OFFICIAL

Report on

Te Aute's Glasgow Leases

RECEIVED
Waitangi Tribunal
13 Dec 24
Ministry of Justice
WELLINGTON

Contents

Introduction 1

A. Overview of Te Aute's trusts and leases 5

B. The administrative machinery of the trusts 7

C. The statutory leasing powers 10

D. In the pursuit of 'settlement' 11

1. The pressure to secure the endowment for 'settlement' (1869 – 1906) 11
2 The struggle for control of the educational trusts and endowments constituted by the Crown but administered by the Church (1871 – 1911) 12
3 Compulsory purchases of 'land for settlement' (1900 – 1906) 13
4 The Poukawa Native Reserve 14
5. The catalyst for the Royal Commission of Inquiry 1906 15
6. The rental value of Te Aute's short term leases (1869 – 1915) vs Te Aute's Glasgow leases (1916 - 2020) 17
7. The Separate Endowed Schools Bill 1906 18
8. The pressure applied by the Department of Education 20
9. Extension of the Crown's Glasgow leasing system 22
10. Extending Glasgow leasing powers to 'public bodies' 1908 – 1913 23

E. Can the Crown continue to assert that 'it played no part in influencing the Board's decision' to grant Glasgow leases and that it therefore 'bears no responsibility' for the detriment caused by the Glasgow leases? 28

F. Can the Crown argue that the leases originally granted by the Te Aute Trust Board in 1916 were not perpetually renewable? 31

1. The McKenzie Opinion 31
2 The origin of the renewal clauses used in Te Aute's leases 32
3 Leases granted under section 5(g) of the Public Bodies Leases Act 1908 32
4 The Hilda Wooldridge lease 33
5. The Taranaki Scholarship leases 34
6. Atihau's fixed term leases 36

G. Incompatible objectives and purposes: a breach of trust? 39

1. Was the Glasgow Leasing System compatible with the purpose of Te Aute's endowment? 39
2. Should the Crown have known that the application of Glasgow leases would not be to the best advantage of the endowment and would not earn as much as possible for Te Aute's trusts? 44

H. Better than freehold title? 47

© 2018

I. Inequitable lease returns 49
1. The impact of inflation on fixed rentals 49
2. The rates of return compared to other leases 49
3. The decline in the real value of Te Aute's Glasgow lease rentals. 50
4. The disproportionate rate of increase in the value of improvements 50
5. Concessions granted to lessees 52
J. The iniquitous 'fair annual ground rent' 55
K. What do the sub-leases tell us about the 'real' value of Te Aute's endowment leaseholds? 60
1. The Brownrigg sub-lease 60
2. The Brownrigg offer to lease the College Farm 61
3 The Kingston sub-lease 61
L. What is 'fair'? – what the sub-lessees pay. 62
M. Can the value of Te Aute's endowment be restored? 63
N. Atihau's trusts and leases 65
O. A comparative review of Atihau's Leases and Te Aute's Leases 68
1. Were the statutory leasing powers exercised freely and voluntarily? 68
2. 'Undue Influence' 69
3. Iniquitous valuation methodology applied to leases 69
4. The 'VLA Method' applied to Te Aute's Glasgow leases 71
5. The 'Fair Annual Ground Rent' applied to Te Aute's Glasgow leases 72
6. The 'Unimproved Value' applied to Te Aute's fully developed lands 74
7. Indefeasible leasehold interests 75
8. Reversion of leases 76
9. Crown efforts to ameliorate the detriment caused by the leases 76
10. 'Similarities', 'fairness and benefit' 78
P. The remedies for Maori Reserved Land leases 79
Q. The additional detriment of 'salvage and privatisation' 81
R. Should the Crown fund the cost to freehold Te Aute's leases? 83

© 2018

Introduction

The Crown has known about Te Aute's Glasgow leases since 1974. [1] The inherent inequity of such leases has not been disputed by the Crown, however despite numerous promises the Crown has failed to remedy the detriment caused by such leases. [2]

The reluctance of the Crown to settle Te Aute's Glasgow leases can be attributed firstly to the obfuscation of Crown officials, and secondly, to largely unfounded and redundant concerns about the potential flow-on effect that settling Te Aute's Glasgow leases could have for the Crown in relation to other Glasgow leases.

Crown officials have suggested that:

> " *The Crown is yet to see historical evidence which supports the view that the Crown intentionally influenced the TATB's decision to enter Glasgow leases ...*
>
> " *The Crown's view has been that it played no part in influencing the Board's decision, and therefore bears no responsibility for addressing any prejudice that the Board, and the school, may have experienced as a result.*" [3]

This report will show that:

(a) Contrary to such claims, the Crown, not only influenced the Te Aute Trust Board's decision to subdivide Te Aute's endowment into leasehold farms for 'settlement' under Glasgow leases, but that it facilitated the application of its 'Glasgow Leasing System' to Te Aute's endowment, in the pursuit of it's all consuming land 'settlement' policies and objectives;

---

1 Te Aute College Students met with the Hon Norman Kirk, Prime Minister, in 1974. The Crown did nothing to resolve the Glasgow Leases and instead it 'integrated' Te Aute College as a State School. See companion report '*Te Aute College – State School or Anglican Church School (2015)*'. See also the Report of the Commission of Inquiry into Maori Reserved Land Leases in 1975, (the '**Sheehan Commission**') and **Petition to Parliament 79/68**.

2 At a meeting with Te Aute's WAI 1456 claimants on 23 March 2009, Minister Finlayson described Glasgow leases as a 'blight on New Zealand's historical landscape'. He gave a commitment to settle Te Aute's Glasgow leases in his capacity as the Attorney-General (the '**A-G'**) rather than as the Minister for Treaty of Waitangi Negotiations (the '**MFTOWN**'). Prior to this, Minister Sharples stated publicly that he would not leave office, as other Minister's of Maori Affairs had, without settling Te Aute's Glasgow leases. He stated that $40 million would be required to restore Te Aute's trusts and endowment.

3 Refer '*Te Aute College: Background paper prepared by the Office of Treaty Settlements*' marked '*Negotiations confidential and sensitive*' presented to He Toa Takitini ('**HTT**') on 19 December 2014; paras 35 & 36.

(b) Contrary to the claim that the Crown has yet to see historical evidence of such influence and inteference in Te Aute's trusts and endowment, the Crown has been in possession of such evidence for more than a century;

(c) The Crown ignored the explicit objections of the Trust Board, **and** Hapū o Nga Puna a Tara to the use of Te Aute's endowment for 'settlement', and promoted and facilitated the 'settlement' of the endowment contrary to the objects of the trusts and the purposes of the endowment; [4]

(d) Crown officials recommended the application of Glasgow leases to Te Aute's endowment at the Royal Commission of Inquiry into the Te Aute and Wanganui School Trusts 1906 and informed the Commissioners that Glasgow leases would produce better returns than the short term leases which had been employed by the Trust Board; [5]

(e) The Crown enacted legislation, without which, the Te Aute Trust Board could not have granted Glasgow leases;

(f) The concerns raised by Crown offiicals in 1981 about '*the likely flow-on effects for other leases*', specifically the flow-on effects for Maori Reserved Land leases (the '**MRL leases**'), should be regarded as redundant, given that the Crown has settled such leases under the Maori Reserved Land Amendment Act 1997. This Act was enacted specifically to settle MRL leases. [6]

---

4 See *Report and Evidence of the Royal Commission on the Te Aute and Wanganui School Trusts 1906*, AJHR 1906 G-5; and also companion reports '*The Crown's Sale of Te Aute's Endowment Land*' and '*Te Aute College: State School or Anglican Church School?*'.

5 The Trust Board employed short term leases from 1869 until the last of such leases expired in 1915.

6 Refer NA – ABWN 7609 W5021 Box 843 rec 55380 Part 2, CONFIDENTIAL Cabinet briefing paper L (82) 24 Copy No / 14 - 1 June 1982. Cabinet deferred settling Te Aute's leases in 1982 until the review of the MRL leases had been completed. Refer NA – ABWN 7609 W5021 Box 843 rec 55380 Part 2, CONFIDENTIAL Cabinet decision CK 82/22/6 - 8 June 1982. The Crown has settled around 2,145 MRL leases under the Maori Reserved Land Amendment Act 1997.

(g) If the Commission of Inquiry into Maori Reserved Land 1975 [7] had been informed that Te Aute's endowment was constituted under The New Zealand Native Reserves Act 1856, [8] the Commissioners would have been obliged to include Te Aute's Glasgow leases within the scope of the Inquiry. [9] In the absence of such vitally important information, the view of the Commission was that Te Aute's Glasgow leases were akin to leases granted by 'Public Bodies', and that as such, Te Aute's Glasgow leases did not fall within the scope of the Inquiry. [10] As a consequence of this, Te Aute's Glasgow leases were not settled under the provisions of the Maori Reserved Land Amendment Act 1997 .

(h) There is a compelling case for settling Te Aute's Glasgow leases in the same way that the Crown settled Atihau's 243 Maori Vested Land leases in 2008, based on **'fairness**' and **'benefit**'. [11]

---

7 The '**Sheehan Commission'**.

8 The Te Aute endowment was comprised in '*three grants of contiguous properties, of which two were ceded by the Maoris to the Crown under the provisions of the* "*Native Reserves Act 1856*" *and the third is a free gift of Crown Lands promised by Sir George Grey, and granted by Colonel Gore Browne*.' - Mr G.S. Cooper (Resident Magistrate) Hawke's Bay Province. See his '*Report On The Subject of Reserves, Native Lands etc., In The Province Of Hawke's Bay*' presented to the House of Representatives on 20 August 1867. AJHRs A-No. 15a. It is important to note that it was Mr G.S. Cooper who was appointed by Governor George Grey in 1857, under section 17 of The New Zealand Native Reserves Act 1856, to obtain the assent of the co-donors of the endowment lands, He prepared the Deeds of Gift and witnessed the same being signed by Hapū o Nga Puna a Tara in March 1857. He reported that the land was '*granted as an educational endowment*', and that it was not granted for '*religious or charitable purposes*'

9 Refer **Sheehan Commission** report page 5(g) terms of reference. It is noted that lands on the West Coast of the Nelson Province were set aside, with the assent of the Natives as reserves for their 'benefit' under the NZ Native Reserves Act 1856, were treated as reserves that fell within the scope of the Inquiry by the Commission. Refer page 22 of the report. Lands set aside as reserves out of Crown land by the Crown under the NZ Native Reserves Act 1856 in the provinces of Auckland, Taranaki, and the South Island, also fell within the scope of the Inquiry. Refer pages 18-21 of the report.

10 For the discussion on this, refer **Sheehan Commission** report at pages 161-162. See also pages 109 to 113. There are '***four distinct parties***' under MRL leases; the Crown (legislator), the beneficial owners, the Maori Trustee, and the lessees. The parties under Te Aute's Glasgow leases are in all essential respects the same as the parties under the MRL leases; the Crown and the Anglican Church (as legislators), the Crown and Hapū (as co-donors / settlors), the Te Aute Trust Board (as trustee), those with a beneficial interest in the leases under the trusts (the beneficiaries), and the lessees. This distinguishes Te Aute's Glasgow leases from most other Glasgow leases in New Zealand, and in particular the 'Public Bodies' leases, in respect of which there are only two contracting parties; the landlord and the tenant. Refer also page 109 para (2)(a)(iii).

11 *Memorandum of Understanding* (27 June 2008) between Atihau-Whanganui Incorporation and HMQ.

The 'rigid paternalistic control' [12] which underpins the statutory administrative arrangements precribed by the Crown in the Maori Reserved Land Act 1955 are essentially no different to those prescibed by the Crown in the Anglican Church Trusts Act 1981 (and its predecessors). [13]

In a 1873, Renata Kawepo [14] had this to say about the Native Reserves Act 1873:

> **" *This law resembles the law for Pakeha children, drunkards and lunatics and we are compared by this law to infants, inebriates and idiots.*"** [15]

Not only has the Crown ignored legitimate concerns expressed by Hapū about Te Aute's trusts, [16] and specifically about the conflict between the purpose of Te Aute's endowment and the use of the endowment for settlement under Glasgow leases, [17] the Crown has enacted legislation which allows the Anglican Church to do the same.

The following statement by the Minister of Maori Affairs in 1981 sets out succinctly why the Crown should settle Te Aute's Glasgow leases:

---

12 Refer **Sheehan Commission** report page 28.

13 See for example sections 3 & 20 of the Anglican Church Trusts Act 1981. While the 'powers' of the Te Aute Trust Board are made subject to 'consultation' with the 'Aotearoa Council', (a body constituted by Canon Law - that is, laws made by the General Synod of the Anglican Church) there is no requirement to consult with Hapū. Hapū have no right of appointment as members of the Te Aute Trust Board. Under section 20 of the Act, the General Synod can both appoint **and** remove members of the Trust Board. This power of removal is unusual, as is the requirement that all members of the Trust Board must swear allegiance to the Church – even it would appear where doing so conflicts with the objects and purposes of Te Aute's trusts.

14 **Renata Kawepo** was a prominent rangatira of Ngati Kahungunu, and a contemporary of Te Hapuku.

15 Petition AJLC 1873 No. 7. Sheehan Commission report at page 28.

16 Letter of Renata Pukututu dated 20 April 1869 produced in the '*Second Report of the Commission of Inquiry into the Condition and Nature of Trust Estates for Religious, Charitable, and Educational Purposes*', AJHR 1869 Session I, A-05a.

17 **Wiremu Erueti** informed the Royal Commission of Inquiry in 1906 that Hapū '***did not wish the purpose for which the land was handed over ... diverted in any way***'. Report of Inquiry, AJHR 1906 (Session II) page 56; See also page 57.

> ***" … the purpose of the endowment and the very continued existence of the institution are threatened by the failure of a leasing system imposed much earlier this century."*** [18]

A. Overview of Te Aute's trusts and leases

1. **Te Aute's trusts** [19] were constituted in 1857 by Crown Grants issued under and pursuant to the provisions of The New Zealand Native Reserves Act 1856 and The Waste Lands Act 1856. [20]

2. The Crown Grants [21] issued under these Acts, constituted an endowment of about 8,279 acres [22] which was to be held ***forever upon trust***:

   (a) *for a school to be maintained at Te Aute for the benefit of the aboriginal inhabitants of New Zealand*.

   (b) *for a school to be maintained in the district of Ahuriri to educate children of both races in New Zealand.*

---

18 Hon. Ben Couch MOMA – Confidential Cabinet Paper L (81) 14 dated 30 June 1981, reporting to Cabinet on the Te Aute Petition – Petition No. 1979/68).

19 Te Aute's trusts were described as the ***Te Aute Educational Trust*** in a Report of the Select Committee to the Legislative Council on the *Te Aute College And Other Educational Trust Estates* in 1875, AJLC 1875 No. 4.

See also AJHRs A-No. 15a : '*Report On The Subject of Reserves, Native Lands etc., In The Province Of Hawke's Bay*' presented to the House of Representatives on 20 August 1867. In his Report Mr G.S. Cooper Resident Magistrate of the Hawke's Bay Province, stated that Te Aute's endowment was '***granted as an educational endowment***', and that it was **not** granted for '***religious or charitable purposes***'. It was George Sissons Cooper who Governor George Grey appointed in 1857, under section 17 of the New Zealand Native Reserves Act 1856, to obtain the assent of Nga Hapū o Nga Puna a Tara to setting aside of their lands as an endowment for Te Aute College. He and Samuel Williams witnessed the Deeds of Gift that were signed by them on 30 March 1857.

20 Refer Crown Grants below. Refer also section 16 of the NZ Native Reserves Act 1856 and section 4 of The Waste Lands Act 1856.

21 Three Crown Grants were issued by Governor Thomas Gore Browne, Crown Grants No's 4, 5, & 12; NA – Crown Grants Register ABWN W5274 459 R.14/f4/f5/f12 and ABWN 8090 W4274 425 R.4. A fourth Crown Grant was issued in 1866 (as part of an exchange) see ABWN 8090 W5274 425 R.4 / 169 and AADZ 8090 W2864 HB7.

22 This is the correct acreage. Refer companion report '*The Crown's Sale of Te Aute's Endowment Land*'.

3. The creation of Te Aute's endowment was part of Governor George Grey's plan for the '**peaceful settlement**' of Hawke's Bay, [23] following the Crown's purchases of the Waipukurau, Ahuriri and Mohaka Blocks in 1851. The Crown's land purchase agent, Donald MacLean acquired about 630,000 acres of ancestral land from Hawkes Bay Maori in less than a year.

4. The Crown severed about 1,760 acres from the lands gifted by Hapū o Nga Puna a Tara, and exchanged this land for 382 acres of Crown land that was of much poorer quality. This severance and exchange resulted in the reduction of Te Aute's endowment 8,287 acres to 6,909 acres. [24]

5. Te Aute's endowment was developed into one of the finest sheep and cattle stations in the Central Hawke's Bay by Samuel Williams, firstly as a 'manager' from 1854 until 1869, and then as a lessee under successive short term leases from 1869 until 1915. [25]

6. By the end of the last lease to Samuel Williams, the Te Aute endowment had been fully developed as a sheep and cattle station. [26]

---

23 Refer companion reports '*The Crown's Sale of Te Aute's Endowment Land*' and '*Te Aute College: State School or Anglican Church School?*'.

24 The loss in acreage and the resulting loss of revenue is considered in companion report, '*The Crown's Sale of Te Aute's Endowment Land*'. The severence of Te Aute's 1,760 acres, the resulting detriment to Te Aute's trusts, and the benefit enjoyed by the Crown from the conversion of such land to its own use, is strikingly similar to the 1,862 acres of Motueka reserved lands, similarly converted by the Crown to its own use and benefits. The Supreme Court has ruled (in respect of such reserved lands) that the beneficiaries have an actionable cause of action against the Crown for breach of the Crown's fiduciary obligations to them. Refer ***Proprietors of Wakatu, Rore Pat Stafford & Others vs A-G and Anor*** SC 13/2015 [2017] NZSC 17.

25 Samuel Williams managed Te Aute's endowment under a power of attorney for about 15 years until 1869. From 1869 until 1915 the endowment was developed under short term (commercial) leases of between 7 and 12 years duration. The first lease for 10 years ran from 1869 to 1878. The yearly rental was £500. This was followed by a lease of 7 years with one ROR for a further 7 years, from 1878 to 1892. The yearly rental was £1,000 plus £500 grass / pasture (over each 7 year term). The third lease ran for 7 years from 1892 to 1899, was extended as a yearly tenancy for a further 3 years from 1900 to 1903. The yearly rental during the term of this and the extended tenancy was £2,000. The yearly rental for the final lease for 15 years from 1903 to 1915 was £2,200. Samuel Willams died in 1907 but his family kept the lease on until 1915.

