon Coates recognised the urgency of the problem, he opposed the sale of Māori land and placed his support behind Ngata’s call for land consolidation instead. As discussed in chapter 16, consolidation was raised as a potential solution to Māori title difficulties as early as 1907. It sought to address the fragmentation of Māori landholdings by consolidating the interests of individuals and families into economic blocks. Once arranged into economic holdings, Ngata hoped that landowners would be able to use their blocks as security to access funds from the recently formed Native Trustee. In turn, consolidation seemingly offered a solution to both the under-development of Māori land, and local government demand for the payment of rate arrears. As we found in chapter 16, however, consolidation was primarily implemented in Te Rohe Pōtæ to meet rating arrears. Addressing the under-development of Māori land became a secondary purpose.

As we also noted in chapter 16, it quickly became apparent that consolidation was moving too slowly to meet the demands of local government and some Māori landowners. In his capacity as Native Minister, Ngata explained that ‘consolidation of titles, while the most effective and enduring method as a solution of Native-land difficulties, was in its nature too slow to keep pace with the demand that lands should be brought into use’. In turn, he explained that: ‘It was necessary to resort to a more speedy and elastic method which would promote settlement of desirable areas pending the permanent adjustment of titles.

To this end, Ngata promoted Māori land development as a means to satisfy the demands of local government. He proposed the development of multiple titles as single stations in order to step over Māori land title difficulties in the first instance. Ngata developed legislation which sought to circumvent problems including large numbers of owners or disarrayed titles by allowing for the suspension of owners’ rights and bringing the land under the jurisdiction of the minister. The programme thus satisfied the local government demand for land to be turned to productive account, while simultaneously satisfying the long-held demand of Māori tribal and political leaders for direct Crown support to develop Māori land.

Ngata’s adept framing of land development as a response to Māori financial distress helped to expand the resources available to the programme. Throughout the 1920s and into the 1930s, the end of the post-war land boom and an increase in unemployment created considerable financial hardship in many Māori

57. Document A146 (Hearn), pp.419–420; transcript 4.1.20, p 337 (Terry Hearn, hearing week 14, Waitomo Cultural and Arts Centre, 7 July 2014).
59. AJHR, 1931, G-10, p(iv (doc A69, p 86).
communities. Māori leaders and the Government became concerned that Māori would be forced to move, en masse, into urban areas in search of work. In this context, Ngata presented the land development programme as a means to support and create long-term rural opportunities for Māori communities. Ngata secured significant funding for the programme by channelling Māori unemployment relief into the newly established schemes.

Alongside its economic role, Ngata also viewed the programme in social and cultural terms. Recognising the strain of colonisation on the fabric of Māori culture, Ngata hoped that land development schemes would promote Māori collective ties. The development schemes, he believed, would ‘reinvigorate Māori collective economic and social life and strengthen collective authority, decision-making and responsibility’.

Consolidation and land development schemes, however, were not merely pragmatic attempts to simplify Māori title and enable farming. They were also components of the State’s twentieth-century framework for assimilating the Māori population to a Pākehā style of living. The social goals of the land development programme, as conceived by Ngata, were articulated in the 1934 Report of the Commission on Native Affairs, which stated that the schemes were intended to enable the development of a ‘new culture’ that combined ‘that which the Māori selects as suitable in the culture of the European and that which shows a tendency to persist in his own culture’. Discussing title consolidation, the bedrock of land development schemes, chapter 16 demonstrated that the Government had long desired to limit the number of owners of Māori land blocks. In its view, multiple ownership was an obstacle not only to farm development generally, but also to the desired assimilated society in which Māori shared a transactional perspective on land with Pākehā. As historian Richard Hill has observed, it was intended to ‘bring Māori closer to the European model of land ownership and lifestyle modes’. In their objective of overcoming supposed limitations of multiple ownership, the land development schemes established in Te Rohe Pōtae Māori from 1930 should be considered within the context of this assimilative agenda.

17.3.1.2 Policy framework

Section 23 of the Native Land Amendment and Native Land Claims Adjustment Act 1929 provided financial and technical support to Māori landowners seeking to further develop their lands. It allowed for the Native Minister to appoint advisory committees to inquire into matters submitted to them, report and make

61. Transcript 4.1.20, pp 192–193 (Terry Hearn, hearing week 14, Waitomo Cultural and Arts Centre, 7 July 2014); Waitangi Tribunal, He Maunga Rongo, vol 3, p 1015.
63. Document A69, p 308.
64. AJHR, 1934, G-11, p 37.
recommendations they considered necessary. It also gave the Native Minister the power to authorise any improvements to the quality and utility of the land to make it fit for settlement, such as surveying, clearing, constructing buildings, purchasing and selling livestock, and purchasing any equipment needed for these purposes.

In return, Māori landowners were required to agree to a number of conditions. Schemes established in the early 1930s required Māori to accept lower rates of pay than other workers (a stipulation that was lifted in 1935), and under section 23(3)(f) landowners had to accept the suspension of their ownership rights throughout the period of development. During this time, Crown officials controlled all investment and expenditure decisions, while development costs were charged against the land under section 23(4)–(7), which was used as security for the loans. Further, the governor-general could prohibit the alienation of Māori land, which the Native Minister had given notice of in the Kahiti, for a period not exceeding 12 months. Landowners were assured that, following development, their land would be returned to them to decide on its ‘future disposition and utilisation’, though neither the timeframe for development nor the conditions that needed to be met before land was returned were specified.

On the ground, land development schemes were implemented in either ‘blanket’ or ‘comprehensive’ form. The former ‘comprised “units” each holding his/her own land, each was assisted directly and separately, and each accepted the risks involved.’ Comprehensive schemes were applied to larger areas of land where multiple titles were farmed as a single station. When the land within such schemes was deemed ‘usable’, occupiers were settled on individual sections and required to meet the development costs associated with their block. Supervisors appointed to each scheme by the Department of Native Affairs oversaw the land’s development. The supervisor had considerable authority over the scheme, formulating development priorities, disseminating farming advice and instruction, and preparing budgets.

Following this approach, the land development programme was rolled out across the district from the early 1930s. By 1931, four schemes – Waimiha, Mahoenui, Ōparure, and Kāwhia, as well as the area that became the Te Kuiti Base Farm (by that point in the possession of the Waikato–Maniapoto District Māori Land Board but yet to be gazetted as a development scheme) were operating in the inquiry district. The speed of the implementation reflected both the programme’s welfare component, which sought to extend unemployment relief to

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66. Native Land Amendment and Native Land Claims Adjustment Act 1929, s 23(2)(a)–(b).
67. Native Land Amendment and Native Land Claims Adjustment Act 1929, s 23(3)(a)–(c).
70. Native Land Amendment and Native Claims Adjustment Act 1929, s 23(9)(a).
71. Document A69, p 274.
75. AJHR, 1931, G-10, pp 8–10.
Māori communities, as well as Ngata’s desire to commit State resources to ensure the Crown’s long-term commitment to Māori land development.\(^ {76}\) However, the pace created problems for the Native Department, as it soon became apparent that Ngata’s enthusiasm outstripped the department’s capacity. As a result, problems plagued some early schemes, which prompted government inquiries into the land development programme.\(^ {77}\)

In 1932, for example, the Audit Department criticised the Te Kūiti area development schemes, describing the Te Kūiti farm director as ‘a hopeless bungler with a rather exaggerated idea of his own knowledge and ability,’ and labelling the Mahoeunui land development scheme’s organisation as ‘haphazard’.\(^ {78}\) It concluded that ‘the course of development of these Development Schemes has been marked by a scandalous waste of Public Monies’.\(^ {79}\)

That same year, the National Expenditure Commission was tasked with inquiring into and reporting on ‘the public expenditure in all its aspects, to indicate economies that might be effected if particular policies were either adopted, abandoned, or modified’ and making recommendations on possible reductions in public expenditure.\(^ {80}\) Its report highlighted concerns about the nature of the Native administration being ‘too widespread’, with the Native Trustee, Native Department, and Māori land boards all having the power to lend money to Māori and to develop Māori-owned lands (albeit the power was dependent upon the Native Minister’s approval and direction).\(^ {81}\) It also raised concerns over the decision to develop pumice land, upon which the Waimiha scheme was established.\(^ {82}\) The economic viability of developing such land was unclear, and the Treasury, weighing in on the debate, suggested that, while ‘the Native Department would have been justified in breaking in a small area of pumice lands in order to ascertain whether it could be economically converted . . . we cannot support the action taken in developing such large tracts at high cost’.\(^ {83}\) The commission believed it was ‘definitely uneconomic’ to finance experimental development work using loan funds that attempted to create permanent pasture out of the land.\(^ {84}\)

Due to the commission’s concerns over misdirected expenditure, the Native Land Settlement Board was established under section 17 of the Native Land Amendment Act 1932. These new arrangements relieved Ngata of much of his discretion over the programme.\(^ {85}\) Despite this change, concerns about financial and administrative transparency persisted, and, in 1934, the Commission on Native Affairs was asked to conduct an in-depth inquiry into the land development

\(^{76}\) Document A69, p 336.
\(^{77}\) Document A69(b), p 15.
\(^{78}\) Stores audit inspector to controller and auditor-general, 30 July 1932 (doc A69, p 182).
\(^{79}\) Stores audit inspector to controller and auditor-general, 30 July 1932 (doc A69, p 182).
\(^{80}\) AJHR, 1932, B-4A, p 4.
\(^{81}\) AJHR, 1932, B-4A, p 31.
\(^{82}\) Document A69, p 183.
\(^{83}\) Treasury paper, no date (doc A69, p 183).
\(^{84}\) AJHR, 1932, B-4A, p 32.
\(^{85}\) Document A69, p 184.
programme. This commission was directed to inquire into the land development schemes. It had three terms of reference. The first was divided into two objectives: to assess the probability of the schemes achieving the results intended, and to investigate the sources from which they were financed, alongside the expenditure and control of money and credit connected to them.\(^{86}\) The second term of reference was to look at the funds available to Māori, the purposes for which they may be applied or should be applicable, and whether they could be used more effectively. Finally, they were to look into any other connected matters which arose during their investigation.\(^{87}\)

The findings of the Commission on Native Affairs heralded significant changes to the programme. While Ngata was cleared of any impropriety regarding his oversight of the programme, it found that he had inadequately accounted for the expenditure of State funds, prompting his resignation.\(^{88}\) In addition, the commission recommended greater central control over the programme, and, as a result, the Board of Native Affairs Act 1934–35 and the Native Land Amendment Act 1936 were enacted.\(^{89}\) The former Act established a board consisting of nine members, which assumed control of the programme from the Native Land Settlement Board. The latter recast provisions for land development and made more explicit the basis on which land development schemes were to be established.\(^{90}\) Pre-existing schemes were brought into this new policy framework, and three additional schemes – Aramiro, Pirongia, and Ngahape – were established in Te Rohe Pōtae under the renewed approach.

The passage of the 1935 and 1936 Acts brought both continuity and change to the land development programme. According to the evidence before the Tribunal, ‘the essential basis of the land development policy remained intact’, as ‘the Crown retained its power over Maori freehold land subject to development, and the balance of risk between owners and the Crown remained unaltered’.\(^{91}\) What did change, however, was the programme’s focus. The legislation placed greater emphasis on the creation of titles in severalty, owner-operated farms, and cost recovery, and empowered the Board of Native Affairs to nominate occupiers.\(^{92}\) In this way, the legislation marked a shift away from Ngata’s holistic conception of the programme’s social, cultural, and economic dimensions to an increased emphasis on economic performance. This shift culminated in the programme’s reformulation in 1949.

The Tribunal received no evidence to suggest that the Crown consulted landowners about the changes implemented in the wake of Ngata’s resignation.\(^{93}\) What is known is that even while he was in office, the entire pre-1949 phase of the land

\(^{86}\) AJHR, 1934, G-11, p 1.
\(^{87}\) AJHR, 1934, G-11, pp 1–2.
\(^{88}\) Document A69, p 190.
\(^{89}\) Document A69, pp 190–191.
\(^{90}\) Document A69, pp 190–191.
\(^{91}\) Document A69, p 193.
\(^{92}\) Document A69, pp 308, 322–323.
\(^{93}\) Document A69, pp 308–309.
development programme is noteworthy for the Crown’s limited efforts to involve and consult landowners. The Native Land Amendment and Native Land Claims Adjustment Act 1929, the Native Land Act 1931, and the Native Land Amendment Act 1936 did not require consultation with owners over the establishment of land development schemes.94 Despite this, what department officials referred to as ‘marae-style’ meetings (as opposed to formal meetings of the owners of each block), were usually held before a scheme was gazetted, though this was not always the case.95

Once schemes were gazetted, the Crown made little effort to meaningfully consult with landowners. There was nothing in the 1929, 1931, and 1936 Acts that required them to do so.96 As noted, the 1929 Act provided for the establishment of ‘advisory committees’ under section 23(2), though this happened only at the Minister’s discretion (the provision was repealed under the Board of Native Affairs Act 1934–35). Although the latter Act provided for the appointment of ‘District Native Committees’, no such committees were established in the inquiry district and, in any case, they were not intended to serve as avenues for owner consultation.97

The wholesale absence of Crown consultation was compounded by a key stipulation of the pre-1949 phase of the land development programme. In order to access State support through the programme, landowners were required to hand control of their lands to the Crown, so it could be developed regardless of title difficulties. The provision was specifically included in the 1929 Act, which stated that no owners, except with the consent of the Native Minister, shall ‘be entitled to exercise any rights of ownership in connection with the land affected so as to interfere with or obstruct the carrying-out of any works under this subsection’.98 This provision was also included in a truncated form in the Native Land Amendment Act 1936, as well as several provisions which placed sweeping powers over Native freehold land into the hands of the Board of Native Affairs.99

17.3.2 Post-1949 land development programme

17.3.2.1 Political origins

The second phase of the land development programme was heralded by a Cabinet decision to expand Māori land development. On 16 July 1949, Cabinet approved a plan to develop 200,000 additional acres of Māori land, of which 20,000 were in the Waikato–Maniapoto Māori Land District.100 That year, the Board of Māori Affairs proposed a policy reformulation of the land development programme, adopted later that year, because the Government considered a ‘new approach’ to

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95. Document A69, p 573.
98. Native Land Amendment and Native Land Claims Adjustment Act 1929, s 23(3)(f); doc A69, pp 321–322.
100. Document A69, p 490.
land development, which clearly set out conditions under which land would be accepted for development, was necessary. Poor occupation in the past was attributed to insecurity of tenure, uneconomic areas, and a lack of ‘good practical farm training and appreciation of responsibility on the part of a number of occupiers of lands.’ Therefore, Māori landowners’ equity would need to be preserved. The Government would also be required to promise that the full cost of improvements would not be loaded against any individual settler and that landowners would have to agree to occupiers being granted leases, which would ensure the protection of soil fertility, maintenance of improvements, and the best form of utilisation.

Reflecting on the priorities of the renewed programme in 1950, the Minister of Māori Affairs, Ernest Corbett, pointed to ‘a double purpose behind this development’: ‘The most important is the establishment of the owners on their lands as independent self-supporting occupiers. The other, a more national outlook, is the continuation of the development of the country’s assets, with its effect on national economy.’

The post-war direction of the land development schemes must also be considered in relation to the State’s plans to assimilate Māori into the Pākehā population, which evolved after the Second World War into a policy of ‘integration.’ Urbanisation was expected to play a significant role in this process. As mentioned earlier in this chapter, assimilation remained the underlying objective of government policy toward Māori during the post-war era and the State encouraged movement off the land and into urban employment with this objective at least partly in mind. In 1957 Corbett wrote that ‘the policy of the government is that Maori and European form one people . . . living together, side by side in towns and villages.’

The Report on Department of Māori Affairs, better known as the Hunn Report, clearly demonstrates the connection between urbanisation and assimilation during this time. In January 1960, Prime Minister Walter Nash, who became Minister for Māori Affairs in 1957, appointed Jack Kent Hunn as Acting Secretary. Hunn was tasked with undertaking a review of Māori assets. Released in 1961, his report suggested, among other findings, that urbanisation of the Māori population was ‘inevitable’ and that: ‘Farming will never support more than a handful; the rest must enter the towns in search of work. Far from being deplored, the “urban drift” can be welcomed as the quickest and surest way of integrating the two species of New Zealander.’ Social and economic ‘integration’ into a ‘modern’ style of life,

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101. Treasury paper, no date (doc A69, p 490).
102. AJHR, 1950, G-9, p 2.
the report contended, would likely result in the elimination of a minority of Māori ‘complacently living a backward life in primitive conditions’. The assimilationist precepts of integration policy were on full display in the language of the Hunn report. In regard to rural landholdings, Hunn believed that as the movement to cities and towns continued, a ‘growing number of Maoris would readily sell their fractional interests’. Hopefully, they would come to see suburban home ownership as the basis for communal identification rather than holding shares in isolated country blocks. The extension and liberalisation of the land development regime from 1949 occurred against this backdrop of increasing, State-sanctioned depopulation of the countryside.