26 The lease reverted to the Te Aute Trust Board without any compensation being paid for the improvements made to the endowment by Samuel Williams.

7. Given the fully developed condition of the endowment lands, it was not necessary to employ the Crown's *Glasgow Leasing System* to facilitate the development of such lands.

8. However, in accordance with the recommendations of Crown officials, [27] the Te Aute Trust Board sub-divided the endowment into 23 leasehold farms which were let to Pakeha settlers under perpetually renewable Glasgow leases.

B. The administrative machinery of the trusts

1. As noted above Te Aute's trusts were constituted by Crown Grants issued under The New Zealand Native Reserves Act 1856 and The Waste Lands Act 1856. The trusts were constituted to fulfil a compact made between Hapū o Nga Puna a Tara and Governor George Grey on 30 March 1853. [28]

2. The lands gifted by Hapū o Nga Puna a Tara as an endowment for Te Aute College, [29] were vested in the Bishop of New Zealand [30] under The New Zealand Native Reserves Act 1856, and such vesting was subject to the provisions of this Act. [31]

---

27 See *Report and Evidence of the Royal Commission on the Te Aute and Wanganui School Trusts 1906*, AJHR 1906 G-5.

28 **Hapū o Nga Puna a Tara** gifted 4,273 acres (in two parcels) and the Crown granted 4,014 acres (in one parcel) which together formed an endowment of 8,287 acres for Te Aute College. For a full account of the trusts and the endowment see companion reports '*The Crown's Sale of Te Aute's Endowment Land*' and '*Te Aute College: State School or Anglican Church School?*'.

29 Originals of the *Deeds of Gift* are held at National Archives - ABWN 8102 W5279/67 HWB 34 (Eastern Blk) and ABWN 8102 W5279/67 HWB 35 (Western Blk). Copies of the Deeds of Gift are also held at National Archives, ABWN 8879 W5278 85 229.14 [Index – Native Deeds] 1841 – 1874 Deed No. 538 (Eastern Blk) & Deed No. 539 (Western Blk).

30 Refer Section A above.

31 Sections 16 & 17 of the NZ Native Reserves Act 1856.

Under section 16 it was lawful for the Governor, with the assent of the 'aboriginal inhabitants', to grant lands to a person or body corporate (the Bishop of NZ was a body corporate), for the purpose of an endowment of a school, with such powers as were vested in Commissioners under the Act. Such powers included the right to lease lands for up to 21 years (without the assent of the Governor); all other sales, leases or other dispositions required the assent in writing of the Governor.

3. The Bishop had the same limited powers as 'Commissioners of Native Reserves'. He had no authority to delegate such responsibilities and powers, or to vest any of the lands vested in him, to any other person or body.

4. Despite the fact that Te Aute's endowment was made subject to the provisions of The New Zealand Native Reserves Act 1856, [32] the Church of England promulgated legislation which put Te Aute's trusts and endowment under the control of the General Synod of the Church of England in New Zealand, **not** the Crown, and also **not** the Bishop of New Zealand. [33]

5. The Bishop of New Zealand Trusts Act 1858 was promulgated by the Church and enacted by the Crown, without the knowledge or assent of the Hapū donors, contrary to the explicit provisions requiring their assent under The New Zealand Native Reserves Act 1856. This Act was promulgated by the Church to assist the Bishop of New Zealand 'establish' the Church of England in New Zealand, by way of land endowments. [34]

6. Although promulgated as a Private Act, the Bishop of New Zealand Trusts Act 1858 was enacted as a Public Act by the Crown. This Act has by a 'side wind', [35] resulted in Te Aute's trusts and endowment lands being erroneously treated as '*Church Trusts*' and '*Church Lands*' for the last 160 years. [36]

---

32 Refer section 17 of the Act. It is noted that the 'settlors' of Te Aute trusts were Hapū o Nga Puna a Tara and the Crown; each gave more or less equal portions of land pursuant to the compact made between such Hapū and the Crown in 1853. The Church of England did not contribute to the corpus of the trusts.

33 The Legislature at that time, did not (it would appear) give any consideration to what was a somewhat obvious conflict of laws. The legality of The New Zealand Native Reserves Act 1856 being by a 'side wind' over-ridden by the Bishop of New Zealand's Trust Act 1858, which was in truth a Private Act, not a Public Act, has not been given any serious consideration.

34 Refer companion report 'Te Aute College: State School or Anglican Church School?' – Part A 1.

35 The Bishop of New Zealand Trusts Act 1858 did not repeal the NZ Native Reserves Act 1856. There is no reference to New Zealand Native Reserves Act in the the Bishop of New Zealand Trusts Act. The arbitrary change in the administration of Te Aute's trusts was probably unlawful, and it was certainly contrary to the rights of the donors under The New Zealand Native Reserves Act, who were not consulted or informed about the changes introduced by the Bishop of New Zealand Trusts Act.

36 Refer companion report 'Te Aute College: State School or Anglican Church School?'.

Also refer to GA Phillipson's PHD Thesis, '*The Thirteenth Apostle*' *Bishop Selwyn and the Transplantation of Anglicanism to New Zealand, 1841 – 1868*' University of Otago, Dunedin, NZ 1992. This thesis presents a compelling view about Bishop Selwyn's attempt to establish the Anglican Church in NZ by endowing the Church with 800,000 acres of Maori reserved lands for its use and support. See pages 71–95.

7. It is submitted that the Crown by enacting the The Bishop of New Zealand Trusts Act 1858 breached the explicit provisions of the The New Zealand Native Reserves Act 1856 and the Waste Lands Act 1856, under which Act the Crown Grants of 1857 were issued. [37]

8. Since the enactment of The Bishop of New Zealand Trusts Act 1858, the misconceptions about the true character and objects of Te Aute's trusts, the true purpose of the endowment lands, and the virtually unbridled authority of the Anglican Church over Te Aute College, have been further perpetuated and entrenched by the Crown through the enactment of the Hukarere Native School's Act 1892, the Church of England Trusts Act 1913, the Anglican Church Trusts Act 1981, and the Crown's 'integration' of Te Aute College in 1999, under the Private Schools Conditional Integration Act 1975. [38]

9. While the rights and obligations of the 'parties' to Te Aute's trusts have been largely over-ridden and obscured by such legislation, the Crown Grants, upon which Te Aute College was founded, endure intact and unchanged since 1857.

---

37 The right of the Hapū to approve the appointment of trustees under The New Zealand Native Reserves Act 1856 was effectively extinguished by the Bishop of New Zealand Trusts Act 1858. Such statutory rights have not been restored and have been further suppressed under the Anglican Church Trusts Act 1981 and the Canons of the Anglican Church. Hapū do not have a statutory right to approve trustee appointments or to be appointed as trustees or to manage and administer Te Aute's trusts and endowment. The appointment and removal of trustees remains a statutory function and responsibility of the Anglican Church.

38 Refer companion report 'Te Aute College: State School or Anglican Church School?'

The rights of Hapū have been further suppressed under the Anglican Church Trusts Act 1981 **and** the Canons of the Anglican Church. Hapū have no right appoint trustees, or to be appointed as trustees, or to manage and administer Te Aute's trusts and endowment. In New Zealand, the power to remove the trustees of charitable trusts is recognised as a judicial function of the High Court. It is a funadamental principle of trust law that the settlor cannot appoint and remove trustees, because trustees must be entirely free and unfettered of any extraneous influence. However under section 20 of the Anglican Church Trusts Act 1981, the General Synod or any entity authorised by it, can remove trustees of any 'church' trusts – including Te Aute's trusts.

C. The statutory leasing powers

1. As already noted, the leasing powers of the Te Aute trustees were originally prescribed in The New Zealand Native Reserves Act 1856, but these were superceded by the Bishop of New Zealand Trusts Act 1858. [39]

2. Under this Act the trustees were authorised to grant leases for any term including renewals not exceeding 21 years, and this remained the extent of the trustees' leasing power, until 1913. [40]

3. The Te Aute Trust Board [41] was declared to be a 'leasing authority' under the Church of England Trusts Act 1913. As a such the Trust Board was authorised to grant leases under the Public Bodies Leases Act 1908, including perpetually renewable leases, subject to the following:

    a) The power to grant leases could be exercised only if it would not be contrary to the provisions of any trust;
    b) The rent on renewal had to be determined by valuation in accordance with the provisions of the First Schedule of the Act;
    c) The rent for the first term had to be a 'rack-rent'.

---

39 Albeit by a 'side wind'. Refer Part B above.

40 Bishop of New Zealand Trusts Act 1858 - Schedule, clause 4.

41 The Te Aute trustees were incorporated as a Trust Board in 1908.

D. In the pursuit of 'settlement'

1. The pressure to secure the endowment for 'settlement' (1869 – 1906)

1.1. It would take little more than ten years for the Crown to make the first of several settler driven attempts to secure Te Aute's endowment for 'settlement'.

1.2. There were numerous inquiries into and reports on the management and administration of the Te Aute trusts during this period. A chronological list of the inquiries is set out below.

(a) 1869 - *Second Report of The Commission of Inquiry Into The Condition and Nature of the Trust Estates For Religious, Charitable, and Educational Purposes*, 1869 AJHR A-No. 5.

(b) 1872 - *Papers Relating to Native Schools*, 1872 AJHR F-5.

(c) 1873 - *Further Papers Relating to Native Schools*, 1873 AJHR G-4A.

(d) 1873 - *Report of the Hawke's Bay Native Lands Alienation Commission*, 1873 AJHR G-7 (No.247)

(e) 1875 - *Report and Proceedings of Select Committee on Te Aute College & Other Educational Trust Estates*, 1875 AJLC No. 4.

(f) 1877 - *Report on Four Petitions of Residents of Hawke's Bay, Relative to the Te Aute Estate, Together with Minutes of Evidence*, 1877 AJHR I-2C.

(g) 1906 - *Report and Evidence of the Royal Commission on the Te Aute and Wanganui School Trusts*, 1906 AJHR (Session II) G-5

1.3. The focus of the inquiries 'remained remarkably consistent' from the first inquiry in 1869 until the last and most significant inquiry in 1906. [42]

1.4. The prayer of the petitioners was always to have the endowment cut up and made available for settlers on the basis that doing so would generate higher returns for the trusts.

---

42 See draft report Professor Richard Boast 'A report on the application of Glasgow Leases to the Te Aute College Endowment Land' (2008) – Petitions and Inquiries.

2. The struggle for control of the educational trusts and endowments constituted by the Crown but administered by the Church (1871 – 1911)

2.1. During this period Te Aute's trusts and endowment were caught up in a broader struggle between the Church of England and the Crown for control of educational trusts and endowments constituted by the Crown but administered by the Church.

2.2. In 1877, when Samuel Williams was asked whether such educational endowments would be more efficiently managed if the Crown was to resume possession of them, he replied '*I very much doubt it*'. [43]

2.3. In relation to this broader struggle for control, if the Religious Charitable and Educational Trusts Bill 1871 had been passed into law, Te Aute's trusts and endowment would have reverted to the Crown.

2.4. Robert Stokes one of Te Aute's trustees and also a member of the Legislative Council at the time, argued very forcefully against the Bill and it was withdrawn after the second reading. [44]

2.5. This was the first of several Bills promulgated by the Crown between 1870 and 1906 to wrest control of religious charitable and educational trusts back from the Church of England.

2.6. The Church of England viewed such trusts and endowments as 'belonging' to the Church – a view that was not shared by the Crown or by Maori.

2.7. The Church rightly believed that the Crown had ulterior motives in pursuing the resumption of the trusts and the reversion of the lands. Maori also rightly believed that the Church had failed to carry out the terms of the trusts upon which their lands had been vested in Church appointed trustees. [45]

---

43 *Report and proceedings of Select Committee on Te Aute College & Other Edcuational Estates*' 1875 AJLC No. 4 at page 14.

44 NZPD, 1871 Vol 10; Sept 19 (COUNCIL) pages 492-495; Sept 21 (COUNCIL) page 532.

45 *Hohepa Wi Neera v The Bishop of Wellington and others*.

2.8. The struggle for control which began in 1871 intensified during the two decades which followed, as evidenced by the list below:

(a) 1871 - *Religious Charitable and Educational Trusts Bill 1871*

(b) 1877 - *Wi Parata v Bishop of Wellington and the Attorney General*

(c) 1894 - *Nireaha Tamaki v Baker*

(d) 1898 - *Porirua School Bill 1898*

(e) 1899 - *The Bishop of Wellington and others v The Solicitor- General*

(f) 1901 - *The Solicitor-General v The Bishop of Wellington and others*

(g) 1901 - *Porirua Wairarapa and Other School Grants Bill 1901*

(h) 1902 - *Hohepa Wi Neera v The Bishop of Wellington and others*

(i) 1902 - *Wallis and others v Solicitor General*

(j) 1905 - *Report and Evidence of the Royal Commission on the Porirua, Otaki, Waikato, Kaikokirikiri, and Motueka School Trusts*, AJHR G-5.

(k) 1906 - *Separate Endowed Schools Bill 1906*.

3. Compulsory purchases of 'land for settlement' (1900 – 1906)

3.1. Most 'land for settlement' was acquired voluntarily by the Crown. [46]

3.2. By 1906 the Crown had purchased 995,267 acres of private land for settlement throughout New Zealand. Of these 193,268 acres less than 20% had been purchased compulsorily. [47]

3.3. Significantly however, 47% by area and 50% by value of all the land compulsorily acquired for settlement throughout New Zealand was situated within a 25 kilometre radius of Te Aute. The Crown's compulsory purchase power was used more in the immediate vicinity of Te Aute than anywhere else in New Zealand. [48]

---

46 See M. Campell 'The Evolution of Hawkes Bay Landed Society 1850 – 1914' VUW PhD Thesis 1972, Chapter 15.

47 AJHR 1906 C-5. See also TABLES, Table 46.

48 TABLES, Table 47. MAPS PLANS & PHOTOS, Map No. 4 & Plan No. 1.

3.4. Although the Crown could not have used its compulsory purchase powers to acquire Te Aute's endowment under the legislation as it was in 1906, it would be naive to ignore the intimidatory effect of the compulsory purchases which had taken place in the vicinity of Te Aute between 1901 and 1906.

4. The Poukawa Native Reserve

4.1. The Crown had exerted pressure on Ngai Te Rangikoianake for over a decade to secure their consent to the draining of Lake Poukawa and the sub-division of the Poukawa Maori Reserve. This culminated in the enactment of the Poukawa Native Reserve Act 1903. [49]

4.2. In 1872 led by Te Hapuku a prominent Chief of Ngai Te Whatuiapiti, Ngai Te Rangikoianake gifted 3,668 acres of their lands surrounding Lake Poukawa at Te Hauke to the Crown, to be set aside as a reserve for their use and benefit under The New Zealand Native Reserves Act 1856.

4.3. Te Hapuku had been a leading figure in the gifting of tribal lands to the Crown for Te Aute's endowment in 1857 under The New Zealand Native Reserves Act 1856.

4.4. Ngai Te Rangikoianake was violently opposed to the Public Trustee's plan to drain the Lake and sub-divide the Poukawa Reserve into small farms for Pākehā settlers. Members of the Hapū had been running sheep successfully on the Poukawa Maori Reserve lands for many years before the Public Trustee (acting on complaints from Pākehā settlers) intervened. [50]

---

[49] NA – MA 1 180 6/61 Parts 1, 2, 3, &4 Poukawa Native Reserve; NA - AAMK 869 W3074 186b 6/61A Part 1, Maori Reserved Land – Poukawa – General 1900-1957.

[50] Sheep Returns – 1884 AJHR 1 H-3 (12-15); 1898 AJHR 1 H-23 (34-40); 1902 AJHR 1 H-23 (33-40); 1905 AJHR 1 H-23 (33-41); 1910 AJHR 1 H-23 (39-45); 1915 AJHR 1 H-23 (31-38). See TABLES, Table 66.

4.5. The Public Trustee ignored submissions made on behalf of the Hapū that their income would be considerably reduced if the reserve was sub-divided and let to small famers, and that they would also lose the benefit of the capital they had spent on fencing and other improvements. Over several years the Public Trustee persuaded Ngai Te Rangikoianake that they would be better off leasing the land, and in the end the Public Trustee's plans were given legislative effect under the Poukawa Native Reserve Act 1903.

4.6. It must have been crushing to the human spirit for Ngai Te Rangikoianake to be deprived of the use of the lands they had been farming and cropping in favour of settlers. It is difficult to fully comprehend the true cost of this reduction of the human spirit. [51]

4.7. Ngai Te Rangikoianake had experienced first-hand the willingness of the Crown to ignore legitimate objections and to use legislation to remove obstacles and to override or extinguish pre-existing interests in its all-consuming pursuit of 'settlement'. [52]

5. The catalyst for the Royal Commission of Inquiry 1906

5.1. The Royal Commission on the Te Aute and Wanganui School Trusts 1906 was ordered by the Premier Richard Seddon immediately after Te Aute's trustees refused an offer from the Crown to purchase 2,300 acres of Te Aute's endowment for 'settlement' on 21 February 1906. [53]

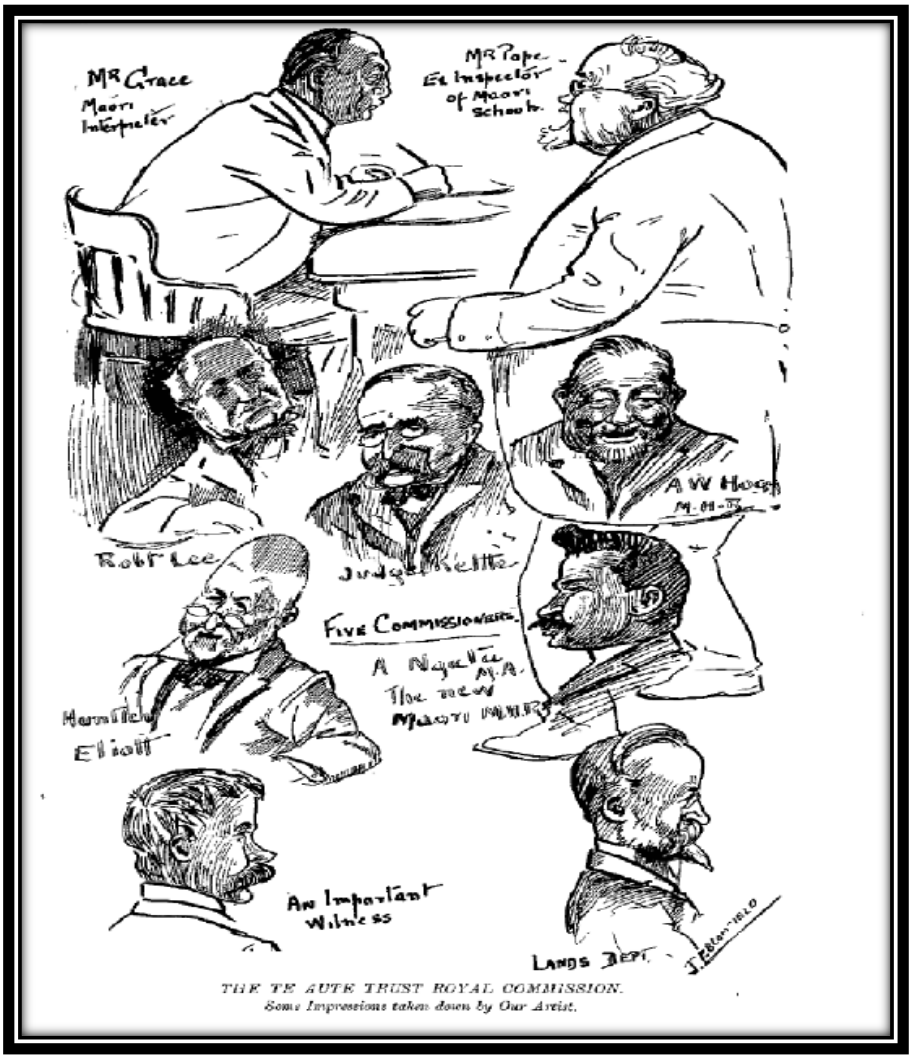
---

51 TABLES, Table No. 50 – see smorgasbord of leasehold tenures and leasing options; Table No. 63 – Land Settlement 1905 – 1940.