17.3.2.2 Policy framework
The reformulated policy offered greater clarity by clearly defining the pre-conditions of land development schemes, which the Crown required to be met and which landowners had to consent to, before it would commence development. For example, the Crown assured owners that the Board of Māori Affairs would preserve their equity in the land and pay rental to owners of 5 per cent of the land’s unimproved value from the time schemes became profitable. The Crown also made it clear to owners that its ultimate intention was the subdivision and settlement of the land. During the programme’s post-1949 phase, far-reaching title reforms were introduced into development schemes, as detailed in chapter 16. For their part, owners were required to accept the stipulations and formally hand control of their lands to the Native Department.

In the post-1949 phase of the programme, the Crown’s consultative mechanisms improved considerably. While the Tribunal received no evidence that owners were consulted over the programme’s 1949 reformulation, there is considerable evidence of owner engagement throughout the post-1949 period. The new policy required the Crown to make a number of assurances when land development schemes were established, and the evidence suggests that the Department of Māori Affairs (the Native Department having been renamed in 1947), took these requirements seriously. Department officials explained to owners the implication of gazetting land for development purposes, and made specific reference to the potential for land to be farmed for many years in order to meet development costs. In addition, and as already noted, Crown officials clearly outlined the Crown’s intention to
subdivide and settle the land. For example, Under-Secretary Tipi Tainui Ropiha made it clear to Ngāti Tūwharetoa that subdivision and settlement was the primary objective: ‘If the country is incapable of unitisation, the Minister may agree to incorporation.’

From 1949, the Department of Māori Affairs sought to hold annual meetings with the owners of each scheme in Te Rohe Pōtae and, in many instances, these meetings were characterised by robust discussion. From 1968, development committees were established, under section 11 of the Māori Affairs Act 1953, at the request of landowners. These committees consisted of four Crown officials and two owner representatives, and the Board of Māori Affairs delegated some powers to the committees. The committees enjoyed, for example, a degree of responsibility over annual farming programmes, as well as the selection and dismissal of managers.

Alongside the better consultative avenues available to landowners, the Crown became more willing to alter aspects of the programme’s policy in line with the demands of landowners. In the early 1950s, the Department of Māori Affairs’ policy was to hand over stations ‘as going concerns’ if they were unsuitable for subdivision or if the owners desired to farm them under an incorporation. This was to be carried out once the financial position was found to be ‘thoroughly sound’, namely that the profits had reached a level commensurate with the debt and improvements and the department was satisfied that the stations would be under ‘smooth and successful management’.

Throughout the 1960s, landowners made it clear that their preference was for large-scale farming and for incorporations and trusts to take over station management. They listed a number of concerns regarding their lands being subdivided and settled, claiming that they would receive scant returns from this process, that it would entail large additional costs, and that it would deprive them of the right and opportunity to exercise collective control and management over their lands or would sever their relationship to them. While the Crown’s intention to subdivide and settle land with lessees following development remained clear, economic challenges arose that cast doubt on the efficiency of this approach. In 1962, department officials noted that declining commodity prices and sustained development costs meant that stations were being farmed for longer periods in order to reduce development debt. Department officials consequently suggested that its plans for subdivision and utilisation would potentially require review.

These economic challenges coincided with growing calls from owners that their lands be returned to collective models of ownership. As the economic context made the subdivision and settlement of blocks increasingly untenable,
the Crown complied with the owners’ demands. From the 1980s, it returned schemes to collective forms of ownership in the form of incorporations or trusts.122 Somewhat similar to the 1950s policy, the Māori Land Board’s policy from 1981 was to return stations to owners as soon as development was completed and it was satisfied that ‘a properly constituted body of owners can assume management’.123 If debts remained, they would be financed from moneys available for rural lending and advanced as mortgages to trustees or incorporations. From 1989, the Iwi Transition Agency, upon the disestablishment of the board and the Department of Māori Affairs, was given the power to return schemes to collective forms of ownership in the form of incorporations or trusts.124

17.3.3 Treaty analysis and findings
The reduction of ownership rights for those whose land came under development schemes, along with the lack of meaningful consultative mechanisms in the early phases of the programmes, alienated Māori from their whenua for significant periods. As owners and Treaty partners, Māori could also have reasonably expected to participate in the management of their schemes to the greatest extent practicable.

The urgency under which the initial schemes were established, coupled with broader economic circumstances, such as the Depression, may have justified limiting consultation at first, but it was incumbent on the Crown to establish consultative mechanisms as soon as possible. Prior to 1949, however, the Crown made little discernible effort to extend meaningful consultation to the landowners when it updated the legislative framework of the schemes. In this respect, the Crown was in clear breach of its Treaty obligation to protect the development rights of Māori. These included their right not only to develop their lands, but also to retain a reasonable degree of control over their lands. Accordingly, we find that the Crown breached these Treaty development rights as well as the principle of mutual benefit throughout the implementation of the land development programme in the pre-1949 period.

The suspension, or removal, of ownership rights was part of a policy that reflected the Crown’s bias towards development. This policy enabled the Crown to develop the land, regardless of the obstacles that had long blocked its development. These barriers were principally the result of the Native Land Court regime imposed on Te Rohe Pōtai Māori in the nineteenth century, as detailed in chapter 10. Under article 3 of the Treaty and its guarantees of equity, the Crown had an obligation, in partnership, to extend positive assistance to Māori to overcome unfair barriers, including those of the Crown’s making.125 This assistance was more forthcoming, however, in the regime introduced following the Government’s adoption of a new approach to land development in 1949. The land development

123. AJHR, 1981, E-13, p 7 (doc A69, p 521).
programme was the only source of State development assistance available to most Māori. By making access to it contingent on the removal of ownership rights, while simultaneously failing to provide meaningful consultative mechanisms, the Crown established a lending environment that forced Māori to accept the temporary alienation of their land in order to access State assistance. This policy persisted for the best part of two decades and was never imposed on other sectors of the community. As such, the imposition of this draconian lending environment was a breach of the principle of partnership, and the article 2 guarantee of rangatiratanga.

As the Central North Island Tribunal noted, Māori have the right to development, which includes not only the right to develop their lands, but also the right to retain a reasonable degree of control over them. Although we did not address this principle of the Treaty of Waitangi in chapter 3 of this report, we adopt it in this chapter as it is clearly relevant to any analysis of the land development schemes and the claims against the Crown.

We also note the findings of the Tauranga Moana Tribunal that the Crown was not in breach of the Treaty for attempting to carry out the land development scheme policy clearly aimed at assisting Tauranga Māori, ‘however clumsily and ineptly some officials may have acted at particular times’126 While we consider that the Crown clearly used the principle of kāwanatanga derived from article 1 to assist Māori in this district as well, our analysis of the manner in which the schemes were established and administered in Te Rohe Pōtae leads us to a different conclusion.

Therefore, we find that the policy and legislative enactment, which did not provide for adequate consultation with landowners, the inequitable conditions attached to Te Rohe Pōtae Māori finance prior to 1949, and the suspension of ownership rights in Te Rohe Pōtae for the duration of the development schemes, were inconsistent with article 2 and its associated principles of partnership, reciprocity, and mutual benefit. These Crown actions were also inconsistent with its guarantee of tino rangatiratanga of Te Rohe Pōtae Māori over their lands derived from article 2 of the Treaty. In addition the Crown's actions, policies, and enabling legislation, until 1949, were inconsistent with the principles of equity, options, and development derived from article 3 of the Treaty of Waitangi.

17.3.4 Land development schemes in Te Rohe Pōtae
Under section 23 of the Native Land Amendment and Native Land Claims Adjustment Act 1929 17 major land development schemes were established in the inquiry district between 1930 and 1961: Waimiha (February 1930), Mahoenui (April 1930), Kāwhia (May 1931), Ōparure (May 1931), Te Kuiti Base Farm (June 1932), Pirongia (August 1936), Ngahape (May 1937), Aramiro (November 1937), Arapae (April 1951), Aotearoa (October 1952), Trooper's Road (October 1952), Ōpārāu

(November 1955), Tiroa (January 1966), Te Hape (1956), Waipuna (February 1956), Pukenui (April 1961), and Okapu (1962).

This section examines the implementation and management of six land development schemes in Te Rohe Pōtae: Waimihia, Kāwhia, Aramiro, Arapae, Īpārau, and Okapu. These schemes were interspersed throughout the district and traverse important phases in the history of the land development programme. Two of the schemes (Waimihia and Kāwhia) were established immediately following Native Land Amendment and Native Land Claims Adjustment Act 1929, Aramiro originated in 1937, following changes to the programme enabled by the Board of Native Affairs Act 1934–35 and the Native Land Amendment Act 1936, while Īpārau and Okapu were later schemes that followed a major departmental reformulation of Māori land development policy in 1949.

Our discussion of these schemes addresses the issues set out in section 17.2.4, including the level of consultation involved in the establishment and operation of the schemes, the extent to which the schemes benefited Māori, and whether they were financially successful. Some of the schemes developed into highly profitable farming enterprises that remain valuable assets to this day, while others struggled to overcome heavy debt-burdens and required significant debt write-offs before being returned to their owners.

The six schemes also point to the cultural impacts of the Crown’s land development programme. While Māori retained the land placed within the schemes, claimants nonetheless raised concerns with the programme’s operation. These concerns included the amalgamation of ownership interests as a result of the Crown’s title reconstruction efforts (as discussed in chapter 16); the dislocation of tangata whenua from their land, as the owners were required to hand control of their lands over to the Crown without access to meaningful consultative mechanisms; and the damage to, and desecration of, sites of significance.

In section 17.3.5, we will discuss specific Crown actions inconsistent with the Treaty of Waitangi arising from these land development schemes.

### 17.3.4.1 Pre-1949 land development schemes

#### 17.3.4.1.1 WAIMIHIA LAND DEVELOPMENT SCHEME, 1930–64

The Waimihia land development scheme was one of four schemes – alongside Mahoeunui, Ōparure, and Kāwhia – established in the inquiry district immediately following the passage of the Native Land Amendment and Native Land Claims Adjustment Act 1929. The scheme was implemented hastily during the Depression in an attempt to extend financial support to Māori communities facing economic distress. The following sections discuss the consultation, implementation, and success of the Waimihia land development scheme with specific reference to claims lodged by the Wai 762 and Wai 1203 claimants.

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127. Document A69, p 201; submission 3.4.237, p 11.
17.3.4.1.1 Consultation

The Waimiha land development scheme was gazetted in February 1930, three months before landowners were consulted over the proposed scheme. In a letter to his friend, Māori scholar and former politician Sir Peter Buck (Te Rangi Hiroa), for example, Ngata suggested that ‘circumstances’ (though he did not specify what these were, it is likely he was referring to the onset of the Depression) ‘demanded that for a time there should be some sort of ‘benevolent despotism exercised.’ In addition, the belated consultation also reflected the external impetus for the scheme’s establishment. It was local government, not landowners, that pushed for the implementation of the land development programme in Te Rohe Pōtae. Reflecting on this matter in 1932, Ngata explained that: ‘It was obvious that the pressure for the settlement of Natives upon lands in the King-country did not come from the Natives themselves. It was suggested as a solution to many difficulties, including the payment of rates.

The undemocratic nature of the scheme’s establishment was compounded by the Crown’s failure to secure the consent of a majority of landowners. Claimant Rangi Harry Kereopa, son of one landowner, explained how owners were divided over the proposed scheme:

I know that before the scheme began, there were objections from some of the owners. Willie Kiu did not want his lands to be taken over by the Pakeha. And a big woman named Okeroa also did not want the scheme. However my dad supported the scheme because there were too many Maori people at the marae with no work and he thought that the scheme would lead to work.

Despite divisions, the Crown overrode dissenting voices and established the Waimiha scheme. It was not legally obliged to ensure specific outcomes from the scheme, as the Native Land Amendment and Native Land Claims Adjustment Act 1929 was silent on the matter of Crown responsibilities and duties towards landowners. However, because of owner concerns at the Crown’s intent, Ngata and his officials extended some oral assurances to the assembled owners. Crown officials assured owners that the land development programme would render their lands productive; the Crown would provide the required technical, managerial, and financial skills; and development moneys would be ‘judiciously spent.’

131. AJHR, 1932, G-10, p 17 (doc A69, p 194).
133. Document A69, p 274.
134. Frank Langstone, notes of speeches made at Watawhata and Moerangi, 18 September 1937 (doc A69(a) (Hearn document bank), vol 3, p 153); doc A69, pp 274, 313.
As the scheme progressed into the late 1930s, owners became frustrated at the Crown’s failure to continue an ongoing dialogue with them. Around this time, the scheme’s manager, JD Jones, was replaced as foreman by a dairy and stock manager. The Crown made this decision without obtaining landowners’ consent, which apparently contradicted assurances Ngata had given at the outset of the scheme. According to local landowner Jim Ngarama, when those few owners consulted agreed to place their land under the programme, Ngata assured them that the scheme’s management would not alter without their consent. However, in line with the policy of the pre-1949 land development programme, the Crown made little effort to consult with landowners, and Jones’s removal was upheld despite the protests that ensued. This lack of consultation speaks to broader issues in the relationship between landowners and scheme management. In his statement of evidence, Kereopa suggested that positive working relationships between landowners and management were the exception, rather than the rule. He explained:

[a] Pakeha fella named Copeland ended up managing the scheme. My dad [Hoani] was not the manager but whenever there was a problem, they used to say ‘go and ask Hoani.’

The next manager after Copeland was a good fella. He said we could go in there and go hunting. The other managers would not let that happen. If you were not working on the scheme, you were not allowed on the land. We were not allowed on our lands.

This testimony indicates that some managers were more responsive to Māori needs and expectations than others, but in general, it casts owner-management relations in a negative light. According to Kereopa, Māori were often denied access to their land by Pākehā management, and, under the management of ‘Copeland’, Māori would help one another rather than seek technical support from the scheme’s management.

The relationship between schemes’ managers and Māori also speaks to the specific claims of Wai 1203 claimants. Referring to Waimiha, and other land development schemes, the claimants emphasised the importance of the Rangitoto-Tuhua block as a food basket for their tūpuna. However, the claimants explained that their tūpuna were denied access to traditional food sources, as access to the land was at the discretion of Pākehā managers. Their tūpuna’s rights to the land were not recognised by the Native Land Court and the land development programme undermined their connection to their traditional lands and resources, as well as their tūpuna’s tino rangatiratanga.

Consequently, in line with the pre-1949 phase of the land development programme, the Crown provided little space for Māori consultation and involvement in the operation of land development schemes, and there was no legislative scope to ensure that traditional connections between Māori and their land were protected as Pākehā managers exercised their discretion over the land. As such, Māori associations with the land were often undermined by the Crown’s singular focus on development.

17.3.4.1.1.2 Implementation

Development of Waimiha lands commenced in late May 1930. Speaking to the proposed development plan, the King Country Chronicle reported that 2,000 acres were to be developed immediately as a ‘community effort’ and that the owners would become the occupiers of what were described as ‘farmlets’. The Chronicle suggested that ‘satisfactory results’ had been achieved as the scheme developed in late 1930, and emphasised the efforts made by the scheme’s management to keep development costs at a minimum. The article concluded that ‘this scheme appears to be the most economical and practical effort ever attempted in this Dominion to accelerate settlement of the land.

Despite this enthusiasm from outside observers, within a few years a series of government investigations uncovered problems affecting the scheme’s progress. In the early 1930s, the Audit Department reported that clearing and grassing had been allowed to fall into arrears and, as a result, 1,800 acres of pasture were carrying just 250 cows, of which only 200 were milking. In 1934, the Native Affairs Commission described work at Waimiha as ‘expensive and protracted’, and suggested that ‘[t]he work already done is not impressive’. P W Smallfield of the Department of Agriculture offered a similarly bleak assessment. In 1935, he noted that of the 2,000 developed acres, 1,000 acres were in fair to poor pasture and a further 500 were in good pasture and bare ground. He suggested that the land was ‘good average pumice country, capable of carrying . . . a good ryegrass, white clover pasture’, but emphasised the need for better management and the extension of farm training to Māori.