52 TABLES, Table No. 66 – Poukawa Maori Farmers 1884 - 1915.

53 NA – E1 W494 10/13/8 Te Aute Box, *Memorandum 19/03/1906* Premier RJ Seddon requesting a Royal Commission of Inquiry into Te Aute.
The Royal Commission of Inquiry 1906 followed hard on the heels of a scathing public attack on the school and the academic curriculum made by the Premier in public speeches he made during a visit to Hawkes Bay in the last week of February 1906. See *HB Herald 28/02/1906 p2*, *HB Herald 01/03/1906 p4*, *HB Herald 03/02/1906 p2*, *HB Herald 06/03/1906 p4*, *HB Herald 08/03/1906 p2*, *HB Herald 10/03/1906 p2*, *The Daily Telegraph 07/03/1906 p4*, *The Daily Telegraph 08/03/1906 p4*, *The Daily Telegraph 09/03/1906 p4*, *The Daily Telegraph 10/03/1906 p4*, *The Daily Telegraph 13/03/1906 p4*. See *Report and Evidence of the Royal Commission on the Te Aute and Wanganui School Trusts 1906* [**Report on 1906 Inquiry**], AJHR 1906 (Session II) G-5, J B Fielder's testimony at pages 11-12.

5.2. To begin with the Seddon's inquiry concerned only Te Aute, but Apirana Ngata very astutely asked for the scope of the inquiry to be enlarged to include Whanganui Collegiate, in order to highlight differences between the trusts. [54]



THE TE AUTE TRUST ROYAL COMMISSION.
Some Impressions taken down by Our Artist.

55

---

54 NA – E1 W494 10/13/8 Te Aute Box; Memoranda – *Memorandum 19/05/1906* Apirana Ngata requesting enlargement of inquiry to include Whanganui Collegiate. Request granted by Minster of Education Hon George Fowlds 29/05/1906.

55 National Library of New Zealand, Papers Past, Illustration by '*Free lance' Vol VI*, *Issue 310, 09 June 1906, Page 11*.

6. The rental value of Te Aute's short term leases (1869 – 1915) vs Te Aute's Glasgow leases (1916 – 2020)

6.1. The Royal Commission of Inquiry 1906 found that Te Aute's endowment had been let '*to the best advantage*' by the trustees and was '*earning as much as possible*'. [56]

6.1.1. While the Under-Secretary for Crown Lands, William Kensington did not disagree with that, he informed the Commission that the revenue for Te Aute's trusts would not suffer in any way if the endowment was cut up for settlement under perpetually renewable leases. He suggested that if the endowment had been cut up for closer settlement in 1869 '*it would probably have brought a higher rental*'. [57]

6.1.2. His testimony was however at odds with the evidence presented to the Commission and the testimony of several other witnesses including experienced valuers and local farmers**.**

6.2. Alexander Hogg (one of the commissioners) used testimony given by Samuel Williams at the Commission of Inquiry in 1869 to imply that Samuel Williams agreed with him that the endowment would gain from being sub-divided and leased for settlement. [58]

6.2.1. Alexander Hogg was a long serving liberal parliamentarian. He was a strong advocate for settlers and settlement. He was also a supporter of George Hogben's education reforms. Not surprisingly his questioning of witnesses during the inquiry left no doubt about where he stood and where his sympathies lay.

6.2.2. Despite what Alexander Hogg tried to imply, Samuel Williams did not suggest that cutting up the endowment into small farms for settlement under perpetually renewable leases would produce a much larger rental.

---

56 Report on 1906 Inquiry, AJHR 1906 (Session II) G-5, at iv.

57 Report on 1906 Inquiry, AJHR 1906 (Session II) G-5, Under-Secretary's testimony at page 105.

58 Report on 1906 Inquiry, AJHR 1906 (Session II) G-5, at pages 104-105.

6.2.3. What Samuel Williams had agreed with at that time was the advisability of establishing a township at Pukehou (very near Te Aute at the junction where the main road and the railway line meet). A sub-divisional plan of the township proposed by Samuel Williams laid out 45 quarter acre sections, a 1.5 acre school site, and 2 streets 'Te Hapuku Street' and "Williams Street' intersected by College Road. [59]

7. The Separate Endowed Schools Bill 1906

7.1. While much has been written about the Royal Commission of Inquiry 1906 the same cannot be said about the Separate Endowed Schools Bill 1906, which was promulgated shortly after the conclusion of the inquiry in June 1906.

7.2. This Bill provoked an extraordinary and unprecedented response from the Church of England which resulted in the Bill being 'thrown out'.

7.3. The Church appointed a special committee to review the Bill **and** also the Royal Commissions of Inquiry 1905 and 1906. [60]

7.4. An abstract of the committee's report on the Bill was published in newspapers throughout New Zealand. In what may be described as a 'call to arms' the Church pleaded that:

> " ... *every effort of every member of the General Synod direct and indirect through every member of the Church ... be used to prevent the passage of any such measure through the Legislature*." [61]

7.5. General Synod ordered that 150 copies of the full report [62] be forwarded to each of the Bishops of the Dioceses in New Zealand, that 30,000 copies of the abstract

---

59 MAPS PLANS & PHOTOS, Plan No. 4.

60 *Report and Evidence of the Royal Commission on the Porirua, Otaki, Waikato, Kaikokirikiri, and Motueka School Trusts, 1905* AJHR G-5; *Report and Evidence of the Royal Commission on the Te Aute and Wanganui School Trusts 1906*, AJHR 1906 G-5.

61 See for example *New Zealand Herald* (Thursday May 16 1907) article '**Interference With Existing Trusts'**.

62 A full copy of the '*Report of the Special Committee appointed to consider the Separate Endowed Schools Bill and Two Reports of Royal Commissions*' dated 25 Jan 1907 is in the *Proceedings of the Seventeenth General Synod* (Jan - Feb 1907), at pages 75-80.

be printed for distribution, and that an abstract of the full report be published in every newspaper in every Diocese.

7.6. A Parliamentary Committee was appointed which consisted of the Bishops of Wellington and Auckland and Mr James Allen M.H.R. (who chaired the special committee). Copies of the report were sent to the Prime Minister and the Minister of Education.

7.7. The untimely demise of the Premier Richard John Seddon on 10 June 1906 was very fortunate for Te Aute. He remains the longest serving Prime Minister in New Zealand's history and had just six months earlier won a landslide victory over the Independents led by William Massey. He was a tremendously powerful and skilled politician who would have seen the Separate Endowed Schools Bill 1906 made law if he had lived to see it introduced to Parliament.

7.8. George Fowlds who introduced the Bill to Parliament in 1907 did not have Richard Seddon's political savvy or his force of will, and in the face of the onslaught from the Church of England the Bill was thrown out.

7.9. Although the Bill was not made law, it nonetheless laid bare the Crown's intentions in so far as Te Aute's trusts and endowment were concerned and also the trusts of other schools similarly constituted and endowed by the Crown.

7.10. The Separate Endowed Schools Bill was just another chapter in a decade long battle between the Crown and Church for control of educational trusts and endowments constituted for the benefit of Maori during the 1850s.

7.11. If the Bill had been passed into law:

(a) Te Aute's trusts would have been placed under the supervision and management of a Board constituted and appointed under the Act, thus replacing the function of the General Synod under the Bishop of New Zealand Trusts Act 1858.

(b) The endowment lands and all other property vested in Te Aute's trustees would without conveyance have immediately and absolutely

vested in the Board along with all powers of management and control over such lands.

(c) The Board would take and hold such lands 'subject to the Act' with the same powers and duties as High School Boards under the High Schools Reserves Act 1880.

(d) All rents and profits derived from Te Aute's endowment would have vested in the Board and been '*held ... for the purposes of this Act*'.

(e) Te Aute College would have been subject to inspection and been accountable to the Minister of Education under the Education Act 1904.

(f) Students would not have to attend any religious observance or instruction as a condition of enrolment at Te Aute College.

(g) The Board was authorised to make roads and dedicate such roads to the public, and make improvements to the endowment lands.

(h) The Board was authorised to grant leases in accordance with the leasing provisions contained in the Municipal Corporations Act 1900, notably section 192 which specifically authorised Councils to grant perpetually renewable leases.

(i) The Act would have applied to the Te Aute trusts and endowment, and Te Aute College from 1907.

7.12. The promulgation of the Separate Endowed Schools Bill 1906 was not justified by the findings or the recommendations of the Royal Commission of Inquiry 1906.

7.13. Importantly the Commission did not recommend, or by implication support, the resumption of Te Aute's trusts by the Crown or the reversion of its endowment.

8. The pressure applied by the Department of Education

8.1. The pressure to sub-divide the endowment for 'settlement' cannot be viewed in isolation from the pressure exerted by the Department of Education and in particular George Hogben, the Inspector-General Schools.

8.2. George Hogben's testimony at the Royal Commission of Inquiry 1906 was blatantly racist and patronising. [63]

8.3. He informed the Commission that 'radical' changes were necessary at Te Aute. He wanted Te Aute's academic curriculum dumbed down supposedly for the benefit of Maori. [64]

8.4. The following exchange classically exemplifies the Inspector-General Schools' racist and patronising views:

> *" Now, with respect to the donors of the land or their descendants, and their view? The donors of the land are dead. I do not recognise that the descendants of the donors know any more as to the intentions than we do." [65]*

8.5. His determination to see radical change at Te Aute is evidenced by his involvement in the drafting of the Separate Endowed Schools Bill 1906, which he supervised under the direction of the George Fowlds the Minister of Education at that time.

8.6. The Department of Education continued to apply pressure over the ensuing years, by refusing secondary school funding for Te Aute College until vocational training in agriculture was added to its academic curriculum.

8.7. Under the Education Act 1914 funding for Te Aute depended on the school being accepted for registration as a private secondary school.

8.8. The department rejected Te Aute's application for registration until it complied with its 'recommendation' that Te Aute provide an agricultural training course.

8.9. Between 1914 and 1921 Te Aute's funding was reduced as a consequence of being classified as a primary school. [66]

---

63 Report on 1906 Inquiry, AJHR 1906 (Session II) G-5, at pages 82-92.

64 Report on 1906 Inquiry, AJHR 1906 (Session II) G-5, at pages 82-92.

65 Report on 1906 Inquiry, AJHR 1906 (Session II) G-5, at page 92.

66 Education Act 1914, sections 2 & 87. Te Aute College by default deemed to be a Private School. See NA - E2 1948/45b 44/6/17 TAC Private School 1916-1948, *letter of Director of Education to Secretary TATB, 11/04/1916*. See also companion report '*Te Aute College: State School or Anglican Church School?*' pages 9 & 10.

9. Extension of the Crown's Glasgow Leasing System

9.1. While the Minister of Education failed to get the Separate Endowed Schools Bill 1906 passed into law, over the ensuing years the Crown's powers to compulsorily acquire land for settlement was extended to lands held by trustees including school reserves and endowments.

9.2. Under the Education Reserves Amendment Act 1911 the trustees of high schools were authorised for the first time to grant perpetually renewable leases under the Public Bodies Leases Act 1908. [67]

9.3. The Te Aute Trust Board was similarly authorised to grant perpetually renewable leases under the Church of England Trusts Act 1913 in accordance with the provisions of the Public Bodies Leases Act 1908.

9.4. While endowments and reserves were exempt from compulsory acquisition by the Governor General in Council under the Land For Settlements Act 1908, the exemption did not apply if the Minister of Lands issued a notice under the Land Laws Amendment Act 1913. If the Minister required such lands for settlement, he was authorised to compel the Trust Board to 'elect' to sub-divide the endowments lands for settlement either voluntarily or compulsorily under the Act. [68]

9.5. The pressure on the Crown to acquire more land for settlement intensified during the First World War to provide land for returning soldiers. The Crown acquired land for this purpose at Otane near Te Aute and provided small leasehold farms under the Discharged Soldiers Settlement Act 1915. This soldiers' settlement was known as the "Te Kura Settlement". [69]

---

67 Section 2 Education Reserves Amendment Act 1911.

68 Section 64 Land Laws Amendment Act 1913.

69 NA – R675601 ABWN W5280 8109 Box 108 Rec No. 369. The leasehold farms were offered on Deferred Payment Licence, or 33 year Crown Leases perpeptually renewable and with right to purchase freehold. See also R21028784 LA1 1136 Rec No. 21/144.

10. Extension of Glasgow leasing powers to 'public bodies' 1908 – 1913

10.1. The Crown's 'settlement' leasing system, which included a smorgasbord of easy and convenient leasing arrangements, made it difficult for local authorities, harbour boards, hospital boards, education boards, charitable trusts and societies, and the like, to lease their lands.

10.2. The extension of the perpetual leasing powers to such public bodies under the Public Bodies Leases Act 1908, the Municipal Corporations Act 1908, and others such as the Education Reserves Amendment Acts 1910 and 1911, was driven by the need to give public bodies competitive leasing powers. It was widely considered that public bodies who did not possess the power to grant Glasgow leases were at a severe disadvantage because of the expectation of the public that all leases should be offered on the same easy and convenient terms as the Crown's 'settlement' leases. [70]

10.3. The Aotea District Maori Land Council's first offering of leases to the public in 1903 failed to attract any interest because the leases did not provide for compensation to be paid to lessees for improvements. It was not until the leases were amended to provide for the payment of compensation for improvements that the public showed any interest in taking up the Atihau leases. [71]

10.4. By 1915 more than 20 million acres of Crown land was held under a variety of benevolent leasehold tenures, the two key features of which were long terms and cheap rentals. [72]

10.5. The average return on all Crown lands leases in 1915 was £0.04 per acre. The average return on Crown education endowment leases in 1915 was £0.10 per acre. [73]

---

70 NZPD, 1908 Vol 10 Sept 22 (COUNCIL) pages 312–322; Sept 29 (COUNCIL) pages 565-567; Oct 8 (COUNCIL) 1026-1029.

71 *Bassett & Kay* - Part One: 3.1, 1.1.3 *Council Administration* page 11-14. See also Walzl, Section 1B iii *Problems with Settling Vested Lands*, pages 69-81.

72 TABLES, Table No. 56.

73 TABLES, Table Nos. 59 & 60.

10.6. To put these rentals into perspective, Samuel Williams paid £0.44 per acre for his lease of Te Aute's endowment between 1903 and 1915. This was more than 10 times the rate paid by lessees under all Crown land leases and more than 4 times the rate under Crown education endowment leases. [74]

10.7. This may have been why the Te Aute Trust Board did not request to be declared a 'leasing authority' by the Governor in Council under the Public Bodies Leases Act 1908. Whatever its reasons may have been, the Trust Board did not request to be declared a 'leasing authority' under the Act as it could have. [75]

10.8. The Church of England had the Te Aute Trust Board declared a 'leasing authority' under the Church of England Trusts Act 1913.

10.9. It is difficult to know if the Church in promulgating the Church of England Trusts Bill 1913 appreciated that a leasing system created to encourage and facilitate settlement would inevitably erode the viability of Te Aute's trusts and other trusts similarly constituted and endowed.

10.10. The Act was promulgated by the Church to remedy an 'anomaly' which emerged during a dispute between the Whanganui Collegiate trustees and the Church in 1909 which had nothing to do with Te Aute's trustees.

10.10.1. The Whanganui trustees obtained an order from the Supreme Court in July 1908 allowing them to borrow £35,000 to erect new buildings, make roads and sub-divide trust lands for leasing and so on, without the approval of General Synod.

10.10.2. The matter was referred to a Standing Commission appointed by General Synod in 1909 who reported that as a matter of law the trustees were not under the control of General Synod or bound by its regulations but by the terms of their trusts.

---

74 TABLES, Compare Table No. 11 with Nos. 59 & 60.

75 NA – R10764845, IA1 W2578 174 rec 127/1 Part 1, *list of 240 public bodies declared & gazetted leasing authorities by Order in Council*. The list includes Masonic Associations, Education Boards, Public Libraries, Local Councils, Anglican Church Trust Boards, Harbour Boards, River Boards, Hospital Boards, Universities, Land Trustees, County & Borough Councils, Institutes, & School Commissioners. The Waiapu Board of Diocesan Trustees and the H & W Williams Memorial Trust were declared 'leasing authorities' in 1913.

10.10.3. The Standing Commission also reported that the trustees could sell property without the consent of General Synod which by implication meant the property of the trust and other similar trusts including Te Aute's did not belong to the Church. [76]

10.11. Given the stoush which erupted in 1907 between the Crown and the Church over the Separate Endowed Schools Bill 1906, and given that the Church had stated publicly that the educational endowments vested in trustees appointed by the Church belonged to the Church, this legal opinion with all its potential ramifications would have rocked the Church.

10.12. Denying the validity of a legal opinion tendered outside the Church was one thing, but denying the validity of such an opinion delivered from within the Church was an altogether different matter.

10.13. Ironically, given the background to the promulgation of the Bill, lawyers representing the Whanganui Collegiate trustees had the Bill amended so that the Whanganui Collegiate trustees were exempted from the provision in the Bill which stipulated that trustees held the property vested in them for and on behalf of General Synod.

10.14. The Te Aute Trust Board was not involved in the events which led to the call for the Bill. The Trust Board was not consulted about the Bill and it was not represented by lawyers during the drafting and committee stages of the Bill. However for the same reasons that the lawyers representing the Whanganui Collegiate trustees gave to have them exempted, the Bill should not have applied to Te Aute's trusts and trustees.

---

76 Legal opinion of Standing Commission of the Church of England 22/10/1909 contained in the *Proceedings of the Eighteenth General Synod* (Jan - Feb 1910), at pages 198-207. While the Church Constitution did empower the General Synod to appoint, control and remove trustees of *Church Trusts* the Standing Commission determined that such powers did not apply to lands conveyed to trustees under the Bishop of New Zealand Trusts Act 1858, which included *Te Aute's endowment*. See also Legal Opinion of Dr Bryan Gilling (Rainey Collins Lawyers) 9 November 2010.

10.15. Importantly in this context there appears to be no logical reason for adding to the leasing powers the Te Aute Trust Board already had, and which had worked perfectly well for the previous 50 years, the power to grant perpetually renewable leases.

10.16. The Bill was promulgated to restrict trustees' powers not to enlarge trustees' powers. For example, General Synod was given the power to remove trustees which power had previously been reserved to the Supreme Court.

10.17. It is difficult to understand why a Bill promulgated to restrict the power of trustees to sell or mortgage trust lands by making such powers exercisable only with the authority of General Synod would not also similarly restrict the powers of trustees to grant perpetually renewable leases.

10.18. The perpetually renewable lease was widely regarded even at that time as tantamount to alienation because it created a leasehold title as good or better than freehold title.

10.19. The Whanganui Collegiate trustees did not require or seek the power to grant Glasgow leases because they had already applied the 60 year building leases to their township properties under the Municipal Corporations Act 1900.

10.20. Ronald Beckett one of the trustees had informed the Royal Commission of Inquiry in 1906 that the trustees were satisfied with the 60 year building leases they had employed to lease their township properties under the Municipal Corporations Act 1900, and that Glasgow leases did not suit their requirements. [77]

10.21. The Te Aute Trust Board did not require or seek the power to grant Glasgow leases because they had employed short term leases '*to the best advantage*'. [78]

---

[77] Report on 1906 Inquiry, AJHR 1906 (Session II) G-5, at page iv. The Commission's findings make it abundantly clear that the employment of short term leases had worked exceptionally well for Te Aute's trusts.

[78] Report on 1906 Inquiry, AJHR 1906 (Session II) G-5, at page 92.

10.22. Given the fully developed condition of the endowment lands it was not necessary to employ long term leases. Fixed term leases with compensation for improvements would have been perfectly adequate and fit for purpose.

10.23. The leasing provisions inserted into the Bill were not necessary for the purposes of shoring up the General Synod's powers to control trustees but the inclusion of such provisions would have smoothed the passage of the Bill through the Legislature.

10.24. The most likely explanation for the inclusion of the Public Bodies Leases Act 1908 leasing powers in the Church of England Trusts Bill 1913 is that the Crown would have required this to be done.

10.25. Minutes and notes contained in the Bill file confirm that this was indeed what happened. The express power to grant leases in accordance with the Public Bodies Leases Act 1908 was inserted at the suggestion of the Solicitor-General (Mr K C Salmond) during a meeting of the Bills Committee on 25 September 1913. A Crown's Law Draftsman (Mr Joliffe) was also in attendance at that meeting. [79]

---

[79] NA – R17690515 LE1 571 1913/26, *Committee – Selection (Private Bills) – Church of England*. The folowing words in the last sentence of clause 9 of the Bill, '*unless heretofore declared to be such a leasing authority by Order in Council under the said Act*' were changed by the Bills Committee at the suggestion of the Solicitor-General to '*and shall have power to grant any leases that are in accordance with that Act*'.

Related to this, 1925 the Whanganui Collegiate trustees filed legal proceedings in the Supreme Court (*Wanganui College Board of Trustees* v *Attorney General*) to test the legality of arrangements originally proposed by George Hogben the Inspector-General of Schools at the Royal Commission of Inquiry in 1906 to cut out about 25 acres of endowment land and to transfer the same to the Department as a site for a public school. NA – E1 W494 26 10/12/12 '*Reserves & Endowment Wanganui Collegiate*'.

Interim leasing arrangements were made under which the Department of Education was granted possession of the proposed school site at a reduced rental or at a rental less than full value.

Lawyers for the Whanganui Collegiate trustees questioned the validity of such interim arrangements. They proposed that *The duty of the Attorney-General was to protect the trust but he was identified in proceedings with a Department that was seeking to divert the trust;* ***and*** *Leases granted at an under value constitute a breach of trust*. NA – E1 W494 26 10/12/12 '*Reserves & Endowment Wanganui Collegiate*'. Letter dated 13/09/1935 from CP & CS Brown, Barristers & Solicitors, Whanganui to HH Cornish (Kings Counsel) Solicitor-General.

E. Can the Crown continue to assert that 'it played no part in influencing the Board's decision' to grant Glasgow leases and that it therefore 'bears no responsibility' for the detriment caused by the Glasgow leases? [80]

1. According to the Office of Treaty Settlements (OTS):

> " *35. The Crown is yet to see historical evidence which supports the view that the Crown intentionally influenced the TATB's decision to enter Glasgow leases ...*
>
> " *36. The Crown's view has been that it played no part in influencing the Board's decision, and therefore bears no responsibility for addressing any prejudice that the Board, and the school, may have experienced as a result.*" [81]

2. These statements were made in a confidential paper (OTS Paper) presented to He Toa Takitini (HTT) [82] on **19 December 2014**. [83]

---

80 Refer confidential paper prepared by OTS and presented to HTT on 19/12/2014; paras 35 & 36.

81 OTS Paper at paras 35 & 36.

82 HTT is an entity constituted to negotiate and settle tribal claims within the Heretaunga – Tamatea rohe. The Crown and HTT included Te Aute's WAI claims in the basket of claims settled by HTT. This was done without the knowledge or agreement of Te Aute's WAI claimants. The mandate of HTT to negotiate a settlement of Te Aute's WAI claims has at all times been disputed by the claimants. WAI 1456 and WAI 2332 were not included in any Statement of Claim or Consolidated Statement of Claim of HTT, and the inclusion of Te Aute's WAI claims in the basket of HTT claims in 2010 (without the knowledge or agreement of the Te Aute WAI claimants) breached an earlier agreement made in 2008, that Te Aute's WAI claims fell outside the scope of HTT's tribal claims. All other claims included in the HTT basket of claims had been expressly mandated (in writing) by the respective claimants. OTS finally conceded in 2015 that WAI 2332 was a contemporary claim and was not included in the settlement of historical / tribal claims. OTS also conceded that WAI 1456 had only been settled in respect of the interests of Heretaunga-Tamatea Maori, not other Maori.

83 The claim that the Crown '*is yet to see historical evidence which supports the view that the Crown intentionally influenced the TATB's decision to enter Glasgow leases*' is somewhat disingenuous. The evidence underpinning WAI 1456 and WAI 2332 was offered to the Crown several times in 2008 and 2009. The Crown was offered the research underpinning WAI 1456 at a meeting with the Hon Dr Michael Cullen on 12 June 2008. This meeting followed a presentation to Dr Cullen and the late Hon Parekura Horomia at Te Aute College on 18 April 2008. The same offer was made to officials at several meetings with officials from Treasury, Ministry of Education, Te Puni Kokiri, and Crown Law during 2008 and 2009, **and** to Ministers Sharples, Te Heuheu, and Finlayson on 23 March 2009. The claimants were informed that the Crown did not need to see such research, because it was looking at a 'whole of government approach' to providing 'solutions' for the future. The claimants were asked to develop future focused options, which culminated in 'Vision 2035'. This vision statement (and plan) was developed under the guidance of Professor Mason Durie. It proposed a 'quantum leap' approach to secure Te Aute's future. Vision 2035 has gathered dust since 2009.

3. The OTS Paper was discovered after a request was made in May 2015 under the Official Information Act (OIA) for information relating to WAI 1456 and WAI 2332. It was eventually released on **31 August 2015**. [84]

4. Upon receipt of the OTS Paper, the writer emailed a copy of this report [85] to OTS on **01 September 2015** nine months **after** the OTS Paper was presented to HTT on 19 December 2014. [86]

---

84 Received by email 31/08/2015 as an email attachment from Rewi Henderson, OTS Negotiation & Settlement Manager

85 The 'August 2015 Revision' was sent as email attachments in 3 separate emails to Rewi Henderson, OTS Negotiation & Settlement Manager on 01/09/2015.

86 The OTS Paper is riddled with errors of fact and plainly incorrect statements that could **not** have come from the claimants research. In its paper comprising 8 pages there are no less than 40 plainly erroneous statements. The following **examples** of such errors highlight a serious failing of the Crown to check the correctness of even basic historical facts.

Para 5. Te Aute College was **not** established by 'Bishop' Samuel Williams.

Para 12. Samuel Williams was **never** a trustee of Te Aute's trusts. He managed and leased the endowment lands.

Para 14. The Crown did **not** establish a 'Royal' Commission of Inquiry in 1869.

Para 15. The Te Aute Trust Board was **not** 'formed in 1884'. It was incorporated in 1908 under the provisions of the Religious, Charitable, and Educational Trust Boards Incorporation Act 1884. The 'Bishop' did **not** secure a loan in 1872 to erect school buildings at Te Aute. A private loan was obtained by the then Reverend Samuel Williams. No funding was provided by the Crown or the Church for that purpose.

Para 35. The statement that Te Aute's Glasgow leases were granted '*in a period of low inflation (as in 1916)*' is plainly nonsense. There have been two periods of sustained hyper inflation in New Zealand – during the period of the First World War and in particular between 1914 and 1920 – and during the 'car less' days of the 1970s caused by the APEC oil embargo 1973-4. This information is available on the Reserve Bank of New Zealand (CPI) website. The further statement in para 35, that Te Aute's Glasgow leases '*provided a strong incentive to the lessee to carry out significant improvements*' igonores the fact (as already noted earlier in this Report) that the Te Aute Endowment had been fully developed, sub-divided and roaded, over a period of more than 50 years by Smauel Williams and the Trust Board.

Para 39. Under the heading '*Original intent of gift dishonoured / Crown initiated land swaps*'. The statement that the 'exchange of gifted lands was highly complex, and historical research on these issues is incomplete' is simply not true. The writer undertook exhaustive research on this specific issue between 2004 and 2007. A report accompanied by maps and diagrams shows very simply, clearly and entirely, the series of exchanges and sales which took place between 1857 and 1866. There is nothing complex about the same, and the research pertaining to the same can be properly regarded as complete.

5. Clearly, the Crown cannot continue to assert that it has not seen '*historical evidence which supports the view that the Crown intentionally influenced the TATB's decision to enter Glasgow leases*' [87] and the related assertion that the Crown '*played no part in influencing the Board's decision*' [88] given that OTS has had this report [89] since 01 September 2015.

5.1. The Crown has not undertaken any research or provided any historical evidence to support its assertions. [90] In the absence of any such research or evidence, it is suggested that it would be disingenuous for the Crown to continue with such assertions.

5.2. The historical evidence [91] referenced in this report shows that the Crown unquestionably influenced the Trust Board's decision.

5.3. However, a new line of argument has emerged in a report of James Willis dated 1 April 2016. [92] This new line argument is based on a legal opinion of Peter McKenzie QC dated 28 May 2013**.** [93] The McKenzie Opinion argues that the leases originally granted by the Trust Board were **not** perpetually renewable leases.

---

87 Refer OTS Paper, para 35, quoted above at F1.

88 Refer OTS Paper, para 36, quoted above at F1.

89 The August 2015 Revision of this Report.

90 The OTS Paper comprises a somewhat superficial review of information made available to the Crown, which while contextually relevant, did not directly relate to the Glasgow leases issues dealt with in this Report. There are no references to primary source material in the OTS report, which would indicate that any thorough historical research has been undertaken by OTS or TPK. The research carried out by Government Departments between 1979 and 1982, specifically on leases, contradicts the recent assertions of TPK and OTS.

91 Refer Section E of this Report.

92 This report (the **Willis Report**) on Te Aute's Glasgow leases was prepared by James Willis, a barrister appointed by the Attorney-General, the Hon. Christopher Finlayson, and presented to the Te Aute Trust Board.

93 This legal opinion (the **McKenzie Opinion**) was commissioned by Te Puni Kokiri (TPK). It was delivered to TPK **before** the August 2015 Revision of this Report was made available to the Crown on 01 September 2015.

F. Can the Crown argue that the leases granted by the Te Aute Trust Board a century ago were not perpetually renewable?

1. The McKenzie Opinion

1.1. According to the Willis Report:

> " *The McKenzie Opinion 'reached an important conclusion, namely that there is at least some doubt as to whether the applicable provisions of the leases support the view the leases are to be regarded as perpertually renewable'*. [94]

1.2. The McKenzie Opinion provides the Crown with a new line of argument to exculpate itself from responsibility for any detriment caused by the leases. If the Trust Board had granted fixed term leases and not perpetually renewable leases, it follows that the Trust Board could not have been been influenced by the Crown to grant perpetually renewable leases.

1.3. The McKenzie Opinion compared the wording of the renewal clauses in one of the original leases with the wording of such clauses in the current leases. [95]

1.4. The 'possibility' that Te Aute's leases are not perpetually reneable leases, is contradicted by the irrefutable fact that the leases have been treated as perpetually renewable leases for more than a century, and also by the context, (legislative, historical, social and political), within which Te Aute's leases were granted.

1.5. The Crown has advertised, granted and renewed leases, which contained the exact same renewal clause found in the Te Aute leases, on the basis that the same were perpetually renewable.

---

94 Willis Report, unumbered page 2 under the heading 'PD McKenzie QC Opinion'.

95 Although the McKenzie Opinion suggests that the current leases may not be perpetually renewable, the real thrust of the opinion is that the original leases were not perpetually renewable, based on the wording of the renewal clauses in the original leases versus the wording of the renewal clauses in the current leases. The McKenzie Opinion is based on an analysis of a reconstructed copy of the Elliot lease (destroyed in the Napier Earthquake 1931) executed in 1917 and a copy of one of the current leases (renewed in 2000) which leases expire in 2020.

2. The origin of the renewal clauses used in Te Aute's leases

2.1. In relation to whether Te Aute's leases were originally fixed term leases with one right of renewal or were perpetually renewable leases, the writer has examined **the origin of the renewal clauses** used in Te Aute's leases, and the use of such renewal clauses in **Crown leases**, rather than arriving at an opinion based on a contemporary view of the wording used in such leases.

3. Leases granted under section 5(g) of the Public Bodies Leases Act 1908.

3.1. This form of lease was one of several prescribed for 'leasing authorities' under the Act. Leases granted under section 5(g) of the Act were perpetually renewable, as were the leases granted under section 5(e) and section 5(f) of the Act. [96]

3.2. Section 5(g) allowed leasing authorities to grant leases which conferred on lessees an option, exercisable 'in perpetuity', either to accept a renewed lease on the same terms and conditions as the existing lease, or to have a new lease on the same terms and conditions as the existing lease, offered for sale by public auction and to receive from such sale the value of the lessees improvements.

3.3. These kinds of leases were granted under the avalanche of legislation enacted to extend the application of the Crown's land settlement polices and objectives, during the first two decades of the last century. [97]

---

[96] Refer Public Bodies Leases Act 1908, section 5 and the First & Second Schedules. **See cl 1. First Schedule**.

[97] See for example, Municpal Corporations Act 1908, section 136(1)(b)(iii); Land Act 1908, sections 218 & 219; Education Reserves Amendment Act 1910, sections 4 & 5; Native Land Act 1909, Reg No. 38. It is important to note that under these types of leases, lessees were not permitted to purchase the freehold in lieu of a renewed lease.

NA – ABWN 7609 W5021 Box 843 record 55380 Part 2.

In a confidential memorandum submitted to Cabinet by the Minister of Lands on 01/06/1982, provided indicative numbers of **Maori leases**, **Public Bodies leases** & **Crown leases** granted by public bodies. We can extrapolate from the information provided in the memorandum (and the associated reports provided by the Departments of Lands, Valuation, & Maori Affairs) that the number of leases in perpetuity and perpetually renewable leases would have exceeded 150,000.

3.4. The renewal clause used in **Crown leases** granted under section 5(g) of the Public Bodies Leases Act 1908, ('PBLA 1908') and other similarly enabling legislation, [98] was the same renewal clause used in **Te Aute's leases**.

3.5. It is proposed that if Crown leases granted under section 5(g) of the Public Bodies Leases Act 1908 were advertised as perpetually renewable leases, and have been administered and renewed as perpetually renewable leases, the Crown cannot argue that Te Aute's leases, also granted under section 5(g) of the Public Bodies Leases Act 1908, and also administered and renewed as perpetually renewable leases for the last century, are not perpetually renewable.

4. The Hilda Wooldridge Lease

4.1. This was a **Crown lease** [99] granted under section 2 of the Education Reserves Amendment Act 1910 and section 5(g) of the Public Bodies Leases Act 1908.

4.2. The Hilda Wooldridge lease contained the following renewal clause:

> " *12. On the expiration by effluxion of time of the term hereby granted and thereafter at the expiration of each succeeding term to be granted to the Lessee ... the outgoing Lessee shall have a right to obtain ... a new lease ... for* ***the*** *term of twenty one years computed from the expiration of the expiring term and subject to the same covenants and provisions as this lease applicable to such new lease*." [100]

4.3. Te Aute's Elliot lease, was granted under section 9 of the Church of England Trusts Act 1913 and section 5(g) of the Public Bodies Leases Act 1908, contained the same renewal clause:

---

98 See Municpal Corporations Act 1908, section 136(1)(b)(iii); Land Act 1908, sections 218 & 219; Education Reserves Amendment Act 1910, sections 4 & 5; Native Land Act 1909, Reg No. 38.

99 The parties to this lease were His Majesty The King (Lessor) and Hilda Grace Wooldridge (Lessee). A lease was originally granted to JW Hayden and E Dingle on 01/10/1920. It was transferred to Hilda Grace Wooldridge 29/06/1921. Following minor adjustments to the area and rental a new lease was executed on 26/04/1928. The new lease was in all other respects the same as the original lease Hayden & Dingle. Refer NA – R16796569: AALD W3055 864 Box 110 item d ER 1475.

100 Copy of lease: NA – R16796569: AALD W3055 864 Box 110 item d ER 1475.

> " *12. On the expiration by effluxion of time of the term hereby granted and thereafter at the expiration of each succeeding term to be granted to the Lessee ... the outgoing Lessee shall have a right to obtain ... a new lease ... for* ***a*** *term of twenty one years computed from the expiration of the expiring term and subject to the same covenants and provisions as this lease applicable to such new lease*." [101]

4.4. The above renewal clauses are in all material respects virtually identical. [102]

4.5. On the expiry of the first 21 year term of the Wooldridge lease, the Crown offered a new lease, on the same terms as the expired lease, by way of public auction. The Crown's 'Abstract of Terms and Conditions' for the new lease included the following statement:

> " *Term of lease is twenty-one years, with perpetual right of renewal for successive terms of twenty-one years at rents based on fresh valuations under the provisions of the Public Bodies Leases Act 1908."* [103]

4.6. Having regard to this statement, and given that the renewal clauses in the Wooldridge and Elliot leases are the same, it is proposed that the Elliot lease also conferred on the lessee a perpetual right of renewal.