In light of the scheme’s progress, some landowners were reluctant to pursue settlement. Reporting on a meeting held in September 1936, the Auckland registrar informed the Under-Secretary of the Native Department that, while ‘the advantages of subdivision were presented . . . those present “hesitated and preferred, it would seem, to continue on a form of wages rather than run any risk”’. The registrar added that the situation at ‘Waimiha is not perhaps all it should be’, but

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140. King Country Chronicle, 12 April 1930 (doc A69, p 280).
141. King Country Chronicle, 29 November 1930 (doc A69, p 280).
142. King Country Chronicle, 8 January 1931 (doc A69, p 280).
144. AJHR, 1934, G-11, p 164 (doc A69, p 321).
146. Registrar to Under-Secretary, 9 October 1936 (doc A69(a), vol 5, p 381); doc A69, p 285.
suggested that ‘with careful handling and with increases in wages recommended and if the people can be induced to became permanent units, these unsatisfactory features should tend to disappear.’

However, the Under-Secretary did not share the registrar’s conciliatory approach. Following the Native Affairs Commission of 1934, and subsequent legislative amendments to the land development programme, the Crown placed renewed emphasis on the subdivision and settlement of development schemes. The Under-Secretary stated that: ‘As soon as the properties are capable of having units established the settlers should be placed on a definite share basis as it is the Government’s desire that the land should be settled and farmers established and not that we should be keeping the prospective units on a wage basis.’ The Under-Secretary emphasised the department’s policy of close settlement to justify the establishment of unit settlement, suggesting that ‘care should be taken to keep the areas as small as reasonable living conditions for a family will permit.’

In line with these directives, the Department of Native Affairs announced in 1937 that the time was ripe for the settlement of unit farmers. Throughout the preceding years, development work at Waimiha had focused on the 2,200-acre Te Tarake block, which was subdivided into 24 sections. Throughout the late 1930s, the Board of Native Affairs approved individuals nominated by Māori landowners and settled these ‘units’ on a number of these sections, initially on a provisional basis, but ultimately as permanent occupiers with individual loan accounts.

However, not long after these people were settled, the reluctance of some owners to pursue settlement was vindicated.

Throughout the 1937–38 season, the average cow from the 10 ‘units’ operating on the scheme produced 167.1 pounds of butterfat per annum. The following season, it dropped to 160.1 pounds per annum across 11 ‘units’. In comparison, the average rate of production for a dairy cow in South Auckland across the same period was more than 260 pounds per annum. Financial challenges were common. While some remained on wages, most relied on farming income, which, after deductions for debt repayment, constituted 40 per cent of their cream cheque. This figure, however, was not enough to make ends meet, prompting the scheme’s supervisor to describe several occupiers as ‘financially embarrassed.’ He added that, ‘[i]n one or two cases the units have obtained outside employment during the season’ to supplement the cream cheque, while ‘[t]he Department has . . . been called on to make several grants, and provide work on the General Scheme in an endeavour to relieve the position’ of others.

The challenges some owners faced following their settlement on the land attracted the attention of P K Paikea, the Māori representative on the Executive

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147. Registrar to Under-Secretary, 9 October 1936 (doc A69(a), vol 5, p 382); doc A69, pp 285–286.
149. Under-Secretary to registrar, 16 October 1936 (doc A69, p 286).
152. Supervisor, Te Kūiti, to registrar, 31 August 1939 (doc A69, p 289).
Council. In 1941, Paikea contacted the Native Minister on their behalf, explaining that some people at Waimiha

are living under a cloud of inefficiency and in a state bordering almost on poverty whilst others are reported to be making a first class success of their farms . . . It may be, presuming that the existing supervision is of the highest order, that these remaining farms are unsound fundamentally from an economic point of view.153

Paikea questioned the efficacy of the scheme's administration and suggested that 'an independent investigation may arrive at a worthwhile basis for the future policy of administration'.154

However, from the Department of Native Affairs' perspective, such an investigation was unnecessary, as Crown officials were already clear on where the problem lay. In the month following Paikea's comments, the Native Minister's private secretary attended a meeting at Waimiha where he noted that some people were very backward and that their living conditions had 'reached desperation point'. The secretary attributed hardship to a lack of experience with farming and 'pakeha ways', as well as a lack of carrying capacity.155 The registrar echoed this assessment when he visited the scheme during the same period. He dismissed the suggestion that the holdings were economically unsound and reported that 'any trouble that the Units may have in meeting their obligations is . . . due to their own inefficiency'.156

The tendency of Crown officials to blame occupiers for the scheme's outcomes ignored the component of the land development programme that sought to develop the competency of Māori farmers. In turn, this approach developed into a self-fulfilling prophecy. More than a decade after the 'units' were settled, many continued to achieve underwhelming results. For the year ending March 1952, for example, the butterfat returns for the 10 units for which records are available ranged from 1,982 pounds to 13,442 pounds. Meanwhile, the average butterfat return was 6,065.157 To put these returns into perspective, in 1953 the Board of Māori Affairs defined an economic dairy holding as one producing 12,000 pounds of butter per annum and carrying replacement herd. Under this definition, nine of the 10 'units' at Waimiha were operating uneconomic farms.158

The continued poor results caused disenchantment with the scheme and forced some to seek off-farm employment.159 Indeed, in 1948, the Under-Secretary met with owners at Waimiha to discuss what he described as a 'loss of spirit among

153. Paikea to Native Minister, 30 June 1941 (doc A69, p 304).
154. Paikea to Native Minister, 30 June 1941 (doc A69, p 304).
155. Private secretary to Native Minister, 25 July 1941 (doc A69, p 304).
156. Registrar to head office, 18 July 1941 (doc A69, p 304).
159. Document A69, pp 396, 422.
the people."\textsuperscript{160} However, rather than interpreting this situation as a reasonable response to sustained failure in the face of hard work, Crown agents viewed the disposition of ‘unit’ farmers as confirmation of their earlier assessments. In 1952, landowners and departmental officials attended a meeting in Waimiha, where an owner suggested that closer supervision of ‘units’ would have produced better results. The registrar acknowledged the absence of sufficient supervision in the past, but suggested that the ‘units’ themselves were ‘far from . . . satisfactory’.\textsuperscript{161} This theme also emerged in a review of the scheme that same year, which reported that little progress had been made towards ultimate settlement, ‘so that now save in three or four cases we are left with a number of very unsatisfactory units and a considerable area of developed land being farmed at a loss.\textsuperscript{162}

While Crown agents attributed ‘unit’ farmers’ results to their own shortcomings, claimant counsel for this inquiry argued that the challenges at Waimiha were a consequence of managerial incompetence. Counsel asserted that ‘the issues with the administration of the Waimiha Scheme contributed to the farms non-profitability and large debt accrual’.\textsuperscript{163} However, the evidence available to the Tribunal suggests that the hardships facing many farm ‘units’ at Waimiha reflected fundamental problems with the scheme’s development plan, as opposed to the failings of any individual. Hearn explained that many of the difficulties which ‘emerged and dogged the Waimiha development scheme . . . arose out of an effort by the Crown to transform a scheme intended to alleviate unemployment into a scheme intended to create individual farm holdings.\textsuperscript{164} The Waimiha scheme was established in the midst of the Depression and during its early stages farming was secondary to the provision of unemployment relief.\textsuperscript{165} As noted earlier, the scheme sought to establish people on sections ‘as small as reasonable living conditions for a family [would] permit’ in an attempt to extend unemployment relief as efficiently as possible and develop the land as an asset for the community.\textsuperscript{166}

The challenges facing ‘unit’ farmers at Waimiha were compounded, in the short term, by their settlement on pumice land. As a result of the Crown’s sustained land acquisitions throughout the late nineteenth and early twentieth centuries, much of the land retained by Te Rohe Pōtae Māori in 1929 was of marginal quality. The land at Waimiha, for example, lay within the range of cobalt-deficient ash deposited by the historic Taupō eruption. Speaking to the potential development of such land in

\textsuperscript{160} Notes from a meeting at Waimiha Hall, 18 April 1948 (doc A69(a), vol 5, p393); doc A69, p392.

\textsuperscript{161} Notes of meeting with units of Waimeha scheme, 30 April 1952 (doc A69(a), vol 6, p6); doc A69, p396.

\textsuperscript{162} Inspecting accountant to Under-Secretary, 7 August 1952 (doc A69(a), vol 5, p281); doc A69, p397.

\textsuperscript{163} Submission 3.4.170(a), p171.

\textsuperscript{164} Document A69, p422.

\textsuperscript{165} Document A69, p410.

\textsuperscript{166} Under-Secretary to registrar, 16 October 1936 (doc A69, p286).
1929, the assistant director of agriculture suggested that ‘a good deal of the country . . . will not be possible [for] development on anything like an economic basis.’

The issue of the land’s productive viability was of considerable concern to both claimants and the Crown. For their part, claimant counsel suggested that the Crown’s decision to commit significant sums to the development of Waimihā’s pumice land represented a failure to actively protect the claimants’ interests. Subsequently, the Crown failed to ensure that ‘the Waimihā land was appropriate for the intensive dairy farming that was to take place through the development scheme.’ On the other hand, Crown counsel also referred to diverging expert opinions on the lands’ capacity for viable development. Counsel concluded that ‘the decision to implement the Waimihā land development scheme on pumice lands was therefore not unreasonable in the circumstances.’

The Crown’s decision to develop pumice lands was certainly a risky proposition. However, it must be viewed in the context of the Waimihā scheme’s establishment, which, as noted previously, initially focused on extending relief to a financially distressed community. As Hearn explained: ‘Ngata’s reasons for establishing Waimihā had less to do with creating a farming settlement for subdivision into economic farms than it had with meeting immediate needs for employment and sustenance.’ Throughout the early 1930s, the land development programme was a channel for unemployment relief, which saw tens of thousands of pounds directed into rural Māori communities. Regardless of the quality of land being farmed, this support provided direct material benefit to communities such as Waimihā.

In addition, any negative impact caused by the land’s infertility was ultimately short-lived, as a solution to the problem was soon developed. Throughout the early twentieth century, for example, the cause of bush-sickness amongst livestock was unknown. However, during the early 1930s, New Zealand scientists discovered that cobalt-deficient soils were to blame, and cobaltised super-phosphate fertiliser was soon developed. It was applied at Waimihā within two years of unit settlement. In 1938, the registrar reported that ‘the application of “cobaltised super” had resulted in greatly improved pastures, healthy stock and the fattening of store lambs’ at Waimihā.

Accordingly, the marginal quality of the land had little long-term impact on the fortunes of Waimihā ‘unit’ farmers. Instead, the hardship faced by many primarily reflected the development plan imposed by the Crown, as people were settled on sections that were subsequently defined as uneconomic. The Crown elected to interpret the financial hardship faced by some settlers as evidence of their lack

168. Submission 3.4.170(a), p 168.
169. Submission 3.4.310(e), pp 170–171.
171. Document A69, p 175.
of commitment and poor farming practices, rather than as a problem inherent in its development plan.\textsuperscript{174} This approach was maintained through the late 1940s and early 1950s, when the Crown implicitly acknowledged the problem by defining economic sections as those capable of producing at least 12,000 pounds of butterfat per annum and agreeing that ‘uneconomic’ blocks would not be settled in the future.

The challenges ‘unit’ farmers faced were reflected in the results achieved on Waimiha station land. According to the evidence before the Tribunal, as prospects for the viable development and settlement of the land receded, the initial Waimiha scheme was dismembered and lands were incorporated into other development schemes, including the Koromiko and Whenuatupu–Ohinemoa schemes.\textsuperscript{175} As a result, by the early 1960s the Waimiha scheme constituted 3,292 acres – excluding the 1,869 acres settled as unit farms – which bore significant debt in comparison to their productivity.\textsuperscript{176} In 1962, the station’s debt stood at £94,510, while assets were valued at £71,400. This left more £23,000 of debt unrepresented by corresponding assets.\textsuperscript{177}

To understand how the land had become so indebted, the scheme’s advisory committee conducted a review in 1963, which identified a number of major challenges. These included the expense of experimental work, such as that associated with pumice lands; alterations to the scheme’s management, which prevented farmers from accessing the expertise of people like J D Jones; the transfer of development costs onto station lands when subdivided sections were settled at valuation; and the poorly managed development of the Whenuatupu blocks, which commenced in the mid-1950s.\textsuperscript{178}

Also in 1963, the Rotorua assistant district officer compiled a lengthy report on the challenges faced by the Waimiha scheme more broadly. He referred to the scheme’s emphasis on unemployment relief over farming in its early stages of development; the scheme’s reliance on an off-site water supply; confusion over the grassed area, which in part resulted from considerable reversion and renewed clearing and grassing; incomplete surveying of the land; and the fact that valuations were not conducted when the scheme was gazetted, meaning that special valuations were subsequently required.\textsuperscript{179}

These documents indicate that the scheme’s results were affected by it being implemented during the Depression with great urgency. However, they also detail ongoing deficiencies in the scheme’s management, ranging from the dismissal of J D Jones and the resulting loss of access to his expertise, to rudimentary failures such as issues over water supply, the reversion of developed land, and the failure to adequately survey station lands.

\textsuperscript{174} Document A69, p 330.  
\textsuperscript{175} Document A69, p 422.  
\textsuperscript{176} Document A69, p 408.  
\textsuperscript{177} Document A69, p 408.  
\textsuperscript{178} Document A69, p 409.  
\textsuperscript{179} Document A69, pp 409–411.
17.3.4.1.1.3 Success of the scheme

Throughout the operation of the Waimiha land development scheme, the station was farmed as a joint venture that consisted of several separately owned blocks. During this time, debt was not attributed to specific blocks, beyond those settled by 'units', meaning that before the land could be returned, debt had to be allocated to the constituent sections. However, as the Rotorua assistant district officer explained, the debt imposed on the general station did not reflect the work conducted on those lands:

During the course of development since 1930 fourteen farms were settled at different times. Settlement was based on valuation so that the cost above valuation has been carried by the balance area. At this stage there is no possibility of recovering the debt from the settlers nor is it possible to allocate this loss among the owners of the balance area blocks.\(^{180}\)

Accordingly, the district officer proposed a debt write-off in preparation for the land’s return. In 1963, the scheme was terminated as a joint venture and, over the following two years, £25,000 was written off the scheme’s debt.\(^{181}\) Following the land’s return, some owners opted to place their lands within the newly established Whenuatupu development scheme, while others leased their lands to that scheme.\(^{182}\)

Commenting on the return of Waimiha scheme lands in the 1960s, claimant counsel highlighted that the land had remained within the scheme for more than 30 years and that ‘it cannot be said that the Crown met its duty to ensure that the land was returned to the Claimants as soon as possible’.\(^{183}\) Crown counsel, however, submitted that the ‘Crown did not undertake that it would complete schemes within a specific timeframe’ and ‘[t]here is no evidence to suggest that the scheme could have been returned at an earlier time than it was.’\(^{184}\) We note that the land was retained under Crown control for longer than anticipated. This situation was able to occur because there was no statutory timeframe provided for the return of control to the owners.

In terms of the results achieved by the Waimiha scheme, the Crown should have been able to return the land to owners in an improved state. As Harry Kereopa explained, once the land was returned, many landowners were in no better position than they had been before. ‘Uncle Snow got his land back’, Kereopa explained, but ‘[a]fter a few years he had to sell it . . . Selling the land was the only way for Uncle Snow to get out of his debts. And his wife, my aunty, was against selling the

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\(^{180}\) Document A69, p 410.
\(^{181}\) Document A69, p 411.
\(^{182}\) Document A69, pp 419–420.
\(^{183}\) Submission 3.4.170(a), p 175.
\(^{184}\) Submission 3.4.310(e), p 175.
land. She was strongly against it so when it was sold, it must have been the only way.”

Kereopa recalled that the Tapatahi whānau also sold their section, and the Kiu whānau ‘got their land back from the scheme but [it] didn’t last long. After about a couple of years it was gone.’

While these results were the product of several factors, some of which were beyond the Crown’s control, there is clear evidence of significant problems with the Crown’s operation of the Waimiha scheme. As detailed above, numerous incidences of Crown mismanagement and its sustained failure to mitigate the challenges created by a flawed development scheme served to undermine the efficacy of the scheme and the potential benefits to landowners. At the outset of the scheme, owners were assured that their lands would be turned to productive account; that the Crown would extend technical expertise; and that development funds would be judiciously spent. Set against these assurances, it is difficult to view the Waimiha land development scheme as anything other than a failure.

17.3.4.1.2 KĀWHIA LAND DEVELOPMENT SCHEME, 1931

Like the Waimiha scheme, the Kāwhia scheme was gazetted in the years immediately following the establishment of the land development programme. The scheme attracted considerable opposition from landowners who did not want their lands included. This opposition was led by Rihi Te Rauparaha Penetana of Ngāti Apakura, and was the focus of claims made by Wai 1469 and Wai 2291 claimants. These claimants detailed how their tūpuna opposed the inclusion of her land in the scheme, as well as the Crown’s failure to address these concerns. In response, the Crown argued that Penetana ‘was late in changing his [sic] mind, [that] work on the scheme had already commenced’ and that ‘acceding to the objection would have jeopardised the scheme’s overall integrity’.