4.7. The Hilda Wooldridge lease is just one example of thousands of leases similarly granted and renewed as perpetually renewable leases, under legislation enacted by the Crown to facilitate land settlement during the three decades from 1890 to 1920. [104]

---

101 Copy of lease NA – R12051151, ABWN W5021 7609 Box 843 55380 Part 1.

102 The only difference being the use of the word "**a**" in the Elliot lease renewal clause and not "**the**" in the Hilda Wooldridge lease renewal clause as highlighted in the respective clauses above.

103 NA - R16796569 AALD W3055 864 Box 110 item d ER 1475. Refer NZ Gazette No. 51, 21 May 1942, at page 1444.

104 Refer Footnotes 108 & 109 above.

Confidential Cabinet Minute 82/22/6 dated 08/06/1982 on Te Aute's Parliamentary Petition (1979/68) noted the concern of the Government about the possible effect legislative abrogation of Te Aute's Glasgow leases could have on "other Maori leases" under the Maori Reserved Land Act 1955, and that "from known existing information there would be a very large number of leases affected by the flow-on effects if there was any Government move to the the Te Aute leases". It was noted in Cabinet Minute L (82) 24 dated 03/06/1982, that "the question of Crown leases was currently being examined ... and that the outcome of that examination would have a significant bearing on the future of the Te Aute College leases". It was agreed that "no action be taken on the petition" and that the petition "should remain under consideration pending a decision" on the findings concerning Crown leases. Despite legislative abrogation of Maori Reserved Land leases and Crown leases since then, there has been no action on the petition. Refer NA – ABWN 7609 W5021 Box 843 record 55380 Pt 2.

5. The Taranaki Scholarship leases

5.1. These were **Crown leases** granted under section 33 of the Reserves and other Lands Disposal and Public Bodies Empowering Act 1914 and section 5(g) of the Public Bodies Leases Act 1908. [105]

5.2. About 9,950 acres of confiscated Maori land and was reserved under The University Endowment Act 1868. The reserved land known as the Opaku Reserve was later set aside to provide tertiary scholarships under the Taranaki Scholarships Act 1905. The Opaku Reserve was subdivided into leasehold farms. The Taranaki Land Board granted leases to settler farmers under the Reserves and other Lands Disposal and Public Bodies Empowering Act in 1914 and section 5(g) of the Public Bodies Leases Act 1908, for perpetually renewable terms of 21 years. [106]

5.3. The Taranaki Scholarship leases contained the following renewal clause:

> " *10. On the expiration by effluxion of time of the term hereby granted and thereafter at the expiration of each succeeding term to be granted to the Lessee ... the outgoing Lessee shall have a right to obtain ... a new lease ... for* ***the*** *term of twenty one years computed from the expiration of the expiring term and subject to the same covenants and provisions as this lease applicable to such new lease*." [107]

---

105 Refer NA – R3947443 ABWN W5021 6095 Box 207 Rec 2/01/01 Part 1; R10381095 AAQU W3428 889 Box 684 Rec 1911/1139.

106 NA – R18850799 AAQU W3570 Box 208 Rec 917; "NOTES on 1. The History of the Opaku Reserve An educational endowment in Taranaki and 2. The Taranaki Scholarships Fund" by JA Valentine and PJH White Members of the Taranaki Education Board. Printed by the Taranaki Daily News, August 1930.

107 Copy of lease: NA – R16796569: AALD W3055 864 Box 110 item d ER 1475.

5.4. Again the wording of the lessee's right of renewal in these leases is virtually identical to the wording of the lessee's right of renewal in the Hilda Woolridge lease and Te Aute's Elliot lease. [108]

5.5. The renewal clauses used in the Hilda Wooldridge lease and the Taranaki Scholarship leases were common in Crown leases and were not by any means peculiar to Te Aute's leases. [109]

5.6. It is noted that Taranaki Scholarship leases were granted **before** Te Aute's leases were originally granted. [110]

5.7. Having regard to Peter McKenzie's view that the leases originally granted by the Te Aute Trust Board a century ago were not perpetually renewable, it is noted the Taranaki Scholarship leases have been renewed several times since the same were granted in 1914 **and** continue to be administered by the Crown as perpetually renewable leases in 2016. [111]

5.8. The renewal clauses used in the Taranaki Scholarship leases, (the original leases and the current renewals), are in all material respects the same as those used in Te Aute's leases, (the original leases and the current renewals).

5.9. For all these reasons, it is submitted that the Crown, cannot argue that Te Aute's original leases were not perpetually renewable and that the current renewals are not perpetually renewable.

6. Atihau's fixed term leases

---

[108] Refer para 6.3 above and footnotes 111 & 112 above. Copy of lease is held at National Archives: NA – R12051151, ABWN W5021 7609 Box 843 55380 Part 1. See also current renewal of lease (Reg No. 453904.1 & Leasehold Title 74836) between HMQ (lessor) and DC Lawrence (lessee).

[109] Both forms of renewal clauses used in Te Aute's leases - the Elliot lease renewal clause, (which did not use the words 'including this present covenant for renewal') and the current lease renewal clause (which does) were common in perpetually renewable school reserves leases for at least 15 years before Te Aute's leases were originally granted in 1916. See 'Leases Granted By School Commissioners' AJHR 1904, C-9.

[110] Refer NA – R3947443 ABWN W5021 6095 Box 207 Rec 2/01/01 Part 1; R10381096 AAQU W3428 889 Box 685 Rec 1911/1139.

[111] See for example, current renewal of lease (Reg No. 453904.1 & Leasehold Title 74836) between HMQ (lessor) and DC Lawrence (lessee).

6.1. These leases highlight the difference between the renewal clauses used in fixed term leases and those used in perpetually renewable leases.

6.2. The McKenzie Opinion proposes that '*there are reasonable grounds to support the argument that the terms of the original Elliot lease did not confer on the lessee a perpetual right of renewal*'. [112]

6.2.1. It is accepted that the absence of the words '***including this present covenant***' for renewal in the Elliot lease, could support the McKenzie proposition that 'the Elliot lease did not confer on the lessee a perpetual right of renewal'.

6.2.2. However, it is proposed that the absence of the words '***with the exception of the present covenant***' for renewal in the Elliot lease could equally support the opposite proposition, namely, that the Elliot lease did confer on the lessee a perpetual right of renewal.

[112] Willis Report at top of page 5.

6.3. The following comparison highlights this point.

Clause 15 – Te Aute's 'Elliot lease' *(perpetually renewable)*

> " *... the Lessee shall elect ... whether the lessee will accept a fresh lease of the land ... for a further term of twenty-one years from the expiry of the term hereby granted. ... Such lease shall contain like covenants and conditions as those contained in this present lease and shall be similar thereto in all other respects* ..." [113]

Clause 15 - Atihau's 'Leland lease' *(fixed term)*

> " *On the written request of the lessee ... the Board will ... grant to him a lease of the demised premises for a further term of twenty three years from the expiration of the said term ... and containing the like covenants and provisions as are herein contained,* ***with the exception of the present covenant for renewal*** ..." [114]

6.3.1. The words '*with the exception of the present covenant for renewal*' limited the Atihau leases to an initial term and one renewal term. [115] In this respect, such leases were akin to leases granted by leasing authorities under section 5(h) of the Public Bodies Leases Act 1908.

6.4. Section 5(h) of the Public Bodies Leases Act 1908 is particularly relevant when considering the perpetuality or otherwise of the leases originally granted by the Trust Board, which leases, as already noted, were of the section 5(g) type. [116]

6.4.1. It is clear from the wording of section 5(h) that section 5(e), 5(g), and 5(f) leases were perpetually renewable. Section 5(h) allowed leasing authorities to grant leases with the same provisions as those paragraphs 5(e), 5(f) & 5 (g), save that the right of renewal or of having a new lease offered for sale by auction, was limited in duration, '***in lieu of being perpetual***'.

---

113 NA – ABWN 7609 W5021 Box 843 record 55380 Part 1. Reconstructed copy of Memorandum of Lease No.6513; TATB (lessor) and George Elliot (lessee).

114 NA - R1277800, MA96 1/2. Memorandum of Lease No. 9620 under the Native Land Act 1909 Part XIV (Regulation No. 38) dated 28/09/1911; Aotea District Maori Land Board (lessor) and John Joseph Leland (lessee).

115 Under section 262 of the Native Land Act 1909, every lease inclusive of the renewal term had to terminate by 25 November 1957. The Leland lease was granted for a total term of 46 years (an initial term of 23 years and one renewal term of 23 years) from 01/07/1911 to 30/06/1957.

116 Refer G 5.2 & 5.4 above.

6.4.2. In so far as the perpetuality of such leases is concerned, the Legislature made no distinction between section 5(e) leases which contained a provision which contained the words '*including this present provision for ... renewal*', and section 5(g) and 5(f) leases which did not contain such words, but which contained provisions substantially to the same effect. [117]

6.4.3. It is clear from section 5(h) that leases granted under paragraphs 5(e), 5(g), and (5(f) of the PBLA 1908, would be perpetually renewable, and it amounts to no more than legal semantics to suggest otherwise.

6.5. It is submitted that if the Trust Board had intended to grant fixed term leases for an initial term of 21 years and one renewal term of 21 years, it would have used a limited renewal clause such as the renewal clause used in Atihau's fixed term leases.

7. It is further submitted that it would have been a very simple thing for the Trust Board to use the same form of fixed term lease it had employed for the previous 46 years from 1869 until 1915. [118]

8. Based on the above review of **Crown leases**; comparing the Hilda Wooldridge lease and the Taranaki Scholarship leases with the Elliot lease, and also contrasting Atihau's fixed terms leases with the Elliot lease, it is submitted that the Crown cannot argue that Te Aute's leases were not originally perpetually renewable or that the current renewals are not perpetually renewable.

---

117 Refer Public Bodies leases Act 1908, Section 5 (e) to (h); and the First & Second Schedules.

118 Report on 1906 Inquiry, AJHR 1906 (Session II) G-5, Exhibits 9, 10 & 12.

G. Incompatible objectives and purposes: a breach of trust?

Should the Crown's Glasgow leasing system and Glasgow leases have been applied to Te Aute's endowment?

This question will be considered in two ways:

a) Was the Crown's Glasgow leasing system compatible with purpose of Te Aute's endowment?

b) Should the Crown have known that the application of Glasgow leases would not be to the best advantage of the endowment and would not earn as much as possible for Te Aute's trusts?

1. Was the Glasgow Leasing System compatible with the purpose of Te Aute's endowment?

1.1. As a general statement, the use of educational endowments for 'settlement' does not seem to be a use compatible with 'education'.

1.2. Te Aute's endowment was constituted as a site and an endowment for a school.

1.3. The Hapū donors of the tribal lands gifted to the Crown for the endowment informed the Crown that the use of the endowment for 'settlement' was contrary to the purpose of the endowment.

1.3.1. Wiremu Erueti who spoke for Hapū at the Royal Commission of Inquiry in 1906 informed the Commission that they were opposed to the endowment being sub-divided and leased to settlers. [119]

1.3.2. He told the Commission that Hapū "*do not wish the purpose for which the land was handed over … diverted in any way*". [120]

1.3.3. When he was asked "*Would the Maoris object to the land being subdivided into farms and let to Europeans, so long as the rent went to the school?*" he replied, "*the Maoris would not like that*". [121]

---

[119] Report on 1906 Inquiry, AJHR 1906 (Session II) G-5, at pages 55-57.

[120] Report on 1906 Inquiry, AJHR 1906 (Session II) G-5, at page 56.

[121] Report on 1906 Inquiry, AJHR 1906 (Session II) G-5, at page 57.

1.3.4. Wiremu Erueti's testimony reflected the experience of Hapū who had their Poukawa Native Reserve lands sub-divided and let to settlers by the Public Trustee under Poukawa Native Reserve Act 1903. [122]

1.4. The Crown's view was that the use of Te Aute's endowment for settlement was justifiable so long as the revenue from the leaseholds was applied to Te Aute's trusts. However, leaving aside the obvious conflict of purpose, the conflict of interest, and breach of trust issues, it was not as simple as that.

1.5. The findings of the Royal Commission of Inquiry 1906 recognised that the endowment had to earn '*as much as possible*' in the interests of the trusts, and this was not disputed by Crown officials at the inquiry.

1.6. **William Kensington** the Under Secretary for Crown Lands informed the Commission that there was no doubt cutting up the endowment to provide leasehold farms for settlers would produce a larger or at least not lower revenue for the trusts – that the trusts '*would not suffer in any way'*. He also recommended the perpetually renewable lease known as the Glasgow lease was the '*best form of lease*' to use. [123]

1.6.1. While some of the witnesses who appeared before the Commission had no objection in principle to the endowment being sub-divided and leased, most expressed concerns that the revenue earning capacity of the endowment would be prejudiced by the application of the Glasgow leasing system recommended by the Under Secretary for Crown Lands.

1.6.2. The Under Secretary's recommendations stand in stark contrast to the view of William Matheson one of the Commissioners on the Royal Commission of Inquiry on Land Tenure and Settlement in 1905.

---

122 Refer Part E Para. 4 of this Report – '*The Poukawa Native Reserve*'. Also NA – MA 1 180 6/61 Parts 1, 2, 3, &4 Poukawa Native Reserve; NA - AAMK 869 W3074 186b 6/61A Part 1, Maori Reserved Land – Poukawa – General 1900-1957.

123 Report on 1906 Inquiry, AJHR 1906 (Session II) G-5, at pages 104-106.

1.6.3. According to William Matheson the Crown's settlement leasing system '*was not intended to create a rent revenue, but to settle people on the land*'. [124]

1.7. The Sheehan Commission 1975 observed that:

> *" **Perpetually renewable leases may possibly be appropriate for the Crown** or a municipal corporation to grant because these are immortal legal entities and **the revenues received are a very minor part of their total income**." [125]*

1.7.1. It is regrettable that when Frank Winter [126] presented his petition to the Commission he appears not to have known that the majority of Te Aute's endowment was constituted under The New Zealand Native Reserves Act 1856, the first of the Maori Reserved Land Acts. [127]

1.7.2. The Sheehan Commission may well have decided to include Te Aute's leases within the scope of its inquiry, instead of excluding them on the basis that they were public bodies leases. [128]

1.7.3. Particularly given the Minister of Maori Affairs advice to Cabinet that the '*Te Aute situation can be distinguished from the general run of local body leases*'. [129]

1.7.4. The Sheehan Commission's observation at paragraph 1.7 above is particularly pertinent - the Crown could afford to be benevolent.

1.7.5. The total revenue from all Crown lands leases, including endowment leases, reserves leases, settlement leases and the revenue from freeholding all such leases accounted for less than 3% of the Crown's total revenue between 1892 and 1950. [130]

---

124 *Report of the Royal Commission on Land Tenure, Land Settlement, and Other Matters Affecting the Crown Lands of the Colony: together with Minutes of Evidence*, 1905 AJHR C-4 at xxiv.

125 *Report of Commision of Inquiry into Maori Reserved Land* (1975), AR Shearer, Government Printer, Wellington -1975, pages 65-66.

126 Frank Winter was a Te Aute old boy and member of the Te Aute Trust Board.

127 *Report of Commision of Inquiry into Maori Reserved Land* (1975), AR Shearer, Government Printer, Wellington -1975, pages 131-132.

128 *Report of Commision of Inquiry into Maori Reserved Land* (1975), AR Shearer, Government Printer, Wellington -1975, page 132 para. (g)(i)–(iv).

129 CONFIDENTIAL *Memorandum for Cabinet Committee on Legislation and Parliamentary Questions, 30 June 1981*, NA – ABWN 7609 W5021 843 55380 Part 2.

130 TABLES, Table No. 55.

1.7.6. Over the same period the revenue from Te Aute's endowment accounted for 71% of the Te Aute Trust Board's total revenue. [131]

1.7.7. Significantly, the revenue from Crown leases was virtually the same every year from 1892 to 1950. Crown lease rent revenue for 1892 was £206,196. Yearly Crown lease revenue over the 59 years from 1892 to 1950 averaged £212,643.

1.7.8. Over the same period the total yearly revenue of the Crown from all sources but mainly from land and income tax increased from £4.1 million in 1892 to £105.2 million in 1950.

1.7.9. These figures confirm that although the Crown's settlement leases contributed very little direct revenue to the overall revenue of the Crown, 'settlement' undoubtedly resulted in a massive increase in overall revenue through the growth that occurred in the pastoral farming sector over this period.

1.7.10. The success of 'settlement' from this perspective is beyond question. However all of that is irrelevant here.

1.8. The overwhelming view of legislators was that perpetually renewable leases with compensation for improvements would enable public bodies to get better returns from their lands than fixed term leases without compensation. [132]

1.8.1. One of the key reasons for enacting the Public Bodies Leases Act 1908 was to ensure that all public bodies were put on the same footing with uniform leasing powers, so that none would be disadvantaged through not having the power to grant Glasgow leases. [133]

1.8.2. The Hon Dr Findlay (Attorney-General) in moving the second reading of the Public Bodies Leases Bill proposed that:

> *"... the Bill is one which will give local bodies having lands vested in them a better lease, and enable them to get better returns than they now obtain."* [134]

---

131 TABLES, Table No. 29.

132 NZPD, 1908 Vol 10 Sept 22 (COUNCIL) pages 312–322; Sept 29 (COUNCIL) pages 565-567; Oct 8 (COUNCIL) pages 1026-1029.

133 NZPD, 1915 Sept 23 (HOUSE) page 121, Education Reserves, Thames High School; 1908 Vol 10 Sept 22 (COUNCIL) pages 312–322; Sept 29 (COUNCIL) pages 565-567; Oct 8 (COUNCIL) pages 1026-1029.

134 NZPD, 1908 Vol 10 Sept 22 (COUNCIL) page 312.

1.8.3. Legislators considered that the interests of settlers stood above all others. The following parts of the Hon John Anstey's speech delivered during the third reading of the Bill fairly represented the views of most if not all the members of the Legislative Council present:

> *" There were several interests which should be considered. There was the interest of the leasing body, the interest of the tenant, and the interest of the public: ... Of these interests, he put the interest of the tenant first, the interest of the public next, and the interest of the leasing body last. ... The interest of the tenant was paramount, ...". [135]*

1.8.4. I find it difficult to reconcile the Attorney General's view that Glasgow leases would enable public bodies to get '*better returns than they now obtain*' when the '*interest of the tenant was paramount*'.

1.8.5. It may be true that perpetually renewable leases with compensation for improvements were necessary to encourage and facilitate 'settlement' of undeveloped lands in remote areas, but it is not true in respect of fully developed land. As the Sheehan Commission observed, there was no necessity to grant perpetually renewable leases in such cases.

1.9. It seems to me that the only way the Crown's Glasgow leasing system can be shown to be compatible with the purpose of the endowment, is if it can be shown that the endowment has been let to the 'best advantage' of the trusts under such leases and that the endowment has been 'earning as much as possible'.

1.10. This is the way the Royal Commission of Inquiry in 1906 assessed the leasing arrangements which had been employed by the Te Aute trustees since 1869. After a very full inquiry it was found **again** that the leasing arrangements employed by the trustees had been to the 'best advantage' of the trusts' and had been 'earning as much as possible'.

1.11. Given these findings, it is not surprising that the Commission did **not** recommend the application of Glasgow leases to Te Aute's endowment. [136] It is however, perhaps surprising that the absence of such a recommendation did not deter the

---

135 NZPD, 1908 Vol 10 Oct 8 (COUNCIL) page 1026.

136 Report on 1906 Inquiry, AJHR 1906 (Session II) G-5, at pages iv-vi.

Crown, as more overt efforts were made to secure the use of the endowment for 'settlement'. The Crown promoted [137] and facilitated [138] the use of the endowment for 'settlement' **and** tried to relieve the Trust Board of the trusts and the endowment. [139] The Crown unquestionably 'influenced' the Trust Board's decision to grant Glasgow leases. It was the Crown's determination to have the endowment sub-divided into leasehold farms for settlement that ultimately resulted in Glasgow leases being applied to the endowment. [140]

2. **Should the Crown have known that the application of Glasgow leases would not be to the best advantage of the endowment and would not earn as much as possible for Te Aute's trusts?**

2.1. Whatever Crown officials may have thought about the remunerative value of settlement leases prior to the Royal Commission of Inquiry in 1906 the findings of the Commission should have left them in doubt about what settlement leases would have to generate in order to improve on the returns which had been derived under the leases employed by the Te Aute trustees from 1869 up to 1906 and beyond to 1915.

2.1.1. It was a specific finding of the Commission that:

> " *The evidence ... abundantly establishes that the endowments have been administered to the best advantage. To put it concretely, the endowments are earning as much as possible* ..." [141]

2.2. It is difficult to fathom how Crown officials could not have known that the use of the endowment for 'settlement' would produce significantly lower revenue for the trusts, given that the 'settlement' leasing system was **not** intended to create rent revenue, but to settle people on the land.

---

137 As evidenced by the Crown's offer to purchase part of the endowment for settlement 21 February 1906 - See *Report and Evidence of the Royal Commission on the Te Aute and Wanganui School Trusts 1906* [**Report on 1906 Inquiry**], AJHR 1906 (Session II) G-5, J B Fielder's testimony at pages 11-12.

138 As evidenced by the enlarged leasing powers under Church of England Trusts Act 1913, and the Public Bodies leases Act 1908.

139 As evidenced by the Separate Endowed Schools Bill 1907.

140 MAPS PLANS & PHOTOS, Plan No. 2.

141 Report on 1906 Inquiry, AJHR 1906 (Session II) G-5, at page iv.

2.3. Crown officials had more than sufficient information from several inquiries into Te Aute's leases between 1869 and 1906 to compare the returns under Te Aute's short term leases with the returns under the Crown's settlement leases during the same period.

2.4. Going into the Royal Commission of Inquiry in 1906 the Crown had in its possession an unusually large amount of information and documentation including valuations and reports concerning the condition and carrying capacity of the endowment lands dating back to 1855, copies of the leases going back to 1869, and copies of financial reports back to 1854.

2.5. Despite having all that information Crown officials persisted with the line that sub-dividing the endowment lands for 'settlement' would yield a 'much larger income' for Te Aute's trusts.

2.6. It seems the Crown was blind to the dis-advantages of settlement leases when applied to fully developed land and disregarded the fact that the Commission having heard all the testimony and having considered all the evidence did **not** recommend that the Crown's Glasgow leasing system and Glasgow leases should be applied to Te Aute's endowment.

2.7. **Critically the Crown's 'Glasgow Leasing System' provided no off-set in terms of rental for the value of perpetually renewable tenure**. Rentals under such leases should have been higher because of the value of such tenure. However Glasgow leases were calibrated to recover costs only, in the interests of settlement and settlers.

2.8. To assess the financial impact of the Glasgow leases a very large body of historical material held by the Crown, the Anglican Church and the Te Aute Trust Board, spanning a period of more than 160 years has been examined and analysed.

2.9. The findings and conclusions in the following sections of this report: [142]

---

[142] These findings and conclusions have been arrived at with the assistance of historians, lawyers, accountants, an economist and valuers.

a) Set out the different ways in which Te Aute's trusts and endowment have been detrimentally affected by the application of the Crown's Glasgow Leasing System;

b) Quantify the financial detriment to Te Aute's trusts and endowment;

c) Explain why a hugely successful leasing system conceived to encourage and facilitate the settlement of undeveloped lands should not have been extended and applied to Te Aute's endowment.

2.10. After 100 years of Glasgow leases, the fundamental question remains: Has Te Aute's endowment been let to the best advantage of the trusts and has the endowment been earning as much as possible under such leases?

H. Better than freehold title?

1. It has often been said that the perpetually renewable lease is as good or better than freehold title, because of the perpetual tenure under such leases.

2. It can also be said that the perpetually renewable lease increases the value of leasehold title and diminishes the value of freehold title.

3. This seems an extraordinary proposition, nonetheless it is true.

4. Logan & Stone (registered valuers) completed a valuation of the 'lessors interest' in Te Aute's endowment lands in 2010. [143]

5. **The value of the 'lessees' interest' in Te Aute's endowment lands is about 3 times the value of the 'lessors' interest'**.

Logan & Stone Valuation 2010	Te Aute's Lessees	Te Aute Trust Board
	'Lessees Interest'	'Lessors Interest'
Freehold Title Value		$5 million
Leasehold Title Value	$13 million	
Capital Value	$23 million	

6. This parasitic characteristic of Te Aute's Glasgow leases had gone largely unnoticed because this effect on the value of the freehold title is not picked up by standard government valuations. Importantly, the valuation of the lessees' improvements, and the valuation of the land exclusive of improvements, which must be carried out to fix the 'fair annual ground rent' also do **not** value either the 'lessors' interest' or the 'lessees' interest' in the leased lands.

7. There can be no doubt that the reversal in the relative positions of the lessor and lessee has actually occurred under Te Aute's Glasgow leases. [144]

---

143 The Logan & Stone valuation report (15/01/2010) was obtained for this Report.

144 TABLES, Table Nos. 32 & 33.

7.1. In 2007 Brownrigg Agriculture under a sub-lease of one of the endowment leaseholds known as the 'Franks' Block' had an option to purchase the lessee's interest and buy the lease for $440,000 plus GST. [145]

7.2. Using this 'market' information and discounting it by 40% to derive a fair average value for all the endowment leaseholds, the lessors' interest and the lessees' interest are very close to the values indicated by Logan & Stones 2010 valuation report.

Brownrigg Option to Buy Lease in 2007	Te Aute's Lessees	Te Aute Trust Board
	'Lessees' Interest'	'Lessors' Interest'
Freehold Title Value		$6 million
Leasehold Title Value	$16 million	
Capital Value	$25.5 million	

7.3. Brownrigg Agriculture employ sophisticated 'financial modelling' and for this reason the purchase option offer can be regarded as a reliable indicator of the respective and relative values of the lessors' and lessees' interests in the endowment lands.

7.4. It is very unfair that no off-set was allowed for the erosion of the lessors' interest in the value of the freehold title under the 'fair annual ground rent' method of fixing rentals under Te Aute's Glasgow leases.

7.5. The Trust Board's equity in the endowment has declined by at least 60% since 1916 while the lessees' equity has increased by at least 60% since then. This change in the relative equity of the lessor and lessees has put the Trust Board at a very significant disadvantage because the loss of equity has been accompanied by a substantial decline in the value of the rentals derived under the Glasgow leases.

---

145 Deed of Sublease, Clause 7.

7.6. The yearly rental has declined by about 50%, from 6.57% of the capital value in 1916 to 3.21% in 2000. [146]

7.7. The decline in the value of equity and income has made the task of freeholding Te Aute's Glasgow leases very difficult and it will become even more difficult in the future based on the trend over the last 100 years.

I. Inequitable lease returns

It has been suggested that inflation causes the real value of rentals to decline under Glasgow leases. [147] While that is unquestionably true inflation is just one of several factors which produce inequitable returns for lessors under Glasgow leases.

There are several factors which contribute to the inequitable returns lessors receive under Glasgow leases, including the 'settler friendly' provisions contained in all Glasgow leases granted under the Public Bodies Leases Act 1908, the most significant of which is the '**fair annual ground rent**'.

1. The impact of inflation on fixed rentals

1.1. The financial loss resulting from the effect of inflation on rents fixed for the duration of each 21 year term from 1916 to 2015 is **$60 million** using a discount rate of 2.0%. [148]

2. The rates of return compared to other leases

2.1. The average rate of return as a percentage of the land value exclusive of improvements at the start of each renewal term in since 1937 is 5.5%. [149]

---

146 TABLES, Table No. 4.

147 TABLES, Table Nos. 2, 7, 9 & 41.

148 TABLES, Table No. 2. The data for this table is contained in Table No. 1 and Table Nos. 12–15, 19, 22, 24, & 27. Mike Copeland (Economist) provided financial advice and assistance and completed a report on the effect of inflation on the lease returns in 2008. If we use the RBNZ compund average annual rate of inflation of 4.3% for the period from 2016 to 2018, the financial loss is **$263 miliion**.

149 TABLES, Table No. 1.

2.2. The rate of return at the start of Samuel Williams lease which ran from 1903 to 1915 was 11% twice the rate of return under the Glasgow leases. [150]

2.3. The rate of return at the start of the first term of the Glasgow leases which ran for 21 years from 1916 to 1936 was £0.92 per acre. The rate of return at the start of the College Farm lease which ran for 15 years from 1916 to 1931 was £3.02 per acre. The rate of return under the College Farm lease was 3.3 times the rate of return under the Glasgow leases. [151]

3. **The decline in the real value of Te Aute's Glasgow lease rentals.**

3.1. The total area under Glasgow leases in 2015 is 4,891 acres yielding $229,125 plus GST yearly. To derive the same value as the leases derived in 1916 the current leases should be yielding $603,904 plus GST yearly in 2015. [152]

3.2. The real rate of return in 1916 was 2.6 times higher than it is now in 2015.

3.3. The real rate of return has declined by 62%.

4. **The disproportionate rate of increase in the value of improvements**

4.1. This issue was raised in the Royal Commission of Inquiry 1950 into the Atihau leases. The Commission found that the rate of increase in the value of lessees' improvements was disproportionately higher than the rate of increase in the value of unimproved land.

4.2. This occurred at the first renewal of Te Aute's Glasgow leases in 1937.

4.2.1. The unimproved land value fell by 7% from £75,513 to £68,507, at the same time the value of the improvements increased by 155% from £10,603 to £27,079. [153]

---

150 TABLES, Table No. 11.

151 TABLES, Table No. 38.

152 TABLES, Table No. 40.

153 TABLES, Table No. 4.

4.3. The Commission was not able to conclusively determine why the value of lessees' improvements under the Atihau leases had increased at a faster rate than land but it did suggest that it might have had something to do with value attributed to improvements at the expiry of the lease terms rather than the cost of such improvements at the time the costs were incurred.

4.4. The Consumer Price Index (CPI) has been used by valuers to determine land and improvements values for rental fixing purposes under Te Aute's Glasgow leases.

4.4.1. The CPI comprises a basket of indices – Food, Clothing, Housing, Wages, & Transport – which together make up the General CPI. In the first quarter of 2015 the General CPI value of $1.00 in 2000 is $1.42. The Housing CPI value of $1.00 in 2000 is $2.68.

4.4.2. Residential dwellings comprise at least 60% of the total value of lessees' improvements under Te Aute's Glasgow leases. Using the Housing CPI to attribute value to the lessees' improvements will produce a disproportionate rate of increase in the value of such improvements relative to the rate of increase in the value of land using the General CPI.

4.5. Whether this explains why the value of improvements increases at a higher rate than land value doesn't really matter because the fact is that over the last 100 years under Glasgow leases, the value of lessees' improvements has increased by an average of 63% while the value of land has increased by an average of 36%, about half the rate of increase for lessees' improvements. [154]

4.6. At the 2000 lease renewal the improvements value increased by $1.36 million, an increase of 103% on the 1979 improvements value. The land value increased by $282,500 an increase of 7% on the 1979 land value. [155]

4.6.1. There were no buildings or fixtures consented to by the Trust Board during this period which would account for this dramatic increase in value.

---

154 TABLES, Table No. 4.

155 TABLES, Table No. 3.

5. Concessions granted to lessees

5.1. The yearly rental for the first term of Te Aute's Glasgow leases from 1916 to 1932 was £5,532. This was reduced to £4,506 from 1933 to 1936 under the National Expenditure Adjustment Act 1932. [156]

5.2. The rental for the first renewal term which ran from 1937 to 1957 was £4,281 (by voluntary arrangement under the Mortgagors and Lessees Rehabilitation Act 1936). [157]

5.3. The Crown has not hesitated to provide statutory relief for lessees and to override contractual obligations in the interests of lessees. The following Acts and Regulations provided a variety of relief for lessees:

(a) Public Bodies Leaseholds Act 1886;
(b) Pastoral Tenants Relief Act 1895;
(c) Discharged Soldiers Settlement Amendment Act 1923;
(d) Land Act 1924;
(e) Land Laws Amendment Act 1929;
(f) Land Laws Amendment Act 1931;
(g) Mortgagors Relief Act 1931;
(h) Mortgagors and Tenants Relief Act 1932;
(i) National Expenditure Adjustment Act 1932;
(j) Mortgagors and Lessees Rehabilitation Act 1936.
(k) Rent Freeze Regulations 1983.
(l) Rent Limitation Regulations 1984.

5.4. The Te Aute Trust Board unsuccessfully opposed an application for relief made by one of its lessees James Robert Faulkner under the Mortgagors and Tenants Relief Act 1932. [158]

---

156 TABLES, Table No. 1. The yearly rate from 1916 to 1921 was actually £5,525, slightly lower than the £5,532 which was applied from 1921 to 1932. This was due to small boundary adjustments which were made when the old roads through the endowment lands were closed and new roads were opened between 1916 and 1921.

157 TABLES, Table Nos. 1 & 16.

158 NA – JC-NA W1567 51/32-100/32 Box 114.

5.4.1. Mr J Faulkner was a dental surgeon who lived and worked in Hastings. He did not occupy or farm the leasehold himself but he employed a farm manager who occupied and managed the farm for him.

5.4.2. The Court was informed that Mr Faulkner suffered damage to properties he owned in Hastings as a result of the Napier Earthquake in 1931 and that his dentistry business had also suffered because of the impact of the Great Depression in New Zealand at that time.

5.4.3. The Court found that the income and expenses of his dentistry practise and his sheep farming business had been intermingled. It also found that by not paying rent under his Glasgow lease Mr Faulkner's leasehold farm had shown a profit of £306 in 1932.

5.4.4. The Court was not entirely convinced about the accuracy of the financial information provided by Mr Faulkner, because he was ordered to keep separate accounts for his dentistry and sheep farming businesses.

5.4.5. Despite having an independent source of income and also having unencumbered livestock including 3,061 sheep and 92 head of cattle the Court remitted half the total outstanding rental and interest of £1,287 and deferred payment of the balance for a period of two years, free of interest.

5.4.6. It is noted that at the time Mr Faulkner was granted such assistance the Te Aute Trust Board was trying to secure funding for the re-construction of the newly completed buildings at Te Aute College and Hukarere which had been very severely damaged by the same earthquake. [159] The cost of the rebuilding work amounted to £18,233 (Te Aute £7,769 and Hukarere £10,464. [160]

5.5. In 1933 Te Aute's lease revenue was reduced by 20% under the compulsory provisions of the National Expenditure Adjustment Act 1932. [161]

---

159 MAPS PLANS & PHOTOS, Photos Nos 4-6.

160 NA – MA51 5 rec 29/3, Te Aute College – HB earthquake assistance 1925-1934; NA - T1 W2591 33 rec 40/562/3 Te Aute College – HB earthquake assistance 1931-1968.

161 TABLES, Table No. 1.

5.6. The National Expenditure Adjustment Act 1932 was followed by the Mortgagors and Lessees Rehabilitation Act 1936 which introduced a regime of relief for lessees which trustees were authorised to grant voluntarily.

5.7. There is no direct evidence about this in the archival records of the Te Aute Trust Board but it is reasonable to conclude that the Trust Board would have voluntarily reduced the rental payable under its Glasgow leases, because of the decision of the Supreme Court to grant relief to Mr Faulkner in 1932.

5.8. It seems unlikely given what happened in that case that the Trust Board would have been able to successfully oppose an application for relief under the Mortgagors and Lessees Rehabilitation Act 1936.

5.9. The rebate which applied to the yearly rentals throughout the first renewal term represented a 23% reduction on the yearly rentals which applied during the first term of the Glasgow leases from 1916 to 1936. The total amount of the rent rebate during this period was £26,271 @ £1,251 per year. [162]

5.10. The detriment caused by the application of the Mortgagors and Lessees Rehabilitation Act 1936 to Te Aute's Glasgow leases was made worse by the refusal of the Government to grant relief to the Trust Board as a mortgagor under the same legislation. [163]

5.10.1. The Te Aute Trust Board made several applications to the Crown for relief between 1939 and 1961 **all** of which were declined. [164]

5.10.2. The Crown also declined an application made for general assistance made in 1958 at a time when Te Aute College was on the verge of closure in 1960. [165]

---

162 TABLES, Table No. 39.

163 NA – MA51 5 rec 29/3, Te Aute College – HB earthquake assistance 1925-1934; NA - T1 W2591 33 rec 40/562/3 Te Aute College – HB earthquake assistance 1931-1968.

164 NA - T1 W2591 33 rec 40/562/3 *Te Aute College – HB earthquake assistance 1931-1968*. Treasury declined requests on 14 April 1939, 7 September 1943, 3 November 1950, and 18 July 1961.

165 NA - T1 W2591 33 rec 40/562/3 Te Aute College – HB earthquake assistance 1931-1968.

5.10.3. The Crown denied a request from the Trust Board in 1943 to remit interest amounting to £162 per year on one of the Crown's earthquake rehabilitation loans. [166]

5.11. New Zealand experienced an unprecedented boom in the farming sector as 'processed grass' (milk, meat & wool) exports delivered exponential revenue growth throughout the period from 1935 to 1966.