The following discussion considers the legitimacy of the Crown’s decision to retain Penetana’s land within the land development scheme.

In February 1931, Pei Te Hurinui Jones, the Native Department’s field officer, informed Āpirana Ngata that owners of the Moerangi blocks and other blocks fronting the Aotea Harbour had raised the possibility of establishing a land development scheme in their rohe. The following month, with the support of King Tē Rata Mahuta, Ngata placed the relevant lands under section 23 of the Native Land Amendment and Native Land Claims Adjustment Act 1929. Throughout March and April, Jones visited the land blocks to ensure that ‘the human material, quality of land, access and other factors conducive to the economical development and settlement of the various areas would meet the requirements of the Hon

188. Document A69, p 216.
Native Minister and the Department. Jones explained that his inspections were conducted ‘more circumspectly than has been the case with other localities and schemes,’ suggesting that his consultative efforts specifically targeted community leaders.

Due to the timing and approach of Jones’s consultation, it appears that not all owners consented to the development of their lands. In a letter to the Native Minister dated 3 June 1931, Ngaungaahi Whareki and Rautahi Kukutai noted that their land, Kawhia C32 (Pokopoko), was included in the scheme, though only one of the land’s owners had been consulted. Neither Whareki nor Kukutai were opposed to the inclusion of their lands in the scheme, contacting the Minister to make it known that they wished to have ‘a voice in the selection of supervisors.’ However, this example indicates that Jones’s efforts to establish the consent of all landowners were far from thorough.

In cases where landowners opposed the inclusion of their lands, Jones was unresponsive to their concerns. At a meeting in late May 1931, owners of the Mangaora and Kawhia blocks made their opposition to the scheme known. In response, Jones simply informed them that the time for opposition had passed. Much of the opposition expressed at the meeting subsequently dissipated when King Te Rata restated his support for the land development programme, though Ngāti Apakura maintained their opposition to their lands being included. Te Taite Tomo (member for Western Māori) spoke to Ngāti Apakura’s objection to the inclusion of Mangaora blocks 1 to 7, suggesting that ‘their contention [is] that they do not favour the mortgaging of their lands.’

Despite the opposition of landowners, Mangaora blocks 1 to 7 were included in the Kawhia land development scheme. The blocks were planned to consist of a station within the scheme, which would be developed on a comprehensive basis (the Kawhia land development scheme itself was developed on a ‘blanket’ basis). Ultimately, however, the 740-acre Mangaora scheme emerged as a stand-alone proposition, which was folded into the Maniapoto scheme in 1938. Regardless of the form that the scheme ultimately took, Ngāti Apakura claimants contended that they did not want their lands included in the land development programme.

A strong voice against the Kawhia land development scheme, particularly on her lands, was Rihi Te Rauparaha Penetana, who was a landowner of Mangaora 2 (Puti Point). Penetana’s opposition to the Crown’s interest in her land dates to the early twentieth century when she protested the proposed acquisition of the

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189. Consolidation officer to registrar, 21 April 1931 (doc A69, p 217).
190. Consolidation officer to registrar, 21 April 1931 (doc A69, p 217).
193. Taite Te Tomo to Native Minister, 1 June 1931 (doc A69, p 218).
197. Submission 3.4.228, pp 92–93.
198. Submission 3.4.228, p 93; doc K21 (Laing), p 12.
block for scenery preservation under the Public Works Act 1903. In 1926, a Native Department memorandum acknowledged that, because of Penetana’s opposition, the land was not acquired for those purposes. Despite this, the Crown pursued the land for the development programme and Mangaora 2 was included in the Kāwhia development scheme in 1931. Penetana immediately expressed her opposition when development began in 1933.

In October 1933, Penetana wrote to Prime Minister Gordon Coates, in his capacity as Minister of Public Works, demanding that workers stop entering her land. Referring to the ‘swaggers’ who wandered throughout Depression-era New Zealand, she refused ‘to allow my children and grandchildren to become wanderers on the road’. Alongside her communication with the Native Minister, Penetana joined landowners in obstructing work on the land, prompting Jones to suggest that criminal charges be laid under the Māori Land Act 1931 to deter others from adopting such tactics.

While the Crown did not take the matter before the courts, Penetana’s opposition forced Ngata to explain the situation to the Prime Minister. He informed Coates that ‘the land was being developed and improved and that it was in the owners’ interests “that they should not be permitted to resist or obstruct the betterment of their lands or that the land should be excluded from the Scheme”’. The landowners, however, viewed the matter very differently. On behalf of Penetana, Collins and Downes, of Te Awamutu, wrote to Coates on 22 November 1933 and explained that their client, and her family:

maintain that they can work this block themselves without any outside assistance and in past years they have been supplying the local dairy factory with firewood. In one season as much as 50 cords at 30 shillings a cord and this has now been taken away from her and they are far worse off through the actions of the department than they were before.

In imposing the development scheme, the Crown applied orders prohibiting the private alienation of the land, which extended to the resources on it. Accordingly, the scheme prevented Penetana from selling the firewood on the land, undermining an important source of income for her and her whānau. The issue was ultimately referred to the Native Land Settlement Board, though the board declined to release the land from the scheme.

201. Document A69, p 220.
203. Document A69, p 221.
204. Document A69(a), vol 7, p 394.
205. Transcript 4.1.20, pp 308–309 (Terry Hearn, hearing week 14, Waitomo Cultural and Arts Centre, 7 July 2014).
Early reports of the Kāwhia scheme’s progress likely gave those who supported the scheme pause to reconsider. One owner, Whare Moke, suggested that the Pākehā officials ‘approached [owners] in an over-bearing manner, and rode rough-shod over their thoughts and customs’, while, in 1933, the scheme’s supervisor offered a bleak assessment of progress to date.\(^{207}\) He explained that previous managers had developed the land as dairy farms, even though it was better suited for sheep, and explained that the sections developed on the station were too small to modify into holdings suitable for the rearing of sheep.\(^{208}\) On the matter of the Mangaora lands, Crown officials suggested that development was ‘somewhat spasmodic owing to the uncertainty of the owners’ wishes’.\(^{209}\)

Penetana’s wishes, however, remained clear. In 1936, she employed the services of another lawyer, who again raised the issue with the Prime Minister. On this occasion, E J McInnes contacted Michael J Savage, in his capacity as Native Minister, informing him that Penetana had never agreed to the inclusion of her block in the scheme. McInnes explained that: ‘If you search the file containing her evidence given at Ngaruawahia before the Royal Commission in April 1927 you will readily understand why Rihi and her large family are (almost) landless to day [sic].’\(^{210}\) In drawing the Native Minister’s attention to the 1927 royal commission – established to investigate the Crown’s 1860s land confiscations – McInnes framed Penetana’s opposition to the development scheme in the context of the confiscation of Ngāti Apakura lands at Rangiaowhia, Ōhaupō, and Ngaroto.\(^{211}\)

Penetana’s plight received a sympathetic response from the Prime Minister. In April 1936, Savage explained that his department had ‘no intention of dispossessing you of your land and you can rest assured that nothing further will be done without the owners being consulted’. He added:

[i]n the meantime, even though the land is included in the Scheme, it should not inconvenience you in your lawful occupation of so much of the land as you may be entitled to in respect of your interest therein and . . . the foreman will be instructed to refrain from disturbing you or in any way interfering with your occupation.\(^{212}\)

This assurance was echoed a few months later by the department’s Under-Secretary. In August 1936, reflecting on an unsuccessful attempt to convene a meeting of Mangaora block owners, the Under-Secretary suggested that ‘as the land is already gazetted . . . and certain expenditure has already been incurred . . . the Department would be justified in proceeding with the work provided that the area occupied by Rihi Rauparaha will not be affected’. He then expanded on the conditions for further development work, explaining:

\(^{207}\) Document A69, p 224.
\(^{208}\) Document A69, pp 222–223.
\(^{209}\) Document A69, p 226.
\(^{210}\) Innes to Native Minister, 20 March 1936 (doc A69, p 228).
\(^{211}\) Transcript 4.1.20, p 300 (Terry Hearn, hearing week 14, Waitomo Cultural and Arts Centre, 7 July 2014); doc K21, p 12.
\(^{212}\) Native Minister to Penetana, 17 April 1936 (doc A69, p 228).
[I]t is . . . desired in all cases where development is contemplated that the owners be approached either by way of meeting of assembled owners or individually for their consent. . . . It will be appreciated that there are ample lands available for development and if the owners of any particular area are not keen on their land being developed, the Department will have no difficulty in finding other suitable areas. We do not wish to commence operations on lands the owners of which will be antagonistic to our work. 213

While these assurances undoubtedly satisfied Penetana’s immediate demands, they were informal, and her land remained within the scheme. While the legitimacy of her concerns were recognised by Crown officials, their proposed solution offered little long-term relief. Indeed, a few years later, in 1942, Penetana passed away, and in the early 1950s her land was amalgamated with the other Mangaora blocks to form Mangaora A. 214 This amalgamation occurred as part of the Crown’s title reconstruction efforts which, from 1949, focused on land within development schemes.

Ngāti Apakura claimants told the Tribunal that ‘the inclusion of the Mangaora lands in the scheme against the express wishes of the owners’ breached article 2 of the Treaty and, consequently, Ngāti Apakura lost management and control over their lands for a number of years. 215 The Crown denied any wrongdoing. Crown counsel acknowledged that some owners protested against the inclusion of their lands, but suggested that the department’s refusal to excise the relevant block from the scheme was reasonable in the circumstances, as doing so would have jeopardised the overall integrity of the scheme. 216

This assessment of the situation overlooks a number of key factors. The evidence indicates that the Crown failed to establish the consent of the majority of landowners, and that opposition to the scheme was expressed by owners before development commenced at Mangaora in 1933. In 1936, Crown officials acknowledged that limited progress had been made regarding the Mangaora blocks, suggesting that the land could have been excised from the scheme at that time. This interpretation is corroborated by the contemporary opinions of the Native Minister and the Under-Secretary of the Native Department, both of whom informed Penetana that development work would continue but would not interfere with her land.

Ultimately, as claimant Stephen Laing explained, the results of the Crown’s amalgamation order ‘have been devastating for my whanau. Our specific interests in Puti Point were combined with those of all of the other Mangaora owners. We therefore have lost our rangatiratanga over the 63 acre Mangaora 2 block.’ 217

213. Under-Secretary to registrar, 5 August 1936 (doc A69, pp 228–229).
215. Submission 3.4.228, p 94.
216. Submission 3.4.310(e), p 166.
The Aramiro land development scheme was one of three schemes established in the northern reaches of the inquiry district in the late 1930s. These schemes were set up in the wake of the land development programme’s reorganisation, which followed the Commission on Native Affairs’ investigation in 1934. In bringing their claim before this Tribunal, the Wai 1327 claimants detailed the inadequacy of Crown consultation with landowners, as well as Crown mismanagement of the scheme. The Crown disputed these assertions, emphasising the thoroughness of its efforts to consult with landowners when the scheme began and detailing the positive financial results achieved at Aramiro.

Consultation

Prior to the establishment of the Aramiro land development scheme, Crown officials commented on the form of consultation to be extended to landowners during initial owner meetings. Prioritising haste over thoroughness, the registrar suggested:

so long as it is the policy of the Department to obtain the consents of the owners and have regard to legal impediments . . . preliminary steps will of necessity be slow and tedious. If, on the other hand, the Department is prepared to brush these aside and simply proclaim the areas, a speeding up would immediately result.

The approach suggested by the registrar was analogous with that adopted by the Native Department in the early 1930s. However, in the case of Aramiro, the registrar’s suggestion was rebuffed. The Native Minister’s private secretary warned against any ‘brushing aside’, suggesting that, ‘to the Maori mind’, such an approach ‘savours of confiscation. The same result’, he explained, ‘can be expeditiously achieved, without causing uneasiness and resentment, by adopting the old Maori method of entering into bargains in open meeting in the sunlight and in the presence of the Native Minister.’

Owner meetings regarding the Aramiro scheme were held in late 1937 and attended by Crown officials. On 18 September 1937, Acting Native Minister Frank Langstone, the Minister of Agriculture, the Native Department’s Under-Secretary, and other Crown officials attended a meeting at Whatawhata, accompanied by Te Puea Herangi. At the meeting, Langstone told assembled owners that the proposed scheme would operate with Māori labour and Crown capital, and that all development funds would be ‘judiciously spent.’ At a subsequent meeting

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218. Submission 3.4.249(c), pp 73–76.
219. Submission 3.4.310(e), p 167.
220. Registrar to Under-Secretary, 10 August 1937 (doc A69, p 241).
221. Private secretary to Under-Secretary, 11 September 1937 (doc A69, p 242).
223. Langstone, notes of speeches made at Whatawhata and Moerangi, 18 September 1937 (doc A69, p 243).
at Moerangi, 100 landowners consented to the development of 5,000 acres of the Moerangi block as part of the Aramiro scheme.\footnote{224} While the Crown’s implementation of land development at Aramiro emphasised the necessity of owner consultation, Wai 1327 claimants asserted that the scheme was imposed ‘when the consent of all owners had not been obtained’.\footnote{225} Claimant Adelaide Collins explained that ‘[i]t is unlikely that the approving owners knew they were giving up control and would have no say in the land’s future’, while counsel for the claimants pointed to Hearn’s report which explained that, by 1947, ‘[s]ome owners denied ever having agreed to development’.\footnote{226}

In response to this claim, Crown counsel suggested that Hearn’s report offered ‘evidence that not all owners were consulted during the ongoing management of the scheme, as distinct from consultation in respect of the scheme’s establishment’.\footnote{227} As detailed below, by 1947, a number of owners, led by Tapatai Edwards, expressed frustration at the operation of Aramiro and the lack of control retained by owners.\footnote{228} This evidence supports Collins’s assessment that some owners were not aware that the scheme would relieve them of their control over their lands. However, the Tribunal received no evidence of owner discontent prior to 1947, at the implementation of the scheme. Accordingly, the views expressed in 1947 likely reflected owner frustration at the operation of the scheme, which prompted some to deny ever having agreed to the development of their lands.

The 5,334-acre Aramiro development scheme was gazetted in November 1937.\footnote{229} Ten years later, at a meeting attended by Prime Minister Peter Fraser at Te Kaharoa Marae in March, owners stridently complained about how the scheme was operating. Speaking on behalf of the owners, Tapatai Edwards ‘made it clear that the owners, of whom there had originally been some 300, had not been consulted over the development and management of the scheme, that they had been placed in what he termed “an inferior position”, and that they had not been treated with equality’.\footnote{230}

The failure to consult with landowners had diminished owner interest in the scheme, prompting the Crown to address the situation. In May 1947, the department convened a meeting where Crown officials presented and discussed the scheme’s finances with the assembled owners and they established a farm committee. This move aimed to encourage landowners to feel a sense of ownership for the scheme, though, in line with the pre-1949 phase of the land development programme, the committee gained little genuine control over development. The

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\item \footnote{224} Document A69, p 243.
\item \footnote{225} Submission 3.4.249(c), p 76.
\item \footnote{226} Document M1 (Collins), p 4; doc A69, p 247.
\item \footnote{227} Submission 3.4.310(e), p 167.
\item \footnote{228} Submission 3.4.310(e), p 167.
\item \footnote{229} Document A69, p 246; ‘Constituting Aramiro Development Scheme’, 10 November 1937, \textit{New Zealand Gazette}, 1937, no 74, p 2475.
\item \footnote{230} Document A69, p 247.
\end{itemize}
Under-Secretary informed the owners that the committee was not intended to ‘interfere or dictate the method of farming the block’. However, the Aramiro scheme extended into the post-1949 phase of the land development programme, which, as discussed above, saw the introduction of new, but limited mechanisms to improve Crown consultation with landowners. From 1949, annual owner meetings were convened to discuss the operation of land development schemes, including with landowners at Aramiro. These meetings provided owners with an opportunity to express their opinions over the development of their lands, and the evidence suggests that the Crown did, on occasion, comply with their wishes. For example, in October 1955 a meeting of Aramiro owners was held at Ngāruawāhia to consider proposals to incorporate scheme lands, the cancellation of partition, and other matters. At the meeting, the owners reached several key points of agreement, including:

- that incorporation should not proceed;
- that the Department of Māori Affairs should continue to manage and develop the property, but leave the bush area alone;
- that cancellation of partitions be considered again in 12 months; and
- that the Moerangi 1B2A blocks should be released to the Edwards family but that no payment should be made for any share in the development scheme in return for no payment for any improvements carried out on the lands concerned.

The Department of Māori Affairs was receptive to their wishes and accepted these decisions in February 1956.