5.12. During the first renewal term from 1937 to 1957 the College Farm generated yearly net income of £10.49 per acre, 7.45 times the £1.41 per acre derived from its leaseholds under the Glasgow leases. [167]

J. The iniquitous 'fair annual ground rent'

1. Te Aute's Glasgow leases stipulate that the rental for each renewal term shall be a 'fair annual ground rent' based on the land value exclusive of improvements value and shall be uniform for the duration of each renewal term. [168]

2. The detriment which arises from the rental remaining uniform for the duration of each 21 year term has been noted above.

3. Here the issue is what 'fair' means in the context of the rent fixing methodology applied to all Glasgow leases under Public Bodies Leases Act 1908 and its successor the Public Bodies Leases Act 1969.

4. The meaning of 'fair' is not defined in leases or the legislation. Given its usual meaning one would assume that 'fair' means 'even-handed' or 'balanced', 'impartial' or 'unbiased'.

5. The clue to its meaning can be found in the all dominating land settlement policies, objectives, and laws of the Liberal Governments from 1890 to 1912.

5.1. In the pursuit of 'settlement' the Crown put the interests of the settler above all others. The lessees' interest was paramount.

---

166 NA - T1 W2591 33 rec 40/562/3 Te Aute College – HB earthquake assistance 1931-1968.

167 Clause 13 has remained unchanged for 100 years.

168 TABLES, Table No. 34.

6. In 1979 the Te Aute Trust Board and the Te Aute Lessees Association could not agree on what was a 'fair annual ground rent'. In accordance with the lease provisions the disagreement was arbitrated. [169]

6.1. The arbitration brought together several 'experts' who made submissions on what constituted a 'fair annual ground rent'.

6.2. There was no unanimity among the several 'experts' involved in the arbitration about the factors which ought be considered in assessing the 'fair annual ground rent' or the weighting which should be applied to such factors. [170]

6.2.1. The valuer for the lessees proposed that what is fair is what is affordable. The rental is affordable if the balance remaining of the net operating profit, after deducting interest and repayments on borrowed capital, taxation, and developmental capital expenditure, is sufficient to pay the rent. He proposed a rental of 3.5% of the land value.

6.2.2. One of the expert witnesses proposed that it was necessary to consider the relationship between yields from perpetual leases and mortgage interest. He considered it was 'desirable' to review trends in interest rates – comparing ground rent with the yields from long term investments in Government Stock, Local Authority Stock, average yields on new mortgages, and on new mortgages in the private sector. He proposed that based on the 'straight average' of those rates which was 9.14% the ground rental should be fixed to yield 9% on the current land value for the duration of the renewal term.

6.2.3. The valuer for the lessor proposed that using the College farm as a basis for assessment, a fair rent is what can be paid where there is an adequate surplus generated from the current carrying capacity to service the rental as well as a reasonable level of outside borrowing. He concluded that taking into consideration the above factors from the lessees' point of view *and in providing a reasonable return to the lessor* a rental of 8% of the land value was fair.

---

169 NA – R12051151 ABWN W5021 7609 Box 843 55380 Part 1.

170 NA – R12051151 ABWN W5021 7609 Box 843 55380 Part 1. Justice Henry's Final Award dated 30 May 1980, pages 13-18.

6.2.4. Justice Henry ruled that **:**

> *" **to the extent that regard has been had to a reasonable return to the lessor this … is not the test.**"* [171]

6.2.5. The Chief Economist of the BNZ proposed that the margin which should be allowed over the market rate of rural mortgage interest was 1%. He suggested that a fair real rate of return on a perpetual rural lease would range between 5% and 6% - comprising 3% for the real return on Government securities plus 1.5-2% for risk and liquidity inherent in rural mortgages plus 1% for loss of liquidity in a perpetual lease.

6.2.6. A registered valuer and Fellow of the Institute of Valuers considered that the relationship between the annual cash return of a fee simple owner and the factors which contribute to the contract rent a prudent lessee would be prepared to pay under public body leases, and also the advantages disadvantages of investing in land. He proposed that the total investment return to land is represented by its annual cash return and the annual capital movement in price, and that this should be compared with the returns from investing in the share market or with the pure cash returns from Government Stock. Lastly he suggested that a prudent lessee will only be prepared to pay in rent a fair share of the annual cash returns which the land will generate over the term of the renewal. On that basis he proposed a rental of 8% to 8.5% of the land value – depending on the level of optimism or pessimism of individual lessees.

6.2.7. What all this reveals is that just about anything can be used or not used to assess fair ground rent and that just about any rate of return can be applied to fix fair ground rent.

6.2.8. Having regard to the experts' testimony at the 1979 rent review arbitration, the idea proposed by the lessees' valuer at the 2000 rent review that fixing the 'fair annual ground rent' involves an 'objective' assessment of factors hardly seems to accurately characterise the process of assessing and fixing 'fair annual ground rent' under Glasgow leases.

---

[171] NA – R12051151 ABWN W5021 7609 Box 843 55380 Part 1. Justice Henry's Final Award dated 30 May 1980, page 16.

7. What is very clear however from Justice Henry's ruling is that **what is fair must be determined from the perspective of the lessee only** and in this respect that hardly seems fair.

7.1. The lessees' valuer John Larmer succinctly explained the meaning of 'fair annual ground rent' as:

> *" the amount which lessees are willing to pay, not the return to lessors on their investment"* [172]

7.2. He added that lessee means '*prudent lessee*' so the 'fair annual ground rent' is the amount which a prudent lessee is willing to pay. The difficulty with this proposition is that it depends on an assumption that a 'prudent lessee' is actually interested in fairness.

7.3. If there is one thing we know after 100 years of Glasgow leases, it is that lessees have been anything but fair, and the best evidence of this has been provided by **Brownrigg Agriculture**.

8. An obvious difficulty with the 'fair annual ground rent' method of fixing rental is that it is derived from a basket of financial indices that have nothing directly to do with the leased land.

9. A 6.50% rate of return in relation to government bonds, shares, mortgages and other financial instruments may appear to be 'fair' however whether the use of that percentage rate produces a 'fair annual ground rent' will ultimately depend on the value attributed to the land. The following examples from the 1979 and 2000 lease renewals and rent reviews illustrate this point.

10. **First example – Lease renewals 1979**

10.1. Shortly before the disagreement concerning rentals was referred to arbitration the Te Aute Trust Board lodged objections against the rating valuations of the western block leaseholds.

---

172 *Valuation Report 20 March 2000*, Larmers Property Advisors (Registered Valuers. lauers), page 7.

10.2. In the meantime the Trust Board and the Te Aute Lessees Association agreed upon the 'land values' which would be used to fix the 'fair annual ground rent'. The arbitrator applied a rate of return of 6.5% on the agreed land values to fix the yearly rental at $169,492.

10.3. The table below shows the effect of a higher or lower 'land value' on the rate of return. It also shows the effect on the yearly rental of a higher or lower land value using the same 6.5% rate of return used by the arbitrator.

Land Values – TAC Lease Renewal 1979		
LVs - Government Valuations 1976-1979	Agreed LVs - Arbitration Valuation 1979	Revised LVs after TATB objections to GVs upheld
$1,582,920	$2,607,564	$4,244,500
11%	**6.5%**	**4%**
$169,492	$169,492	$169,492
6.5%	6.5%	6.5%
$102,890	**$169,492**	**$275,893**

11. Second Example – Lease renewals 2000

11.1. This example illustrates how a cynical valuation can be used to depress the 'fair annual ground rent' and also underlines the point made earlier that the proposition that a 'prudent lessee' is interested in fairness is highly doubtful.

11.2. The '**Te Aute Lessees Association**' engaged **John Larmer**. The land exclusive of improvements was valued at $3,917,000. This represented a $325,500 or 8% decrease on the 1979 land value. The lessees' improvements were valued at $2,745,000. This represented a $1,423,500 or 108% increase on the 1979 improvements value. [173]

173 *Valuation Report 20 March 2000*, Larmers Property Advisors (Registered Valuers. lauers).

11.3. The table below illustrates the iniquity of this cynical valuation of the land and improvements for the purpose of fixing the 'fair annual ground rent' under Te Aute's Glasgow leases.

Larmers Valuation 20 Mar 2000			
Year	**Land Value**	Increase +/- $	Increase +/- %
1979	$ 4,244,500	$ -	
2000	$ 3,917,000	$ (327,500)	**-8%**
Year	**Improvements Value**	Increase +/- $	Increase +/- %
1979	$ 1,321,500	$ -	
2000	$ 2,745,000	$ 1,423,500	**108%**

K. What do the sub-leases tell us about the 'real' value of Te Aute's endowment leaseholds?

1. The Brownrigg sub-lease

1.1. Brownrigg Agriculture is a major farming conglomerate. It holds about 11,000 hectares of mainly Maori land under leases in Hawkes Bay, Manawatu and Poverty Bay.

1.2. Jonathan and David Brownrigg lease about 1,000 hectares of Te Aute's endowment more than all of the other lessees put together. [174]

1.3. They obtained a sub-lease of the Frank Block on 3 December 2007. [175]

1.3.1. Rental was subject to review every 2 years against the Consumer Price Index (CPI) but on any review rental was not to be less than the preceding rental period. [176]

---

174 TABLES, Table Nos. 48 & 49.

175 *Deed of Sublease* between GD &SL Walker and PJ Trustee Company Ltd (as lessors) and David & Jonathan Brownrigg Ltd (as lessee).

176 *Deed of Sublease*, clauses 1 & 14.

1.3.2. **The yearly sub-lease rental of $43,200 plus GST was 6 times the 'fair annual ground rent' of $6,887.50 plus GST paid by the lessee under the head lease.** [177]

1.4. It is reasonably supposed that Brownrigg Agriculture would have used the same 'detailed financial modelling' it used to forecast returns when it tendered for the lease of the College Farm, one year later in 2008.

2. **The Brownrigg offer to lease the College Farm**

2.1. Brownrigg Agriculture offered a yearly rental of $235,000 plus GST which equates to a rent yield of $317 per hectare or to 3% of the land value exclusive of improvements. [178]

2.2. This offer to lease the College Farm was substantially lower than the $1,304 per hectare or 8% of the land value Jonathan and David Brownrigg paid to sub-lease the 'Frank Block'.

2.3. The offer was also lower than sub-lease rental paid by the sub-lessee of the 'Silverstream Block'.

3. **The Kingston sub-lease**

3.1. Bruce and Wendy Kingston obtained a sub-lease of 365 hectares of the 429 hectare 'Silverstream' Block for 3 years from 1 May 2009, with a right of renewal for two further terms of 3 years. [179]

3.2. The yearly sub-lease rental of $80,000 plus GST equates to a rental value of $219.00 per hectare or 5% of the land value exclusive of improvements.

3.3. Although the $317 per hectare offered by Brownrigg Agriculture for the College Farm appears better than the $219 per hectare being paid under the sub-lessee of the Silverstream Block, the rental offered for the lease of the College Farm should have been much higher.

---

177 *Deed of Sublease*, clause 1. See also TABLES, Table No. 36.

178 Offer dated 4 April 2008 and Supplementary Offer dated 16 May 2008. See also TABLES, Table No.37.

179 *Deed of Lease dated 1 May 2009*. See also TABLES, Table Nos. 35 & 36

3.4. The livestock carrying capacity of the College Farm (SU/ha) is at least 2 times that of the Silverstream Block.

3.5. The College Farm has yielded over a 75 year period 6.3 times the net revenue per hectare derived under the Glasgow leases of the Silverstream Block. [180]

3.6. The head lease rental for the Silverstream Block is fixed at $53.05 per hectare until 2020.

3.7. **The yearly sub-lease rental of $80,000 plus GST for 365 hectares is 4 times the 'fair annual ground rent' of $22,770 plus GST paid by the lessee for the 429 hectare 'Silverstream' Block.** [181]

3.8. The lessee has retained the use and occupation of about 64 hectares which has been set up for equestrian pursuits and upon which the residential dwellings and stables are located.

L. What is 'fair'? – what the sub-lessees pay.

1. Using sub-lease rentals as a starting point – we can say that **$738 per hectare** is a 'fair' average market rent rate for Te Aute's leaseholds.

1.1. This rate is a little higher than the average of the Silverstream sub-lease rate of $219 per hectare and the Frank sub-lease rate of $1,302 per hectare.

1.2. This rate compares reasonably with the market rate of **$619 per hectare** extrapolated from Logan & Stone's 2010 valuation of Te Aute's western block leaseholds.

2. Based on this 'fair' average market rent rate of $738 per hectare the yearly rental value of Te Aute's endowment leaseholds is **$1.46 million** plus GST.

2.1. This is **6.4 times** the $229,125 (plus GST) derived under Te Aute's Glasgow leases.

3. The Brownrigg and Kingston sub-leases show that what a '*prudent lessee*' is actually prepared to pay is much more than what valuers and arbitrators will assess as being what a '*prudent lessee*' will under the 'fair annual ground rent'

---

180 TABLES, Table Nos. 48 & 49.

181 TABLES, Table No. 36

valuation methodology applied to Glasgow leases under the Public Bodies Leases Act 1908.

M. Can the value of Te Aute's endowment be restored?

1. The Crown has already acknowledged that it is at least morally culpable for the failure of a leasing system which was applied to Maori reserved lands, and Maori vested lands.

2. In 1973 the Te Aute College Students' Association ('TACSA') met with the then Prime Minister Norman Kirk. He was presented with a petition about Te Aute's Glasgow leases.

3. This was followed by another petition about the leases in 1979.[182] The Minister of Maori Affairs reported to the Cabinet Committee on Legislation and Parliamentary Questions on 30 June 1981 that:

> *" - the Te Aute situation is unique for the following reasons ...*
>
> *" - the lessor is an educational institution originally endowed by the Government ...*
>
> *" - the purpose of the endowment and the very continued existence of the institution are threatened by the failure of a leasing system imposed much earlier this century to produce a return sufficient to maintain an adequate income in the face of inflation ...*
>
> *" - State salvage was necessary in 1973/74 to avert a collapse and State action may again be necessary if steps are not taken to restore the intent of the original endowment by legislative adjustment to the terms of the leases .." [183]*

4. A year later, on 2 June 1982, the Minister of Lands Jonathan Elsworthy, recommended that:

> *" the Committee note the likely flow-on effects for other leases if legislation was introduced to provide for more frequent reviews of rent for the Te Aute College leases."* [184]

---

182 Parliamentary Petition No. 1979/68.

183 NA – ABWN 7609 W5021 Box 843 rec 55380 Part 2, CONFIDENTIAL Cabinet briefing paper L (81) 14 Copy No / 2 - 30 June 1981.

184 NA – ABWN 7609 W5021 Box 843 rec 55380 Part 2, CONFIDENTIAL Cabinet briefing paper L (82) 24 Copy No / 14 - 1 June 1982.

5. On 9 June 1982 Cabinet noted:

> " *the Maori Affairs Select Committee has referred the petition to the Government for consideration ...*
>
> " *the possible effect that any changes made to the Te Aute leasing arrangements would have on other Maori leases (the Maori Reserve Land Act 1955 refers) ...*
>
> " *there would be a very large number of leases affected by the flow-on effects if there was any Government move to amend the Te Aute leases ...*
>
> " *that the prayer of the petition should remain under consideration ...".* [185]

6. Since the enactment of the Maori Reserved Lands Amendment Act 1997, 2,145 reserved land leases have been settled and 243 Atihau vested land leases have been settled. Regrettably there has been no 'flow-on' for Te Aute.

7. The Crown actively and aggressively promoted the use of Te Aute's endowment for 'settlement' instead of focusing on Te Aute trusts and the interests of those beneficially entitled under the trusts.

8. The evidence proves conclusively that the Glasgow leases applied to Te Aute's endowment have substantially reduced the capital and income value of the endowment and that as a consequence Te Aute's trusts have been very seriously undermined.

9. It is no great leap for the Crown to acknowledge that it is no less culpable for the detriment caused by the application of 'settlement' leases to Te Aute's endowment, than it was for the detriment caused by the application of 'settlement' leases to Maori reserved lands and Maori vested lands.

---

185 NA – ABWN 7609 W5021 Box 843 rec 55380 Part 2, CONFIDENTIAL Cabinet decision CK 82/22/6 - 8 June 1982.

N. Atihau's Trusts & Leases

1. In 1902 and 1903 about 115,209 acres of mainly isolated and undeveloped Maori land was conveyed to the Aotea District Maori Land Council, [186] under deeds of trust signed by the beneficial owners.

2. **Atihau's trusts** were constituted [187] under the Maori Lands Administration Act 1900. The aims of the Act were:

   (a) *the retention of Maori land for the use and benefit of Maori.*

   (b) *the better settlement and utilisation of unoccupied and unproductive Maori land.* [188]

3. The leasing powers under which Atihau's leases were granted were originally prescribed under the Act and deeds of trust signed by the beneficial owners.

4. There was no compulsion to convey land to the Land Board, but if it was, the conveyance had to be effected by way of a deed of trust signed by the beneficial owners. [189]

5. The Land Board was given full power and authority subject to the provisions of the deeds of trust to grant leases by public tender upon such terms and conditions as it thought fit.

6. The deeds of trust authorised the Land Board to grant leases for up to 42 years, including renewals, at the best rent that could reasonably be attained. [190]

7. The Maori Land Settlement Act 1905 allowed leases for up to 50 years.

---

186 NA – R12777800, MA 96 1/2 Exhibits copies deeds of trust for Morikau, Ohutu, Otiranui, Paetawa, Waharangi Blks signed by beneficial owners and the Aotea District Maori Land Council (1902 – 1903).

187 Copies of the original deeds of trust presented to Royal Commission of Inquiry 1950 - NA – R12777800, MA96 1/2.

188 The dual aims of the Act were "*to ensure that Maori land, whilst being protected from sale, was generally made available for European settlement through leasing*." Tony Walzl's report '*Whanganui Land 1900-1970*' (Feb 2004), commissioned by the Crown Forestry Rental Trust ('***Walzl***'), at page 48.

189 NA - R1277804, MA96 3/6. See for example the Deed of Trust for Ohutu No. 2 Block (411 acres) which was signed by about 124 beneficial owners. The deed included a Memorandum of Transfer which was signed by 10 of the beneficial owners on behalf their behalf.

190 NA - R1277804, MA96 3/6. See Deed of Trust for Ohutu No. 2 Block.

8. The Native Land Settlement Act 1907 allowed existing leases to be increased from a maximum of 42 years including renewals, to 50 years.

9. Under the Native Land Act 1909 all leases including all renewals expired no later than 25 November 1957.

10. The beneficial owners authorised the Land Board to sub-divide and lease their lands to settlers in the expectation that they would re-occupy the leased lands when the leases ended.