17.3.4.1.3.2 Implementation

Other evidence indicates, however, that during the post-1949 phase of the programme landowners at Aramiro continued to be denied reasonable control over their lands. The Tribunal received no evidence to suggest that a development committee was established for the scheme after 1968. The evidence available indicates that control of the scheme remained firmly in the hands of the Crown at this time. For much of the late twentieth century, Henare Gray worked at Aramiro and commented on the operation of the scheme on the ground:

A man named Dixon Wright from the Maori Affairs Department made all of the decisions concerning the farm. There was also a Pakeha farm advisor called Norm Palmer.

Some of the other owners also worked on the farm along with me but we weren’t running the farm back then. We were just the workers carrying out the labour. Dixon Wright made all the decisions in consultation with Norm.

231. Under-Secretary to registrar, 7 August 1947 (doc A69, p 248).
Only a handful of owners managed to get work on the land, in contrast to assurances made to Māori at the initial meetings. A Department of Māori Affairs memorandum from 1952 acknowledged as much.\textsuperscript{234}

The scheme also served to alienate some Māori from their lands permanently. Following the reformulation of the land development programme in 1949, the Crown’s title reconstruction efforts within land development schemes reflected its long-standing desire to limit the number of owners of Māori land blocks.\textsuperscript{235} To this end, the Crown and the Māori Trustee acquired land within, and adjacent to, land development schemes through a combination of ‘live-buying’ (purchases by agreement from any person), the compulsory acquisition of so-called ‘uneconomic interests’, and the purchase of general land, before reconstructing land titles through amalgamation and conversion.

Such processes undermined the cultural connection between Māori and their tūrangawaewae, as Henare Gray explained:

a lot of the original owners lost their shares in the land. Some of the owners were classed as having uneconomic shares because their shareholding was too small. Dixon Wright took their shares because he said that they were uneconomic. Three brothers all lost their shares as they were classed as uneconomic shares. They were Sonny (Pinto) Samuels, Moko Hamiora and Richard (Dick) Edwards.\textsuperscript{236}

Reflecting on the impact of this policy, the Crown acknowledged that the conversion of uneconomic interests ‘resulted in some Te Rohe Pōtæ Māori being deprived of their tūrangawaewae, and was a breach of the Treaty of Waitangi and its principles.’\textsuperscript{237} In chapter 16, we found that the policy of conversion was inconsistent with several principles of the Treaty. This was clearly also the case with the manner in which conversion was applied to the lands of the Aramiro development scheme.

17.3.4.1.3.3 Success of the scheme
In 1970 and 1973, the Aramiro scheme returned dividends to landowners of $4,394 and $10,000, respectively. In 1976, the scheme was valued at $499,375, compared with a development debt of less than $23,000.\textsuperscript{238} The scheme satisfied the requirements specified by the assistant fields director of Lands and Survey who, in 1978, suggested that, ‘provided the debt position is reasonably low and the farms are making good profits, serious consideration will have to be given to handing [land development schemes] back to owner control.’\textsuperscript{239}

Accordingly, in 1979, Aramiro landowners agreed to form a trust to administer the land, which was formed in March 1980 under section 438 of the Māori Affairs

\textsuperscript{234} Document A69, p 383.
\textsuperscript{235} Harris, ‘Māori Land Title Improvement since 1945’, p 133.
\textsuperscript{236} Document M7, p 2.
\textsuperscript{237} Statement 1.3.1, p 9.
\textsuperscript{238} Document A69, p 388.
\textsuperscript{239} Assistant fields director, file note, 10 November 1978 (doc A69, p 482).
Act 1953 (see chapter 16). Before the land was returned, the owners purchased the shares acquired by the Crown and Māori Trustee through processes such as live-buying and the acquisition of 'uneconomic interests' for a total of $43,000, which was added to scheme debt.\(^{240}\) On 1 July 1981, the scheme was returned to the collective control of landowners, though the department resolved to continue working with them until they had acquired the necessary experience to manage the scheme.\(^{241}\) Henare Gray, a trustee of the section 438 trust, recalled: 'When we got the farm back it was in a reasonable state. There was a woolshed on the land and good stock numbers although the fences weren’t very good.’\(^{242}\)

There is little evidence, other than the state of the fencing, to support the assertion that the Crown mismanaged claimants’ lands. The outcomes achieved by the scheme indicate that, in an economic sense, Aramiro was well run. In 1970 and 1973, dividends were paid to the owners and, by 1980, the total security of the land stood at $1,386,000, compared with the owners’ equity of $1,352,944. This was the lowest rate of indebtedness of all the schemes operating in the inquiry district at the time.\(^{243}\)

Wai 1327 claimants asserted that the Crown failed to return the land as soon as possible.\(^{244}\) It does appear to be the case that the Crown assumed too much control for too long. That noted, the Aramiro scheme appears to have been reasonably managed.

17.3.4.2 Post-1949 land development schemes

17.3.4.2.1 Arapae land development scheme, 1951–88

The Arapae land development scheme was established in 1951, following owner meetings spanning two decades. The scheme’s establishment was delayed by the land development programme’s reformulation in 1949 and it was one of the first schemes to be established under the new policy framework.

The claimants detailed the suspension of their ownership rights throughout the course of the land’s development, and the Crown’s failure to ‘[t]ake reasonable steps in the circumstances to establish processes and policies that encouraged development while protecting the development rights of owners and their communities.’\(^{245}\) Furthermore, the owners’ dislocation from the land is said to have been extended beyond the life of the scheme by the imposition of debt on the land upon its return.\(^{246}\)

17.3.4.2.1.1 Consultation

The 1949 reformulation of the land development programme sought to establish greater clarity between owners and the Crown over the pre-conditions of land

\(^{240}\) Submission 3.4.249(c), p.75; doc A69, p.389.

\(^{241}\) Document A69, p.389.

\(^{242}\) Document M7, p.2.

\(^{243}\) Document A69, p.483.

\(^{244}\) Submission 3.4.249(c), p.75.

\(^{245}\) Submission 3.4.222, p.7.

\(^{246}\) Submission 3.4.222, p.8.
development (see section 17.3.2). While the Board of Māori Affairs approved a proposal for the Arapae land development scheme in 1950, Treasury would not extend the required funds to the department until owners had agreed to specific aspects of the development plan. To this end, Cabinet approved a recommendation for the development of Arapae contingent on the owners’ agreement that the land be developed as a station and remain under Crown management until the debt was reduced to disposal value.

Despite such efforts, some landowners viewed the scheme as a Crown imposition, rather than a voluntary undertaking. Claimant Makaretia Wirepa-Davis, for example, explained that her parents “were not happy with the development scheme, but were told it was an inevitable process of which they couldn’t do anything to stop.” While it is unclear who presented the scheme in this way, the reluctance of some landowners to support the development scheme likely reflected the cultural and historical significance of the land in question.

Wirepa-Davis told the Tribunal that, prior to the Native Land Court issuing the title to Kinohaku East, the lands of Ngāti Kinohaku were collectively owned by the hapū, under the mana of their rangatira, such as Te Wharaunga. She advised that the specific area of the Arapae land development scheme was the site of a number of cultural, spiritual, and historical sites of significance to the hapū.

The remains of both Moti, an historic fortified pā, and Toketoke, a traditional papakāinga, were within the 930-acre scheme. Wirepa-Davis’s father told her of the significance of these sites. She explained: “I learnt from my father that our pā site was a fort and the site of various battles and (unsuccessful) attempts by rangatira such as Te Hape to take the pā as his own. My father also told me that our pā site was frequented by parties travelling from the coast at Kāwhia and Whaingaroa to the central north island [sic] or Taranaki.”

In accordance with the land’s history of occupation, the Arapae scheme lands included several other sites associated with human habitation. For example, Wirepa-Davis spoke of the wetland, Mangapoaro, as a traditional food source that provided tuna, toketoke (large worms), and kōura for tangata whenua. She referenced the hill leading up to the pā, known as Ahippopote, as a site associated with ceremonial practices involving fire. In addition, the land housed a number of urupā and burial caves associated with the pā and papakāinga.

In light of the various cultural, historic, and spiritual sites at Arapae, Wirepa-Davis recalled her childhood on the land, and the significance attributed to the hapū’s sacred sites by her kuia, Pareraukura Matetoto – affectionately known to her whānau as Kiini Poihaere. Born in 1882, Matetoto grew up at the Moti

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papakāinga and, according to the claimant, ‘was tapu personified. She was taught by her elders to be respectful of everything; of Papatūānuku and all her resources to humans and oneself.’ Wirepa-Davis recalled that ‘Kiini Poihaere would scold us [children] for playing in certain areas that were referred to as tapu. I mean she would really yell at us to get out of these areas.’

When the Arapae land development scheme began, Matetoto maintained her role as kaitiaki of the lands. But, as Wirepa-Davis explained, ‘our tapu and sacred areas were secondary and very minor to the Crown’s grand plans for a development scheme over our land.’ In turn, as development commenced, Matetoto actively sought to protect the integrity of these sites. She recalled:

Many people can remember my Kiini Poihaere’s anger and efforts to stop the bulldozers coming onto our land. In particular, my nanny was upset that the bulldozers were going through and over areas which had been considered absolutely sacred and protected to her. She was upset that roadways were being put in over areas such as openings to caves.

While there is little evidence about the Crown’s efforts to consult with landowners at Arapae, the actions of Matetoto suggest that, if consultative efforts were made they were highly ineffective. A conversation between Matetoto and scheme managers would likely have provided sufficient information to ensure that the integrity of important sites was not impacted by the operation of the scheme. Instead, the Crown appears to have authorised managers of the schemes to follow its development agenda with little regard for the values of tangata whenua, forcing Matetoto to take matters into her own hands. As Wirepa-Davis explained:

Even though she was slight in stature, she was huge in heart and determination... My sister said she always knew when there was going to be an argument because Kiini Poihaere would situate herself in an area where she had to be forcibly moved before the trucks could enter our property.

Despite such efforts, Matetoto’s protests failed to prevent sites of significance from being desecrated.

17.3.4.2.1.2 Success of the scheme
Alongside the desecration of sacred sites, Wai 1387 claimants described the impact of the debt imposed on their land, noting that the debt inherited by landowners had prolonged their alienation from their land. Claimant counsel noted that the land had a debt of $75,293 in June 1979, which caused some disquiet amongst...
owners. ‘[T]his disquiet’, counsel added, ‘grew further when the debt had increased to $236,089.00 as a result of the Crown “selling” its shares in the land back to the owners.’

The information offered by claimant counsel, however, is only part of the story. While the debt of the scheme stood at $75,293 in 1979, the net value of the station was $401,820. Moreover, the scheme was a viable farming enterprise, as demonstrated by the reduction of scheme debt, from $75,293 to $37,394, between 1979 and 1985. By 1985, the station was valued at $1,064,000, meaning that the owners’ equity in the scheme was more than 95 per cent.

In the lead-up to the land’s return, the Crown did impose additional debt on the land to cover the acquisition of shares obtained by the Crown. As a result, the debt stood at $273,994 in 1990. However, the Crown subsequently wrote-off $199,644, and returned the land with a debt of $74,350. While it is reasonable to expect the Māori landowners to bear some risk in the land development schemes they entered into, it is clear that Crown-imposed debts, even with the assistance of write-offs, were crippling for certain landowners.

17.3.4.2.2 Ōpārau land development scheme, 1955–89

The Ōpārau land development scheme, situated on the western shore of the Kāwhia Harbour, was established in early 1955. Wai 1439 claimants contended that the Crown failed to adequately consult with landowners during the operation of the scheme and that its mismanagement undermined their financial interests and conflicted with their cultural values. However, Crown counsel argued that throughout the implementation, operation, and return of the scheme, its actions were reasonable considering the circumstances.

17.3.4.2.2.1 Consultation

Local government in the inquiry district was particularly zealous in using legislation that provided for the forced vesting of unproductive Māori land in the Māori Trustee. Section 34 of the Māori Purposes Act 1950 empowered the Native Land Court to place Māori freehold land under the administration of the Māori Trustee in cases where the land was unoccupied; the beneficial owners could not be located; noxious weeds had overrun the property; rates were unpaid; or the owners had failed to diligently maintain the land.

Some of the owners of Pirongia West blocks, which subsequently served as the basis of the Ōpārau land development scheme, were among the Te Rohe Pōtae Māori affected by this legislation. In the early 1950s, the Kawhia County Council lodged applications with the Māori Land Court under the Māori Purposes Act 1950 and the Māori Affairs Act 1953, seeking to place Pirongia West blocks under

263. Submission 3.4.226, pp 69–70.
264. Submission 3.4.310(e), pp 176–178.
the administration of the Māori Trustee. These applications were made on the basis of weed infestation and rate arrears and were accepted by the Māori Land Court on 21 January 1953.266

Accordingly, when landowners were consulted over the Ōpārau land development scheme in December 1954, many of them had already lost direct control over their lands. When they agreed to place their lands within the proposed scheme, their consent permitted the Crown to hand authority of the Pirongia West blocks from the Māori Trustee over to the Department of Māori Affairs. Once the Ōpārau scheme was in place, the Minister of Māori Affairs made an oblique reference to the Māori purposes legislation, suggesting that the scheme will ‘demonstrate the benefits of proper land utilisation to the Maori people of the district’.267

As noted above, the post-1949 phase of the land development programme led to amendments to Crown policy which provided for some limited owner consultation. The Board of Māori Affairs legally convened annual general meetings where owner consent for land development proposals was sought. From 1968, the board established development committees and extended certain powers to them.268

While both of these initiatives were implemented at Ōpārau, claimants presented the Crown’s consultative efforts as tokenistic and inadequate. Albert Kewene, a pioneering Māori oral health practitioner and an owner-representative at Ōpārau in the 1970s, explained:

consultation is a key concern I have about the management of the Ōpārau Land Development Scheme. There were AGM’s and various notices were given to some shareholders, but response or turnout was always poor. . . . I think this reflects badly on the Māori Trustee and Māori Affairs Department. What had they done to build up a relationship with the owners? I think they didn’t bother to have any relationship.269

Kewene’s experience as an owner representative demonstrates the Crown’s limited attempts to engage with owners. He explained that ‘the farm was run by a Development Committee. . . . We may have been members of the development committee, but I am not sure. We were definitely invited to the meetings’.270 Kewene emphasised the Crown’s failure to provide adequate support to owner representatives:

[t]here was no training and we had no advice about what we were meant to do or even really what our job was on the committee. If we were meant to communicate with the other owners we had no contacts or list of other owners and no way of communicating with them really.271

267. Notes for press release, no date (doc A69(a), vol 5, p 135); doc A69, p 460.
The lack of training made it very difficult for owner representatives to make sense of the detail covered at committee meetings. They were presented with a plethora of statistical information at meetings, representing quite complex data. In some cases, Hearn suggested that Crown officials did make considerable efforts to explain the data to landowners. However, this was not the case at Ōpāraru. Kewene explained:

To be fair we were asked our thoughts about some of the farming issues – should the farm look to more meat production or wool? – should the farm focus on sheep or cattle? – What types [of] breed should be on the farm? They did seek some general comment from us on such questions. We didn’t have any idea how to answer such questions as we weren’t even aware where the money was being made on the farm. They said there were profits, but we saw little or no paperwork. What we did see was limited to say one sheet of two lines.

Kewene’s evidence presents the Crown’s consultative efforts at Ōpāraru as ineffective; Crown agents were more concerned with satisfying bureaucratic demands than meaningfully including landowners in the development of their lands. As he explained: ‘We were there to look after [the] interests of shareholders. But what did we contribute? We felt like puppets, being used so they could say they consulted the owners.’ Effectively, in his view, the Ōpāraru scheme was run by the Department of Māori Affairs.

17.3.4.2.2.2 Implementation
The claimants detailed a number of grievances resulting from the mismanagement of the scheme. The western-most section of the scheme – known to landowners as Tiritirimatangi – was designated Pirongia West 1 Sec 2A by the Native Land Court. While the scheme was operating, this 290-acre block was separated from the remainder of the station by a neighbouring section, prompting the Crown to construct an accessway. During the construction of the road, landowners removed 11 tūpāpaku from the path of the accessway and moved them to nearby sites.

Despite this effort, the Crown failed to establish legal access to the road, which remained reliant on the goodwill of the neighbouring property owner. It was under these conditions that the land was returned to owners in 1989. Since that time, the neighbouring property, Pirongia West 2B3D, changed hands, and the relationship with the new owner is poor. Access to the road, and, by extension to Tiritirimatangi, is now restricted, and landowners have been forced to take the matter before the Māori Land Court.

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272. Transcript 4.1.20, p 263 (Terry Hearn, hearing week 14, Waitomo Cultural and Arts Centre, 7 July 2014).
Albert Kewene described the Crown’s inaction in establishing a road as clear evidence of Crown mismanagement of Ōpārau. The Crown had an obligation to improve the land during the operation of the land development scheme, which included improving the title. However, in the case of access, the Crown failed to satisfy this obligation. This failure is particularly glaring in light of the fact that, while the scheme’s access to Tiritirimatangi was never legally established, the Crown did manage to lay out legal access, across scheme land, to the neighbouring property.278

Evidence from the claimants detailed the scheme’s impact on their connection with their lands. As already noted in section 17.3.2, during the post-1949 phase of the land development programme, the Crown was focusing its title reconstruction efforts on such schemes. This was done through live-buying and the compulsory acquisition of so-called ‘uneconomic interests’, but title reconstruction was also achieved through the amalgamation of titles as partitions were cancelled and owners and their interests were regrouped.279 While the Crown has acknowledged the Treaty breach inherent in the compulsory acquisition of ‘uneconomic blocks’, claimants from Ngāti Hikairo emphasised the additional impact caused by amalgamation, as the Crown altered the relationship of landowners to their whenua.

Kewene explained that the 830-acre Oparau 1 block was formed following the amalgamation of a few blocks on 11 August 1959. ‘This amalgamation’, he explained, ‘grouped together a number of whānau into a large block. Some whānau went from large shareholders in a small block to very small shareholders in a large block. The amalgamation mixed together whānau from quite distinct whakapapa lines and this has caused some difficulties.’280 Referring to his own whānau’s experience, Tom Moke explained:

[t]he amalgamation brought together various different whānau and hapū into the same title and ownership structure. We went from being whānau owners of the majority interest in the original block to being shareholders in a not much larger block alongside others we did not know.281

Claimant counsel pointed out that because the Crown amalgamated two very different parent blocks in Pirongia West and Te Kauri, the amalgamation did not simply dilute the claimants’ ownership stake to their lands, but grouped together two very distinct whakapapa lines.282 To make such fundamental alterations to the owners’ association to their lands, it was incumbent on the Crown to carefully consult, and then establish the informed consent of all landowners.

17.3.4.2.2.3 Success of the scheme

The Ōpārau land development scheme was returned to owners in 1989. In line with contemporary Crown policy, the cost of additional interests acquired by the Crown was imposed as debt upon the land in the period leading up to the scheme’s return. As a result, in the late 1980s the scheme debt stood at $397,262, prompting the Crown to grant a debt write-off. Ultimately, $285,662 was written off the debt, and the land was returned to owners with an outstanding debt of $111,600.285

The scheme was an underwhelming demonstration of ‘proper land utilisation’. By 31 March 1959, the station’s capital value stood at £55,020, with livestock valued at £22,542 and a debt of £61,558.284 By 1980, the scheme was valued at $1,044,702, with a debt of $179,179 and a rate of return of 4.5 per cent over the previous season.285 While this rate of return was significantly better than that achieved with the Okapu development scheme discussed in the next section, it fell well below the average return achieved on schemes throughout the inquiry district (at slightly less than 8 per cent) and was significantly less than the 14.45 per cent achieved at Waipā.286

Commenting on the land’s return, claimants emphasised the scale of debt imposed, as well as the condition of the land upon its return. As Kewene explained: ‘It was not just that we were lumbered with a debt of $100,000 or so after nearly 30 years of compulsory Crown control, it was various other problems with the farm. There were fencing issues, poor water quality for the stock, poor water reticulation, weeds and poor quality pasture.’287

On the matter of the debt imposed on landowners, the evidence suggests that $111,600 was not an unreasonable figure considering the land’s value. As Crown counsel explained: ‘There is no evidence to indicate what the total capital value of the land was at the time it was returned, in relation to the debt, but at June 1980 the total security value of Ōpārau was $1,044,702.’ Accordingly: ‘It is likely that the debt remaining was a small proportion of the total value, in 1990.’288

However, on the matter of the land’s condition upon its return, the outstanding issues inherited by the claimants and the earlier owners offer further evidence of Crown mismanagement. As noted by Kewene, the land was returned beset by water reticulation, pasture, fencing, and weed problems, even though it had been ‘originally taken under the control of the Māori Trustee because of weeds and rates demands.’289 The land was removed from the control of owners for more than three decades and returned with more than $100,000 of debt. In turn, owners could expect that their land would be returned in a reasonable condition. Instead, the land was returned with multiple and rudimentary problems. This situation, in

286. Document A69, p 484.
288. Submission 3.4.310(e), p 177.
conjunction with the title issues, is clear evidence of the Crown’s mismanagement of Ōpārau.

**17.3.4.2.3 OKAPU LAND DEVELOPMENT SCHEME, 1962–90**
The Okapu land development scheme was established in 1962 and was the final development scheme implemented in Te Rohe Pōtae. In accordance with an agreement reached between the Departments of Lands and Survey and Māori Affairs, the scheme was initially administered by Lands and Survey, before entering a co-administrative arrangement with both departments.\(^{290}\) This arrangement continued until 1979, when the Department of Māori Affairs assumed full control of the scheme. Ngāti Te Wehi claimants outlined an array of concerns about the scheme’s implementation, operation, and return, and suggested that it undermined their cultural, economic, and social interests in a variety of ways.\(^{291}\) Crown counsel, however, submitted that, ‘[o]n the evidence cited there is insufficient information to establish a causal link between any of the actions of the Crown and the alleged effects on Ngāti Te Wehi.’\(^{292}\)

**17.3.4.2.3.1 Consultation**
The Okapu development scheme was implemented amidst significant technological and demographic change. Prior to the Second World War, over 400 cooperative dairy factories operated throughout rural New Zealand, processing milk transported from nearby farms in milk cans. During the 1950s, however, the introduction of the milk tanker radically altered commercial farming. The tankers allowed for much greater quantities of milk to be transported over much larger distances, resulting in the closure of many dairy factories.

The introduction of tankers also undermined the profitability of many small farms. To service tankers, farmers had to invest heavily, building milk-holding tanks, redesigning their milking systems, and redeveloping access routes to accommodate the much larger vehicles.\(^{293}\) Consequently, many small farms closed. Speaking to this issue as it affected Okapu, claimant Phillip Mahara explained:

> My grandfather [Rapi Rapi] had 180 acres, and he used to milk a lot of cows. He was making a good profit, bought a nice house and when they closed the dairy company down, that’s when they went out of business, and they couldn’t sell their milk. My grandfather had to leave his land . . . \(^{294}\)

Alongside post-war technological change, the decades following the Second World War were characterised by major demographic shifts. According to demographer Ian Pool, ‘[i]n 1945, the majority of Maori men were . . . in agrarian

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\(^{290}\) Document A69, pp 351–352.
\(^{291}\) Submission 3.4.237, pp 9–34.
\(^{292}\) Submission 3.4.310(e), p 165.
\(^{294}\) Document A104 (de Silva), p 207.
occupations’, while by 1966, ‘employment in manufacturing had become the modal type’.

In this era, Māori became increasingly mobile, and this nationwide shift was evident at Okapu. Claimant Ronald Āpiti described how people left the area in search of work prior to the implementation of the development scheme. It was against this background of economic and social change that the Okapu development scheme was established. Throughout the 1950s, the idea of establishing a land development scheme was raised with several owners and in early September 1960 the Department of Māori Affairs announced two owner meetings to discuss the implementation of the proposed scheme. These meetings were held in Ngāruawāhia and Kāwhia that month and, afterwards, the Crown claimed to have established the unanimous support of all landowners. Development work then began at Okapu in 1962.

However, claimant counsel detailed a number of flaws in the Crown’s efforts to establish the consent of landowners at the September meetings that established the Okapu scheme. These included the failure to consult with all landowners – as some owners did not receive notification of the meetings – and the failure to translate proceedings into te reo Māori. In addition, counsel explained that ‘Crown officials did not interpret, or explain the Development Scheme adequately’, and that, ‘by August 1962, Crown officials stated at meetings that there was unanimity between owners to accept the Okapu Scheme, despite widespread opposition to it from individual Māori landowners’.

The evidence offers a mixed picture of the Crown’s consultative efforts. In announcing the September meetings, the Crown correctly followed standard procedure and publicly notified landowners throughout the preceding weeks. Ultimately, more than 80 owners attended the meetings, suggesting that the notification process was relatively successful. At these meetings, owners passed a number of resolutions, including one acknowledging ‘that the policy of the Board of Māori Affairs with regard to the development of land under the Māori Land Development Scheme has been explained to the owners present’. However, at a hearing before the Māori Land Court in August 1962, a number of landowners expressed concern at the Crown’s consultative efforts. Some owners of the Moerangi blocks claimed not to have received notification of the meetings and Sam Te Hira suggested that ‘[o]wners seemed to be at sea as to [the] purpose

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300. Document N63, p 75.
of [the Kāwhia] meeting.\textsuperscript{303} Te Hira recalled that proceedings were not translated into te reo Māori, and this was supported by Tumu Totara Te Huia, who explained that she ‘signed a piece of paper at [the] meeting, it was a copy of [the] resolutions . . . but I did not know [the] full meaning of [the] paper.’\textsuperscript{304} Roy Moke claimed that proceedings were translated into te reo Māori, but explained that the resolutions were passed with a ‘strong “Aye”’, even though he was aware that some landowners opposed the scheme.\textsuperscript{305}

As historian Melissa Matutina Williams explained, “‘[s]ilence’ has always been a culturally appropriate way for Māori to express “dissent” or disagreement, but this is not always the case in Pākehā society and the opposite is sometimes assumed.”\textsuperscript{306} In interpreting the ‘strong “Aye”’ as support for resolutions, Crown officials appear to have overlooked the silence of some landowners, which, from their perspective, was an expression of dissent. The end result was that, after the meetings, the Crown pursued the development of Okapu on the basis that it had established the unanimous support of all landowners.

As noted throughout this chapter, several provisions that improved the consultative avenues available to landowners were introduced after the post-1949 phase of the land development programme. This was the case at Okapu, where owner meetings were held from 1964, and a development committee was established in 1970.\textsuperscript{307} While the extension of these provisions did not necessarily ensure that owners retained a reasonable degree of control over their lands, they did extend a degree of consultation to the landowners not previously available.

The first owner representative on the scheme’s development committee was Tom Wete.\textsuperscript{308} He was followed by Tumate Whitiora and Wiri Mahara in 1973, who were required to vote on issues concerning the scheme, including the three-yearly project authority.\textsuperscript{309} At the general owner meetings, assembled owners had the opportunity to question Crown officials and, on occasion, vote on matters of significance. In 1976, for example, owners were asked if they wanted the scheme to remain under the dual administrative control of the Departments of Lands and Survey and Māori Affairs or be placed under the sole control of the latter department. In 1979, owners voted to extend some of the profits made by the scheme to the Okapu marae.\textsuperscript{310} In addition, owners attending general meetings routinely questioned Crown officials on general matters such as scheme results, debt, and expenditure and raised discrete issues including the protection of ūrupa.\textsuperscript{311}
Claimant counsel detailed the poor attendance rates at annual meetings and blamed the Crown for failing to make arrangements, such as holding meetings on weekends, that would help ensure interested parties were sufficiently represented. Attendance at general owner meetings was indeed consistently low, with five owners in attendance in 1970; seven in 1973; and 10 in 1981. The spike in attendance rates at meetings immediately preceding the land’s return suggests that some owners attended meetings they perceived as important, while other evidence indicates that the Crown made at least some effort to encourage attendance. At the general meeting in Kāwhia in 1981, for example, Queenie Mahara said that ‘it was a pity that there was a poor attendance of owners and asked if next year’s meeting could be held in Hamilton.’ As a result, the Crown convened the 1982 meeting in Hamilton, though attendance remained poor.

The claimants also raised issues concerning management of the Okapu scheme. For example, claimants suggested that Māori who worked on the scheme were paid substantially less than Pākehā. They highlighted the limited employment opportunities extended to women at the scheme and suggested that, when the Department of Māori Affairs assumed control in 1979, Māori workers were replaced by Pākehā.

17.3.4.2.3.2 Implementation

The Crown’s initial failure to establish the informed consent of all landowners led to tumultuous scenes at Okapu. In developing the land, the scheme radically altered the land-use patterns at Okapu, replacing small whānau farms, which had previously serviced the local dairy cooperative, with a single station that used contemporary farming methods. To achieve this change, people were encouraged to shift off the land. Their homes, gardens, and fences were removed or left to deteriorate. Even for owners who supported the scheme, these changes probably represented a challenging break with the past. For those owners who viewed the scheme as an external imposition the change was traumatic. As claimant John Mahara, whose grandfather and granduncles each had substantial farms at Aotea prior to the scheme, explained:

I remember moving all our belongings by horse and we travelled about two miles away to where the papakainga is now by Okapu marae. . . . In the 1960s, there were bulldozers that came up to put up boundary lines. People from government also came in and put up fencing. There were massive bush fellings happening at that time. As a result, our gardens and orchards were destroyed. They even did some spraying which further killed our plants and sources of food. They wiped everything out.
While some people cooperated with the Crown, others did not. When the scheme began, the Ormsby whānau introduced stock and erected a dwelling on the land, creating a considerable stir within the Departments of Lands and Survey and Māori Affairs. According to the summary of a discussion held at the time with staff, Te Amohia Ormsby had stated during this conversation that the Lands and Survey Department was ‘upsetting the old people who had been living on the block for many years’, by trying ‘to stop [them] from growing potatoes in their gardens and also from cutting firewood’.317 In mid-1964, another owner threatened to destroy a recently erected fence. When confronted, he told Crown officials that he would pull it down and ‘go to gaol if necessary’.318

In addition, claimant Petunia Mahara detailed the scheme’s impact on sites of cultural significance; claimant Phillip Mahara commented on its effects on owners’ cultural practices, explaining how tangata whenua were no longer able to access stock from their lands to feed manuhiri; and claimant Jack Mahara discussed the construction of an access road, Kawaroa Road, which uncovered kōiwi and impacted the health of nearby waterways.319 All these issues were commonly experienced by those affected by land development schemes throughout Te Rohe Pōtae, and were keenly felt by landowners at Okapu who viewed the scheme as an external imposition.

While the Department of Māori Affairs improved its arrangements for consultation and owner involvement after 1949, for whānau experiencing major disruptions to their way of life as a result of the schemes, these improvements mattered little. Claimant John Mahara, who was a boy at the time the Okapu scheme began, remembers ‘our whanau being told [due to the scheme] that we were not able to go back to our lands. They said it went into a scheme to be managed by the Crown. Our whanau didn't know what that meant, we were given no explanation.’320

Claimant counsel attempted to draw a causal link between the scheme’s establishment and the urbanisation of Ngāti Te Wehi, which, itself, was then linked to the claimants’ cultural dislocation.321 Counsel submitted that the Crown gave a number of assurances to landowners that were not honoured, and that, ‘Ngati Te Wehi was not given the opportunity to actively manage or be involved in any decision-making.’322 The claimants’ evidence detailed the natural bounty of the Okapu lands before the scheme’s establishment to demonstrate that they were self-sufficient and capable of addressing most of their needs from the land and waters of the area.

John Mahara noted that, ‘[w]e had the largest orchard at Aotea... We also had a large maara or vegetable garden where we grew everything like Maori potatoes, kumara, corn, pumpkin, kamokamo and water melon.’323 He further detailed that

317. Administrative officer, file note, 24 March 1964 (doc N63, p 640); see also doc N63, p 622.
318. Field officer to superintendent, 8 May 1964 (doc N63, p 624).
320. Document N1, p [4].
323. Document N1, pp [2]-[3].
his whānau also kept livestock, including cows for milk and meat, as well as sheep: ‘If we wanted meat, Dad would simply kill a cow or a sheep. If we wanted kaimoana, we simply walked down the hill to the moana and got it. It wasn’t a problem.’ As Mahara recounted, ‘we were self-sufficient and the land was not wasted nor under utilised. We had everything to sustain our children and other families at that time.’ However, Mahara also explained how the closure of the local dairy factory forced his grandfather off the land. Thus generating an income through dairy farming became difficult. The loss of such income may have contributed to a decision to relocate.

In 1961, for example, the Department of Māori Affairs told the Department of Lands and Survey that: ‘It is not considered that the fact that there are Māori families living on the Aotea block should affect development operations.’ In June 1964, a letter from the district officer reminded an owner, Mr T Hohua:

> at the meeting when the owners decided to bring the land under the development scheme a promise was made to you that you could continue in occupation of the house for the rest of your lifetime. The Department has no intention of altering the arrangement unless you yourself desire to go and live elsewhere.

Thus, the limited evidence available does not indicate a causal connection between the urbanisation of the owners and the setting up of this land development scheme. Nor does it indicate that the Crown gave assurances that the owners would manage the farm.

Claimant evidence also included detailed accounts of the impact of title reconstruction on the connection between landowners and their lands. Tawini Moke Mahara, for example, lost her shares in Moerangi G3B as they were deemed uneconomic, while the amalgamation of the Okapu lands diluted the owners’ interests to their specific landholdings. Phillip Mahara explained that, ‘[i]n relation to land ownership the scheme changed our way of land tenure for ever. It changed the ownership by giving ownership to people who couldn’t whakapapa to the land and it took land from those who could.’ John Mahara added that there is now

> a situation where tangata whenua tuturu share their lands with people who are not tangata whenua tuturu. The scheme has meant that our status as tangata whenua has been diminished and desecrated. To this day our wairua and mana is still affected by this swapping of land interests.

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324. Document N1, p [3].
327. District officer to T Hohua, 30 June 1964 (doc N63, p 612).
329. Document N2, p [5].
330. Document N1, p [5].
Alongside the dilution of owner interests in their specific lands, there is also evidence of Crown mismanagement at Okapu. Throughout the 1979–80 season, the rate of return on investments at Okapu was 1.86 per cent, the lowest of any scheme operating in Te Rohe Pōtae. In June 1980, Okapu’s debt, as a percentage, was the second highest of all the schemes in the inquiry district. There is clear evidence that at least some of the blame for these results can be attributed to Crown failure.

First and foremost, it appears that the development scheme was implemented before an economically viable station was established. An inspection report from 1962 identified that, of the scheme’s 1,975 acres, only ‘650 acres could be classed as readily workable land.’ As a result, efforts to acquire additional land continued in the early years, until the Crown purchased the the interests of Roy Moke in 1975. In 1979, the district officer explained that this purchase ‘had enabled [Okapu] to make profits as prior to that it had been an uneconomic area.’ The poor results achieved, and the debt accrued at Okapu, were the result of the Crown’s failure to establish a viable area before pursuing development.

It also appears that the co-administrative arrangement in place at Okapu from the 1960s to 1979 impacted the scheme’s viability. The co-administrative arrangement shared by the Department of Lands and Survey and the Department of Māori Affairs appears to have been tense. In 1976, the district officer of Māori Affairs wrote to head office to express his concerns ‘at the way things are moving on this property’. He commented on problems in the Lands and Survey Department’s capital expenditure proposal for 1976–79, and explained that, when he raised his concerns with Lands and Survey, the superintendent acknowledged that ‘he had not studied these proposals in detail and agreed that he would have to have a look at them.’ The district officer suggested:

[i]t was clear to me that a proposal had been prepared, which we were asked to submit to the Board, that had not been properly evaluated and I think highlights the totally unsatisfactory position at present, where the Department of Maori Affairs is expected to share in the administration of a property being run by the Lands and Survey Department . . . [a] Department with whose methods we do not agree.

This issue was addressed when the Department of Māori Affairs took sole control of the scheme in 1979. However, by then the co-administrative arrangement had been in place for over a decade. During that period, the evidence detailed above clearly indicates that, on occasion, the Lands and Survey Department failed to demonstrate the due diligence required in their role as trustee of the landowners’ interests.

335. District officer to head office, 22 December 1976 (doc N63, p 1078).
17.3.4.2.3.3 Success of the scheme

The Okapu scheme was returned to its owners on 1 July 1990. The land, claimant counsel submitted, was returned to a section 438 trust, ‘which was a Trust that the owners neither fully understood nor wanted.’ The hand-back process is said to have been rushed, demonstrating ‘that Maori Affairs and the Iwi Transition Agency had no intention of including Ngati Te Wehi’ in that process, and ‘[t]here was no discussion, or consultation with the owners regarding how they would administer the Okapu Scheme, about Trustees nor about the options open to them in terms of resuming control, or how to service the debt.’ In addition, the tikanga of the claimants is said to have been ignored, and counsel suggested that the owners did not receive any training on how to run or manage a trust.

However, the evidence offers a very different picture. Returning the land was first raised in 1979, when the district officer informed assembled owners that the land would be returned to the control of an incorporation or a section 438 trust. Between 1979 and 1990, there was one recorded instance when a Crown official was asked whether the land could be split into family blocks, though that issue was raised by a person attending the 1984 owners’ meeting on behalf of an owner, rather than the owners themselves. Throughout the period leading up to the land’s return, no owner expressed any concern, let alone opposition, to the Crown’s intention of returning the land to a section 438 trust.

In fact, in the years immediately preceding the land’s return, there was an unprecedented degree of owner enthusiasm. A meeting was held on 25 November 1988 to appoint trustees for the trust and more than 40 owners attended. James Mahara commented on ‘how good it was to see such a good turnout of the people present . . . because usually Queenie, Phillip and his mother were the only ones that attended.’ Seven trustees were appointed, including Queenie Mahara. Phillip Ranga explained ‘how glad he was to see Queenie being appointed as she always attended the meetings and took an active part in the business of the block.’

On the matter of trustee training, avenues of support appear to have been extended to the landowners. After the November 1988 meeting, Queenie Mahara informed the other trustees that she had received a letter from Māori Affairs informing her of a meeting in Hamilton ‘for all existing and proposed Trustees’ in early December. In turn, she ‘invited the owners to write down any questions they would like brought up at the meeting.’ In addition, the trustees were informed that they were ‘able to meet with Maori Affairs every 2–3 months so they will have

337. Submission 3.4.237, p 31.
some idea on how to run the property.\footnote{Minutes of meeting of Okapu station owners, 25 November 1988 (doc N63, p 2577).} In late 1989, the department's field officer reported that '[t]he trustees have been attending regular meetings throughout the year and are ready to take over administrative control.\footnote{Minutes of AGM, 6 October 1989 (doc N63, p 2524).}

The subsequent fortunes of the Okapu station suggest that trustees could govern the block and do it well. As Phillip Mahara explained, the scheme was debt-free within a few years of its return.\footnote{Document N2, p [9].} Alongside the competence of the trustees, this situation also reflected the state of the scheme upon its return. While the scheme certainly had its economic challenges, the land was returned in a state that encouraged its subsequent success. The district field officer of the Iwi Transition Agency explained:

The station['s] debt currently stands at $520,000 but in line with a recent Government policy approval it will be written down to about $68,000 only. This is based on a status quo budget prepared for Okapu which showed that if 90% of the farming surplus was applied to debt servicing it could sustain a debt of $68,000.\footnote{Minutes of AGM, 6 October 1989 (doc N63, p 2524).}

Commenting on these figures and the scheme's productivity, the district officer suggested that the scheme would be debt-free within 10 years.\footnote{Document N63, p 2524.} The land was ultimately returned to the owners on 1 July 1990 with a debt of $61,700 and, as Phillip Mahara explained, was debt-free within a few years.\footnote{Document A69, p 487.}

17.3.5 Treaty analysis and findings

The establishment of the land development programme in 1929 represented a marked change to the Crown's engagement with Te Rohe Pōtae Māori and their lands. Chapters 13 to 15 have demonstrated that the late nineteenth and early twentieth centuries were characterised by the contraction of Te Rohe Pōtae Māori landholdings, as the Crown acquired swathes of the inquiry district. This period was also characterised by the sustained failure of the Crown to extend development assistance to Māori seeking to turn their lands to productive account. The land development programme marked a new departure from these policies and directed significant State support to Māori land.

Even though the Crown, through Ngata, appears to have made a genuine attempt to alleviate economic hardship in Te Rohe Pōtae through specific land development schemes Te Rohe Pōtae Māori landowners clearly struggled to accept the Crown's control of these schemes, and few benefited directly from their imposition. The land development programme was the only source of development assistance available to many Māori, meaning that Māori seeking State support had to accept the compulsory vesting of their lands in the Crown for the purposes of
the schemes. However, such a requirement was not imposed upon other owners of land utilising Crown development funds.

The Crown’s mismanagement of specific land development schemes at Waimihia, Aramiro, Ōpārau, and Okapu contributed to the underperformance of the schemes, as well as title reconstruction efforts at Aramiro, Ōpārau, and Okapu. It also undermined the relationship of Māori to their tūrangawaewae. At Kāwhia, land was included in the development scheme despite the vocal and consistent opposition of Rihi Te Rauparaha Penetana and other owners, while the Crown implemented the Okapu development scheme without the informed consent of a majority of landowners. At Arapae, the Crown’s failure to adequately consult with the landowners throughout the early years of the scheme resulted in a number of sites of significance being destroyed, despite the protracted efforts of Pareraukura Matetoto to protect the wāhi tapu of her hapū. While the schemes were not without benefits, these benefits came at a cost to landowners.

Following the Department of Māori Affairs’ policy reformulation of its land development programme in 1949, significant and largely welcome changes reshaped the schemes in favour of greater consultation and owner involvement.

The Crown significantly improved its efforts to consult with landowners by introducing annual owner meetings and establishing development committees for schemes after 1949. However, opportunities for landowners to hold managerial positions on their land remained limited and improved consultative avenues continued to fall short of giving owners control over their lands. Furthermore, there was limited communication about the schemes and their ongoing impacts on those who lived on the land. This disconnect between the Crown’s official liberalisation of its policy framework and lived experience is evident in the childhood memories, cited earlier, of claimant John Mahara, whose family was uprooted from their lands to make way for the Okapu scheme.352 Therefore, we find that the Crown’s actions and policies used for the implementation and then management of the development schemes, as well as its consistent failure to provide for owner control of the schemes, were inconsistent with the principles under article 2 of the Treaty: partnership, reciprocity and mutual benefit, and its guarantee of tino rangatiratanga of Te Rohe Potae Māori over their lands. In addition, the Crown actions and policies were inconsistent with the principles of equity, options and development derived from article 3 of the Treaty of Waitangi.

17.4 Māori Returned Service Personnel

As the Second World War drew to a close, the Rehabilitation Department developed a scheme to compensate returned service personnel for the economic disadvantage they had suffered by serving. Ex-service personnel were offered support to help them reintegrate into society. Housing and business loans were available, alongside preferential access to State housing, and a scheme was developed to

352. Document N1, p [4].
assist those seeking a start in farming. In implementing this scheme, Claudia Orange has written that the Rehabilitation Department’s goal ‘was equality of opportunity and treatment of Māori’ and, in light of the Māori population’s rural bias, the support prioritised their settlement on the land. Orange, however, also mentioned ‘serious weaknesses’ in the administration of the land schemes, which had ‘no proper guidelines’ and suffered from an ‘over-emphasis on seeking balanced budgets when only part of a farm had been brought into production.’ She also described ‘great confusion over title and rights of tenure’ in the schemes.

In 1943, the Māori Rehabilitation Committee reported that, in accordance with ‘the announced intention of the Government to grant the same facilities to Māori and pakeha alike . . . a greater effort and expenditure will probably be required in the case of the Māori.’ To this end, the committee recommended establishing the Māori Rehabilitation Finance Committee (comprising representatives from Treasury, the Lands and Survey and Native Affairs Departments, and two members of the Rehabilitation Board), which would administer applications for rehabilitation made through the Native Department. In addition, the report recommended that the committee be empowered to purchase and develop lands for Māori ex-service personnel and, where Māori-owned land was available, seek to acquire such land for development and settlement. In late 1943, Cabinet accepted these recommendations.

During this same period, the Government passed the Servicemen’s Settlement and Land Sales Act 1943, which provided for the compulsory acquisition of land for the rehabilitation scheme. However, Māori land was specifically excluded from the compulsory provisions of the Act. Instead, the Rehabilitation Board adopted a policy of self-help, whereby Māori landowners were encouraged to voluntarily make their lands available to Māori ex-service personnel.

The claimants describe the assistance extended to Māori ex-service personnel following the Second World War as inadequate. Ngāti Hikairo claimants said that the Crown acquired land for the purpose of balloting farm lots to Pākehā returned servicemen. In particular, they alleged that much of the Waimarino block was balloted to Pākehā returned servicemen after both of the world wars. The claimants protested not only this ‘unjust alienation’, but ‘the fact that there was no such reward for the Māori Returned Servicemen, who made an identical sacrifice – several of whom were Ngati Hikairo.’ Wai 1147 claimants explained that their

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357. Document A69, p 528.
359. Wai 1200 R01, doc A67 (Gould), p 222.
360. Claim 1.2.6, pp 6–7.
tupuna, Takirau Tanoa, was treated differently from his Pākehā neighbours; he was settled on sub-standard land that was ultimately ‘so unviable the whanau were forced to leave.’\textsuperscript{361} Wai 616 Ngāti Rōrā claimants detailed the Crown’s failure to comply with the conditions of the sale of Te Kuiti 2B20B, as well as the inadequate support extended to Te Rohe Pōtae Māori ex-service personnel, referring specifically to the Crown’s failure to settle Māori on the Te Kuiti Base Farm.\textsuperscript{362} Ngāti Mahanga Wai 1327 claimants, meanwhile, identified tribal lands affected by the rehabilitation scheme and emphasised the inequitable administration of the rehabilitation programme as extended to Māori.\textsuperscript{363} As Henare Gray explained, ‘I never heard of any Māori that got any land. It was Māori owned and the Government just sent [Pākehā] in and gave them sections.’\textsuperscript{364}

\subsection*{17.4.1 Overview of government policy}

Throughout 1945, the Māori Rehabilitation Finance Committee met with Māori to drum up support for the Rehabilitation Board’s efforts to rehabilitate Māori ex-service personnel. At these meetings, ‘the Maori people were informed that the Government and other organisations connected with Rehabilitation were agreed that the Maori soldier should receive treatment equal in every respect to that afforded to the pakeha servicemen.’\textsuperscript{365} To support the Government’s endeavour, Māori ‘were asked to take stock of the lands and of the returned servicemen in their area and to decide how much of this land could be set aside for the settlement of their men.’ They were informed that ‘the only form of settlement which the Rehabilitation Board would consider was one where the ex-servicemen would have a security of tenure’ and warned that, ‘if the Maori land available throughout New Zealand was insufficient for the needs of the Maori ex-servicemen their men would have to go into the race for Crown and pakeha lands.’\textsuperscript{366}

However, before any ex-service personnel could enter the race for land, they had to establish their readiness for settlement through a Rehabilitation Department grading system. The system designated applicants with a grade from ‘A’ to ‘C’ based on their suitability as farmers. An ‘A’ grade identified an applicant as suitable for immediate settlement on either a dairy or sheep farm; a ‘B’ indicated that the returned serviceman was suitable for supervised work and settlement following some training; and a ‘C’ grade designated a returned serviceman as needing substantial training prior to settlement.\textsuperscript{367} Until March 1951, farming assistance was restricted to those applicants who received an ‘A’ grade.\textsuperscript{368}

For Māori, however, an additional tier was added to this grading system. Amongst those graded ‘A’, some Māori applicants were tagged with an endorsement

\textsuperscript{361} Claim 1.2.38, p 47; doc R1, p 21.
\textsuperscript{362} Submission 3.4.279, pp 48–49.
\textsuperscript{363} Submission 3.4.249(c), pp 70–72.
\textsuperscript{364} Document A94 (Collins, Turner, and Kelly-Heppi Te Huia), p 311
\textsuperscript{365} Document A69, p 551.
\textsuperscript{366} Document A69, p 551.
\textsuperscript{367} Wai 1200 ROI, doc A67, p 224.
\textsuperscript{368} Document A69, p 526.
indicating that their ‘settlement [was] subject to supervision of the Department of Maori Affairs’ because they were financially inexperienced.\(^{369}\) While non-Māori applicants who lacked the necessary financial skills were also supervised, they were not supervised to the same extent. Speaking to this matter in 1954, the Farms Advisory Committee of the Rehabilitation Board explained that the supervision imposed upon Māori simply reflected the capacity of the Department of Māori Affairs, which had experience supervising farmers through its development scheme programme, whereas the Department of Lands and Survey was unable to extend the same provisions to Pākehā.\(^{370}\)

Accordingly, the tagging system appears to have been intended as a protective mechanism made possible by the capacity of the Department of Māori Affairs. However, despite this intention, its effect was potentially discriminatory. While it was discussed only in passing in this inquiry, it is possible that the tagging system in Te Rohe Pōtae (and elsewhere) undermined Māori access to rehabilitation support. In our opinion, this matter deserves further consideration in the military veterans kaupapa inquiry.

What is clear is that the Rehabilitation Board extended equal support to those returned service personnel settled on land with secure tenure. For the purposes of rehabilitation, where the freehold was not available, the Rehabilitation Board required renewable leases with terms of 33 years, with provision for compensation for 100 per cent of improvements.\(^{371}\)

In the post-war period, Māori land available for immediate settlement was primarily within the land development schemes and was subject to part 1 of the Native Land Amendment Act 1936. In awarding leases to this land, the Board of Native Affairs leased sections for 21 years, with a right of renewal for an additional 21 years and compensation for 50 per cent of improvements upon the end of the lease term.\(^{372}\)

Such terms did not meet the requirements of the Rehabilitation Board, and it quickly became clear that this situation was undermining the assistance available to Māori ex-service personnel. Speaking to this matter in 1946, the Gisborne registrar, R Thompson, suggested that the Rehabilitation Board’s insistence that applicants have a secure title ‘has effectively prevented many would-be blocks being offered by the owners’. By way of a solution, the registrar suggested that: ‘If it were possible to induce the Rehabilitation Board to accept the same forms of tenure which the Board of Native Affairs relies on in its Land Development Schemes, it is considered that much better progress could be achieved’.\(^{373}\)

Committed to its policy, the Rehabilitation Board proved unwilling to budge. Speaking to fellow members in June 1948, Hone Heke Rankin voiced his ‘deep concern . . . that so few Maori ex-servicemen have benefitted from the existing

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\(^{369}\) Wai 1200 ROI, doc A67, p 224.

\(^{370}\) Wai 1200 ROI, doc A67, p 226.

\(^{371}\) Document A69, p 546.

\(^{372}\) Document A69, p 545.

\(^{373}\) Registrar, Gisborne, to Under-Secretary, 2 May 1946 (doc A69(a), vol 12, p 402); doc A69, p 544.
policy of Rehabilitation Land Settlement’. He explained that, over the course of five years, only 98 men had been settled, and he called on the board to extend interest rate concessions to those settled on lands under part I of the 1936 Act. But, the board simply reiterated its policy; namely, that concessions to promote the land’s settlement and development ‘could not be granted given that leases under the Act provided for compensation for improvements at a rate of 50 percent’. The basis of this approach, the board claimed, was to ensure that Māori and Pākehā ex-service personnel received equal treatment.

The Rehabilitation Board’s intransigence continued even when the Board of Māori Affairs altered the basis of the leases awarded. In line with the reformulation of the land development programme in 1949, the board reconsidered the basis of its settlement policy for land under part I of the Native Land Amendment Act 1936. From the early 1950s, leases were awarded for terms of 42 years, with compensation of 75 per cent of the value of improvements. However, when notified of this change, the Rehabilitation Board again re-affirmed its policy. As a result, the Department of Māori Affairs indicated that it would turn its attention to settling Māori ex-service personnel through its ordinary channels, as opposed to employing the provisions available through the rehabilitation scheme.

In 1949, Peter Fraser, in his capacity as Minister of Māori Affairs, expressed his disappointment ‘with the settlement of the young Maori soldiers. This was caused,’ he suggested, ‘mainly through the reluctance of the Maori owners to give the freehold or even a renewable lease to their own boys, and partly the result of unscrupulous grabbing of their lands in the early days’. At this time, Māori landowners could have agreed to alterations of lease terms to satisfy the requirements of the Rehabilitation Board. However, as Fraser implied, ‘unscrupulous grabbing of their lands in the early days’ had left many Māori in the inquiry district with little land, while the Rehabilitation Board’s emphasis on security of tenure was viewed by many Māori as amounting to the irretrievable loss of the land involved.

Moreover, some Māori were reluctant to make their land available to the scheme because they believed there was no guarantee that the land would be used to settle Māori ex-service personnel. In the inquiry district, this concern turned out to be well-founded. Wai 616 claimants told the Tribunal that their tūpuna agreed to sell the 109-acre Te Kuiti B20 block to the Crown on the condition that it be used to settle Ngāti Maniapoto returned soldiers. But soon after the sale was confirmed in April 1946, the rehabilitation officer stationed in Te Kūiti indicated

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374. Rankin to Minister of Rehabilitation, 14 June 1948 (doc A69(a), vol 13, p 361); doc A69, p 555.
379. Notes of representations made to Minister of Māori Affairs, 25 March 1949 (doc A69(a), vol 15, p 113); doc A69, p 563.
382. Submission 3.4.279, pp 45–46.
that a Pākehā returned serviceman wished to acquire the land. In response, the Native Department’s chief supervisor sought to honour the original agreement, suggesting that he would not agree to the settlement of a Pākehā on the land, ‘[u]nless the Rehabilitation Department can give me an assurance that no Maori ex-serviceman requires, or is likely to acquire, the section’.384

Despite this stance, it appears that pressure from the Rehabilitation Department ultimately prompted the Native Department to reconsider, as a meeting was held with the original owners in May 1947 to establish their views on the matter. This meeting was only attended by one of the original owners; an attendance rate that the Native Department interpreted as disinterest on the part of Māori. As Hearn explained, ‘[w]hether that [was] a reasonable inference is difficult now to judge’, but, in any case, the land was subsequently settled by the Pākehā returned serviceman. This settlement appears to have occurred in the absence of any Crown effort to establish the potential interest of a Māori returned serviceman in settling the land.385 The land was ultimately settled without any regard for the arrangement associated with its sale.

In 1949, the new Under-Secretary of the Department of Māori Affairs called for an ‘increased effort’ on the settlement of Māori ex-service personnel, as the Crown realised the difficulty of extending rehabilitation support to Māori settled on Māori-owned land.386 To this end, the Crown turned its attention to land available for purchase, or already in Crown ownership. In a document from 1949, the Māori Rehabilitation Finance Committee identified 16 suitable sites throughout New Zealand, two of which lay within the inquiry district.387 These were the Hangatiki Base Farm and the Kopua development scheme.

In the early 1950s, the Crown completed the purchase of the Hangatiki Base Farm and settled four Māori farmers on the land. In 1951, lands within the Kopua scheme were allotted to three Māori ex-service personnel.388 Land within the Te Kuiti Base Farm was also purchased at this time – under the provisions of part 11 of the Servicemen’s Settlement and Land Sales Act 1943 – though settlement of the land did not proceed. The Māori Rehabilitation Finance Committee suggested that there were ‘no suitably graded Ex-Servicemen available in the King Country and one only . . . in South Auckland’.389 Alongside the increased provision of lands available to Māori ex-service personnel, the early 1950s also saw the removal of restrictions to aspects of the settlement of ex-servicemen. For example, access to farm settlement was opened to applicants graded ‘B’ and ‘C’ in 1951, and restrictions

384. Under-Secretary to registrar, 22 November 1946 (doc A69(a), vol 1, p 368); doc A69, p 540.
386. Under-Secretary to registrars, 4 July 1949 (doc A69, p 564).
preventing tagged Māori applicants from applying for general land were lifted in 1954.  

Despite these efforts, the support extended to Te Rohe Pōtae Māori by the post-war rehabilitation scheme was ultimately inadequate. By 1948, 131 Māori ex-service personnel were settled on Māori land nationwide, seven of them in the inquiry district. By the end of March 1949, 40 Māori ex-service personnel were awaiting settlement within the Waikato–Maniapoto Māori Land District; nine were said to be ‘under action’, while 31 were described as ‘[c]ases where there is nothing in view and the ex-servicemen are awaiting the availability of suitable land.’ In early 1950, 23 ‘A’-graded Māori ex-service personnel were awaiting settlement in the Waikato–Maniapoto Māori Land District, prompting the Under-Secretary to suggest that, at the current rate of settlement, ‘there appears to be no alternative but for a large proportion of these men to seek their rehabilitation through other channels.’ Ultimately, by 1958, 14 Māori ex-service personnel were settled in the inquiry district.

17.4.2 Treaty analysis and findings

Having served this country in foreign theatres of war, Māori servicemen returned to New Zealand, where they were consistently assured that they would receive equal treatment. Despite these assurances, the Rehabilitation Board viewed equal treatment as the implementation of a one-size-fits-all policy, rather than a policy that sought to extend equal benefits to its recipients.

As a result, some Te Rohe Pōtae Māori were pressured to release yet more land for a Crown purpose. The evidence shows that they did so. Ngāti Mahanga and Ngāti Hikairo, for example, made their ancestral lands available to the scheme and then watched as the Crown, through the Rehabilitation Board, implemented a policy that did not achieve the standard of equal treatment it purported to deliver. The historical evidence before us does not suggest that Māori land was compulsorily acquired for the settlement of Pākehā returned servicemen under the rehabilitation scheme. However, the Crown did place pressure on Māori landowners to release yet more land for this Crown purpose, and at least one block voluntarily transferred into the scheme was then released to a Pākehā, instead of being returned to the original owners.

In terms of the leases available within land development schemes, these did not comply with the security of tenure requirements the Rehabilitation Board demanded. Consequently, because the Rehabilitation Board refused to alter its approach, the Department of Māori Affairs (with the Board of Māori Affairs) was

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392. Return of graded Māori ex-servicement, [circa April 1949] (doc A69(a), vol 13, pp 311–312); doc A69, p 558.
393. Under-Secretary to all officers, 9 January 1950 (doc A69(a), vol 14, p 68); doc A69, p 558.
forced to settle Māori ex-service personnel on Māori land without the assistance of the rehabilitation scheme.

The precise impact of this policy on Te Rohe Pōtae Māori is difficult to determine as there is limited evidence before us regarding the operation of the scheme as it affected non-Māori. For example, it is unclear what proportion of Pākehā seeking assistance in Te Rohe Pōtae was settled with the support of the rehabilitation scheme, or how much land was forcibly acquired from them under the provisions of the Servicemen’s Settlement and Land Sales Act 1943. However, what is clear is that Māori had already contributed more than their fair share of land to Pākehā settlement and the demand to release more land for the Crown’s use when Crown land was available, was inequitable, which also led to a poor outcome for Māori returned servicemen.

Therefore, we find that the Crown’s actions and policies used for the implementation of the returned servicemen’s rehabilitation scheme, and its omission to intervene to correct the work of the Rehabilitation Board, were inconsistent with the principles of partnership, reciprocity, and mutual benefit. In addition, the Crown’s actions, policies, and omissions were inconsistent with the principles of equity and options, derived from article 3 of the Treaty of Waitangi.

We make this finding because ultimately, across the inquiry district, only 14 Māori ex-service personnel were settled by 1958. This situation largely reflected the failure of the Rehabilitation Board to amend its policies after it had become clear that its emphasis on settling Māori on Māori land conflicted with its purported goal of ‘equal treatment’. Its lack of action meant many Māori ex-service personnel were unable to access the support available through the scheme. The Crown knew that this policy was not working and yet it did nothing to intervene, other than through the Department of Māori Affairs (and the Board of Māori Affairs) acting outside the rehabilitation scheme. If ever there was a time for the Crown to give back, it was for those who paid the ‘price of citizenship’. The evidence is that it did not.

17.5 Prejudice

The policy of land development schemes adopted by the Crown in Te Rohe Pōtae and other districts was a significant step toward assisting Māori communities overcome title difficulties and to reverse the previous lack of development finance available to Māori so they could fully realise the economic potential of their land through farming.\(^{395}\) Despite the relatively positive fiscal outcomes of some land development schemes in the inquiry district, Māori expected more control over those lands. We have found that the Crown, by its policies, actions, and legislation leading to the establishment and implementation of the schemes, acted in a manner inconsistent with a number of the principles of the Treaty of Waitangi. These breaches had prejudicial effects on Te Rohe Pōtae Māori.

In the first instance, an absence of consultation inherent in the selection, formation, and management of the schemes undermined the autonomy of Māori communities to make decisions about the future of their lands. Te Rohe Pōtae Māori were not able to exercise their tino rangatiratanga or mana whakahaere over these lands. This was then compounded by the Crown’s paternal style of management once land development schemes were up and running. Landowners were excluded from decision-making on an ongoing basis at least until 1949, and after that their involvement was marginal. During the schemes’ operation, there was an effective suspension of Māori property rights that was not applied to, nor considered appropriate for, Pākehā receiving development finance. It is clear that estrangement from management of their lands had detrimental economic effects on some landowners in the inquiry district where schemes faltered. While it is fair that Māori should carry some risk when developing their land, in this district many suffered personal hardship stemming from the dysfunction of management and the organisational limitations of the development schemes.

Even when owners benefited financially from the schemes, the evidence for the case studies presented in this chapter indicates they led to diminished connection with the land, a loss of mātauranga and cultural activities associated with the land, and the destruction of important sites. To the claimants, the success of the schemes required more than good financial performance.

These cultural impacts, resulting from development schemes in the post-1949 period, are clearly demonstrated in evidence heard from Wai 2126 claimants, such as the Mahara whānau and others. The incorporation of their lands into the Okapu scheme in the early 1960s heralded the decline of a life tied closely to the land, introduced amalgamation of land interests that ultimately caused their papakāinga to diminish, and led to a long-term estrangement from the land. As John Mahara described:

My mokopuna today have a completely different life to what I had growing up. My children have not been brought up growing their own food. They do not know how to grow their own kai. They do not know how to milk cows. They do not know how to catch their own kaimoana. Living at Aotea meant that we were able to carry out our traditional practices and tikanga. Living at Hamilton has meant that our children have not had those opportunities. 396

In relation to the settlement of Māori ex-service personnel, we found the Crown acted by omission and direct action in a manner inconsistent with the principles of the Treaty of Waitangi. This resulted in prejudice for those in the district who felt compelled to give more land for this additional Crown purpose and it resulted in only 14 Māori returned servicemen receiving assistance under the rehabilitation scheme.

396. Document 11, p [4].
17.6 SUMMARY OF FINDINGS

Our key findings in this chapter have been:

- That the Crown acted in a manner inconsistent with the principles of the Treaty of Waitangi by failing in the pre-1949 phase of land development schemes, to provide adequate consultative avenues through which owners could have a say in the establishment, implementation, and the development of their land.

- That the Crown acted in a manner inconsistent with the principles of the Treaty of Waitangi by requiring that Māori cede control of their lands to the Crown. This created a situation where Māori access to the land development programme was contingent on their accepting the temporary alienation of their lands. This imposition was absent from the requirements imposed on other sectors of society seeking similar funding assistance.

- That the Crown acted in a manner inconsistent with the principles of the Treaty of Waitangi by forcing Māori to continue to accept the temporary alienation of their land for access to the land development programmes in the post-1949 period.

- That the Crown acted in a manner inconsistent with the principles of the Treaty of Waitangi by failing to ensure that Māori retained a reasonable degree of control over their lands.

- The Crown’s operation of the land development programme was inconsistent with the principles of the Treaty of Waitangi with respect to:
  - Waimihia, where Crown mismanagement resulted in a degree of wastage, and the Crown failed to accept culpability for flaws in its development plan, to the detriment of many ‘unit’ farmers;
  - Kāwhia, where the Crown included the Mangaora 2 block within the development scheme despite the sustained, and justified opposition of the landowner, Rihi Te Rauparaha Penetana;
  - Aramiro, where so-called ‘uneconomic interests’ were acquired, depriving some Māori of their tūrangawaewae;
  - Arapae, where the failure to consult with landowners resulted in the destruction of, or damage to, a number of sites of cultural significance;
  - Ōpārau, where the acquisition of ‘uneconomic interests’ deprived some Māori of their tūrangawaewae; amalgamation combined land ownership across distinct whakapapa lines; and the scheme was mismanaged (as evidenced by the poor condition of the lands when returned and also the Crown’s failure to legally establish an access road); and
  - Okapu, where the Crown implemented the scheme without the consent of the majority of landowners; Crown mismanagement undermined the results achieved; and the acquisition of ‘uneconomic interests’ and the amalgamation of land blocks undermined the relationship of landowners with their tūrangawaewae.

- In regard to Māori returned service personnel, the Crown:
  - Generally adopted a policy that only Māori land should be made available for Māori returned servicemen and then pressured Māori in Te
Rohe Pōtai to free up more land for this Crown purpose, despite there being Crown land available in Te Rohe Pōtai.

- Specifically settled a Pākehā returned serviceman on Te Kuiti 2B2OB block, despite the original condition of the land’s sale that a Ngāti Maniapoto service person be settled on the land. The Crown also failed to settle Māori ex-service personnel on the Te Kuiti Base Farm on the basis that there were no suitably graded farmers in the area.

- Generally, the Rehabilitation Department sought to extend equal treatment to Māori but would only prioritise the settlement of Māori on Māori-owned land. The lease terms available on most Māori land, however, served to undermine Māori access to the rehabilitation scheme, as the Rehabilitation Board would only support ex-service personnel settled on land with secure tenure. Instead of amending its policies to ensure Māori could benefit from the scheme, the Rehabilitation Board pursued a one-size-fits-all approach that ultimately undermined Māori access to the scheme.
Dated at Wellington this 4th day of June 2019

Deputy Chief Judge Caren Fox, presiding officer

John Baird, member

Dr Aroha Harris, member

Professor Sir Hirini Mead KNZM, member

Professor William Te Rangiua (Pou) Temara, member