11. The deeds of trust for Ohutu Nos. 1, 2, 3 & 8, and Otiranui Nos. 2 & 3, authorised the Land Board to grant leases for up to 42 years inclusive of renewals. [191]

12. The deeds of trust for Paetawa, Morikau No. 2 and Waharangi Nos. 1–5 authorised the Land Board to grant leases for up to 42 years inclusive of renewals, and leases in perpetuity and perpetually renewable leases. [192]

13. Despite having such authority, no leases in perpetuity or perpetually renewable leases were applied to any of these Blocks. [193]

14. Atihau-Whanganui Maori were opposed to leases in perpetuity and perpetually renewable leases. They staunchly resisted pressure from settlers and politicians to grant leases in perpetuity and perpetually renewable leases, despite the difficulties they experienced in leasing the vested lands. [194]

---

191 Copies of the original deeds of trust presented to Royal Commission of Inquiry 1950 - NA – R12777800, MA96 1/2. See also TABLES – No. 65.

192 Copies of the original deeds of trust presented to Royal Commission of Inquiry 1950 - NA – R12777800, MA96 1/2. See also TABLES – No. 65.

193 NA - R12777804, MA96 3/6 & R12777800 C455274 MA96 1/2. Schedule of Leases presented to Royal Commission of Inquiry 1950.

194 Walzl, see generally Section 1, *Protest and Compromise (1890-1905)* and Section 1E v, *The Terms of Leasing* at pages 148-150.

15. Such leases were regarded as 'alienations' because of the extremely long and potentially infinite terms of such leases. The Crown accepted that leases in perpetuity and perpetually renewable leases were contrary to the first of the stated aims of the Maori Lands Administration Act 1900; namely the retention of Maori land.

16. Of the 243 leases granted by the Land Board, 241 were fixed term leases; only 2 were perpetually renewable. [195]

17. The machinery for the administration of the Atihau vested lands trusts was set up by the Crown under the Maori Lands Administration Act 1900. [196] Under this Act, Maori owners comprised the majority of both elected and appointed trustees (members) of the Councils (Land Boards). These Boards were constituted to manage and administer Maori Vested lands and leases.

18. However, through successive Acts, Maori to representation on such Boards was reduced and then the right to such representation was removed altogether, and Maori were not represented and did not participate in the management and administration of Maori Vested Lands. [197]

19. The Maori Trustee took over the administration of all Atihau's leases (except 2 perpetually renewable leases granted by the Aotea District Maori Land Board in 1910) under the Maori Vested Lands Administration Act 1954.

20. The Maori Purposes Act 1966 amalgamated leased lands in an effort to improve lease administration and to slow the fragmentation of the lands.

21. The Maori Trustee continued to administer the Atihau lands and leases under the Maori Vested Lands Administration Act 1954 until 1969 when the beneficial Maori owners were incorporated as the Atihau-Whanganui Incorporation under the Maori Affairs Act 1953.

---

195 NA - R1277804, MA96 3/6. Schedule of Leases presented to Royal Commission of Inquiry 1950.

196 Refer *Bassett & Kay* - Part One: Whanganui Vested Lands 1900 – 1950.

197 Refer Native Lands Amendment Act 1913.

O. A comparative review of Atihau's leases and Te Aute's leases

1. Were the statutory leasing powers exercised freely and voluntarily?

1.1. The statutory authority of the Aotea District Maori Land Board to grant leases under the Maori Lands Administration Act 1900 was exercised voluntarily.

1.2. With the exception of the two perpetually renewable leases applied to Otiranui No. 2 & No. 3, the 228 fixed term leases granted by the Land Board were consistent with aims of the Act and the authority to grant leases contained in the deeds of trusts.

1.3. Most of the leases were granted for an initial term of 21 years with a right of renewal for a further term of 21 years.

1.4. There was no pressure exerted on the Land Board by the Crown to grant leases that were not consistent with the aims of the Act **and** the terms of the trusts upon which lands were vested in the Land Board. The fact that the Land Board acted freely and voluntarily when it exercised its authority to grant leases, did not stop the Crown settling Atihau's leases. [198]

1.5. In respect of the two perpetually renewable leases [199] granted by the Land Board, which were consistent with the terms of the trusts upon which the Otiranui lands were vested in the Land Board, of the $26.5 million paid to settle the Atihau leases, $3 million was paid specifically to freehold the two perpetually renewable leases over Otiranui No.2 & No. 3. [200]

1.6. The Church of England Trusts Act 1913 provided the Te Aute Trust Board with the authority to grant leases under the Public Bodies Leasing Act 1908. The Trust Board was not permitted to exercise the power to grant leases under the Public Bodies Leasing Act 1908 if the exercise of that power was contrary to its trusts.

---

198 *Memorandum of Understanding* dated 27th June 2008.

199 Otiranui No. 2 & No. 3 Blocks. Refer NA - R1277804, MA96 3/6. Schedule of Leases presented to Royal Commission of Inquiry 1950.

200 *Memorandum of Understanding* dated 27th June 2008.

1.7. The Crown has argued that the Trust Board acted freely and voluntarily and that it is therefore not responsible for the losses caused by the Glasgow leases. This argument is difficult to reconcile with the Crown's settlement of Atihau's leases. It is also difficult to reconcile with the overwhelming evidence that the Trust Board's decision to sub-divide the Te Aute endowment into small farms and to grant Glasgow leases in 1916, was heavily influenced by the Crown.

2. 'Undue Influence' [201]

2.1. In contrast to Atihau's leases, Te Aute's leases were granted at the behest of the Crown **and** contrary to the trusts. [202]

2.2. The Trust Board implemented all of the recommendations made by the Crown's officials at the Royal Commission of Inquiry into the Te Aute and Wanganui School Trusts 1906. [203] The endowment was sub-divided into small farms and leased under Glasgow leases immediately after the last of the short term leases granted by the Trust Board expired in 1915.

2.3. The Crown unquestionably influenced the Trust Board's decision to grant Glasgow leases, and in this respect, it is noted that Crown officials specifically informed the Commission of Inquiry that Glasgow leases would produce better returns than the short term leases which were employed by the Trust Board from 1869 to 1915. [204]

3. Iniquitous valuation methodology applied to leases

---

201 'Undue Influence' in this context, refers to the equitable doctrine that involves one party taking advantage of a position of power over another party. This disparity in power between parties can vitiate wrongful actions (in this case, the exercise of a power to grant perpetually renewable leases) over another partry .

202 Refer Section D above.

203 See *Report and Evidence of the Royal Commission on the Te Aute and Wanganui School Trusts 1906*, AJHR 1906 G-5; and also companion reports '*The Crown's Sale of Te Aute's Endowment Land*' and '*Te Aute College: State School or Anglican Church School?*'.

204 Refer Section D above.

3.1. The main complaint of Atihau's beneficiaries was not that fixed term leases were inconsistent with the trusts upon which they had vested their lands in the Land Board.

3.2. Their complaint was that the valuation methodology for determining ground rent and compensation for improvements effectively rendered the fixed terms of the leases indefinite, contrary to the express terms of the trusts, and the dual aims of the enabling legislation.

3.3. The ground rent and compensation for improvements clauses in the Atihau leases were prescribed in Regulations made under the Maori Lands Administration Act 1900.

3.4. It is noted that Regulation 78A which caused the most detriment for the beneficiaries of the trusts was added to the Regulations in 1903 at the request of the Land Board, **not** the Crown.

3.5. Rentals were fixed at 5% of the unimproved land value using the 'Residue Method' - mathematically expressed by Bassett & Kay [205] as:

Capital Value – Improvements = X (Unimproved Value)

3.6. An Inquiry into Maori vested lands leases in 1950 found that this method of valuation was unfair and detrimental to the beneficial owners. [206] Witnesses informed the Commission, that a 'substantial reason for the apparent decrease in the value attributed to the land was that the values attributed to improvements had increased above the cost of the improvements'.

---

205 *Bassett & Kay* - Part Three: 3.1, page 58.

206 REPORT OF ROYAL COMMISSION APPOINTED TO INQUIRE INTO AND REPORT UPON MATTERS AND QUESTIONS RELATING TO CERTAIN LEASES OF MAORI LANDS VESTED IN MAORI LAND BOARDS 1951, AJHR 1951 G-5. '**The Royal Commission of Inquiry 1950**'.

3.7. In simple terms, the lessor and the beneficiaries of the trusts could not afford to compensate the lessees for the value of the lessees' improvements because the rate of increase in the value of the lessees' improvements was higher than the rate of increase in the value of the beneficiaries' land. [207]

3.8. The resulting downward spiral in the position of the beneficiaries meant that the trustee (lessor) could not afford to compensate the lessees for the lessees' improvements, and in consequence the leases had to be re-let (over and over) thereby effectively alienating lands that were supposed to be inalienable.

3.9. As a result of this Inquiry, the definitions for 'improvements', 'value of improvements', 'unimproved value', and 'capital value' contained in the Valuation of Land Act 1951 were applied to the Atihau leases under the Maori Vested Lands Administration Act 1954.

3.10. The unimproved land value was determined separately from the value of improvements. It was not the result of the value of improvements being subtracted from the capital value. This aligned the method of valuing land and improvements under Atihau's leases with the method under the Valuation of Land Act 1951, known as the 'VLA Method'.

4. The 'VLA Method' applied to Te Aute's Glasgow Leases

4.1. The 'VLA Method' has been mathematically expressed as follows:

Capital Value = Unimproved Value + Value of Improvements.

4.2. The VLA Method has been applied to Te Aute's Glasgow leases since the first renewal of the leases in 1937.

---

[207] *Basset & Kay* - Part Two: Royal Commission into Vested Lands and Subsequent Negotiations 1950 – 1954. The problems for the beneficiaries of the Atihau trusts stemmed from clauses in the leases and provisions in the enabling legislation which prescribed: (a) The method of valuing the land upon which rentals were set; (b) The method of valuing the lessees' improvements; and (c) The method of compensating lessees for their improvements.

4.3. This method of valuing the respective assets and interests of lessors and lessees was prescribed in the First Schedule of the Public Bodies Leasing Act 1908 for perpetually renewable leases granted under section 5 of the Act. [208]

4.4. The VLA method of fixing rentals was prescribed but not mandatory under the Public Bodies Leases Act 1908. It is now mandatory under the Public Bodies Leases Act 1969. [209]

4.5. Despite the use of different terminology the valuation principles and definitions prescribed under the Valuation of Lands Act 1908 and under the Public Bodies Leasing Act 1908 still apply to Te Aute's Glasgow leases today. [210]

4.6. Although the Residue Method has been heavily criticised, the VLA Method applied to Te Aute's leases has produced much the same results. [211]

4.7. The *In Re Wright's Objection* case [212] showed that the VLA Method which replaced the Residue Method produced the same detrimental results for the beneficiaries of Atihau's leases as the Residue Method. [213]

5. The 'Fair Annual Ground Rent' applied to Te Aute's Glasgow Leases

5.1. The real issue in relation to the fixing of rentals under Te Aute's Glasgow leases is the requirement that the rent should be a '**fair annual ground rent**'. [214]

5.2. This method of setting the rental has always produced iniquitous returns for the lessor because it has its origins in a benevolent leasing system deliberately calibrated to facilitate 'settlement'.

---

208 Set out in clause 13 of Te Aute's Glasgow leases and renewals since 1916.

209 Compare section 5 & First Schedule Public Bodies Leases Act 1908 and Section 11(b) & First Schedule Public Bodies Leases Act 1969.

210 NA – R12051151, ABWN W5021 7609 Box 843 55380 Part 1; Justice Henry noted that the provisions of the Valuation of Land Act 1908 had been used in Te Aute's leases in his Final Award (30/05/1980) on an arbitration to determine the rent payable on Te Aute's lease renewals 1979.

211 TABLES, Table Nos. 3 & 4.

212 *In re Wright's Objection*, [1959] NZLR 922, referred to in *Bassett & Kay* at page 84.

213 *Bassett & Kay* - Part Three: 3.3.1 Wright and Forsyth Lease Resumptions, pages 79-86.

214 Compare section 5 & First Schedule Public Bodies Leases Act 1908 and Section 11(b) & First Schedule Public Bodies leaases Act 1969.

5.3. The Royal Commission of Inquiry 1950 using the Ohutu 8 Block as an example found that the Residue Method reduced the unimproved land value and increased the lessees' improvements value. [215]

Ohutu 8	1st Term	2nd Term
Capital Value	£ 17,000	£ 31,472
Value of Improvements	£ 13,460	£ 29,016
Unimproved Land Value	£ 3,540	£ 2,456

5.4. The unimproved land value (as a percentage of the capital value) fell from 21% to 8%, as a direct result of the increase in the value of the improvements.

5.5. Judge Archer in the *Wright's Objection* case found that the reduction in the unimproved land value as a percentage of the capital value which had occurred in relation to the Ohutu 8 Block using the Residue Method had also occurred in relation to the Ohutu 1C2 Block using the VLA Method. [216]

Year	**UV**	**VI**	**CV**	**UV % of CV**
1908	£ 1,458	£ 62	£ 1,520	96%
1913	£ 2,456	£ 1,534	£ 3,990	62%
1921	£ 3,561	£ 4,127	£ 7,688	46%
1929	£ 1,650	£ 6,926	£ 8,576	19%
1937	£ 1,293	£ 5,317	£ 6,610	20%
1948	£ 1,370	£ 8,115	£ 9,458	14%
1953	£ 1,345	£ 11,575	£ 12,950	10%
1957	£ 2,410	£ 20,030	£ 22,440	11%

5.6. The valuation principles and methods prescribed by the Crown and applied to Te Aute's leases have produced similarly detrimental results.

5.7. As the table below shows, Te Aute's leaseholds also suffered a decline in unimproved land value and an increase in improvements value between the first

---

215 *Basset & Kay* - Part Two: 2.1 Report of the Royal Commission into Vested Lands 1951, page 31.

216 *Basset & Kay* - Part Three: 3.3.1 Wright and Forsyth Lease Resumptions, page 86.

and second terms of its leases, as had occurred under Atihau's leaseholds, (refer Ohutu 8 example above).

Te Aute's Leaseholds	**1916-1936**	**1937-1958**
Capital Value	£ 84,174	£ 96,566
Value of Improvements	£ 10,603	£ 27,059
Unimproved Land Value	£ 73,571	£ 68,507

5.8. The '**fair annual ground rent**' method has resulted in absurdly disproportionate increases in improvements values relative to the increases in land values exclusive of improvements, at every renewal of Te Aute's Glasgow leases including at the most recent lease renewal and rent review in 2000. [217]

6. The 'Unimproved Value' applied to Te Aute's fully developed lands

6.1. A detriment suffered under Te Aute's Glasgow leases, **not** suffered under the Atihau leases, was the loss of the value of improvements owned by the Trust Board (lessor) in 1916, under the 'fair annual ground rent' method of fixing the rental for the first renewal term in 1937.

6.2. The rentals payable under Te Aute's Glasgow leases should not have been based on the 'unimproved value' of the land because Te Aute's endowment lands had been substantially improved between 1854 and 1916.

6.3. The endowment lands were **not** unimproved at the time the Glasgow leases were granted. Samuel Williams had converted the endowment lands into one of the finest sheep and cattle stations in Hawkes Bay. [218]

---

217 TABLES, Tables 3, 4 & 6.

218 Sybil Woods, *Samuel Williams of Te Aute*, Pegasus Press, Christchurch, 1981, Chapter XI. In 1856 the endowment lands had an annual leasing value of 'a farthing an acre'. By 1869 the endowment lands were earning in rent £0.07 / acre (£0.07 = 1s5d = 68 farthings).

6.4. While the lessors' improvements were taken into account in fixing the 'rack rent' for the first term of Te Aute's Glasgow leases, [219] **all** improvements had to be disregarded for rental fixing purposes under the 'fair annual ground rent' methodology which applied to the renewal of Te Aute's Glasgow leases in 1937.

6.5. The table over page summarises the value of the lessors' improvements, lost on renewal in 1937.

TATB improvements 1916	£	10,569	Included in 1916 'rack rent'
Lessees Improvements 1937	£	13,723	
Total improvements	£	27,079	
TATB improvements 1937	£	13,356	Excluded in 1937 'fair ground rent'

6.6. The annual rental fixed for the first renewal term of Te Aute's Glasgow leases which ran from 1937 to 1957 was £4,281 - 23% less than the annual rental of £5,532 for the first lease term which ran from 1916 to 1936.

7. Indefeasible leasehold interests

7.1. Most of the leases granted by the Aotea District Maori Land Board ran for 21 years with a right of renewal for a further 21 years. [220]

7.2. Of the 243 leases granted by the Land Board only the 2 perpetually renewable leases applied to Otiranui No. 2 and Otiranui No. 3 were contrary to the first of the stated aims of the Maori Lands Administration Act 1900 under which the leases were granted, namely the retention of Maori land.

---

219 Section 10 Public Bodies Leases Act 1908. All Glasgow leases granted under the Act had to reserve a 'rack rent' meaning a rent based on the land plus improvements – but only for the first term of such leases. The rent for any renewal term was was on the land value exclusive of improvements, under the 'fair annual ground rent' methodology which applied to all Glasgow leases. While the lessee did not own such improvements, all improvements (regardless of whether the improvements were owned by the lessor or the lessee were excluded for rental fixing purposes). This had the effect of reducing the rental payable.

220 NA - R1277804, MA96 3/6 & R12777800 C455274 MA96 1/2. Schedule of Leases presented to Royal Commission of Inquiry 1950.

7.3. These leases of Otiranui No. 2 (505 acres) and Otiranui No. 3 Blk (792 acres) constituted about 1% of the leases granted and 1% of the lands leased by the Land Board. [221]

7.4. In relation to these leases the Supreme Court in *Robert Olphert Pearson* v *The Aotea District Land Board* (1945) [222] decided that the Land Board had acted without legal authority and that such leases were therefore void. However it also decided that the registration of such leases and any renewals of such leases under the Land Transfer Act created indefeasible leasehold interests.

7.5. This ruling would probably apply to the Glasgow leases granted by the Te Aute Trust Board if any challenge to the validity of such leases was made. [223] The effect of this ruling was not considered in the McKenzie Opinion.

8. Reversion of the leases

8.1. An important difference between Atihau's leases and Te Aute's leases is that virtually all of Atihau's leases were granted for fixed terms while all of Te Aute's leases were granted for perpetually renewable terms.

8.2. Atihau's leases created affordability issues for the lessor (and the beneficiaries of the trusts) but the reversion of the leases was not fettered by the right of perpetual renewal as is the case under Te Aute's leases.

8.3. Providing affordable loans to facilitate the purchase of the lessees' improvements would not have breached the terms of the leases.

---

221 TABLES, Table No. 65.

222 NA - R17215449, AAVN 869 W 3599 247 54/23/10 Part 1; Otiranui Block No. 3 and 3. This case was heard in the Supreme Court at Whanganui (No. 1975). Hearing commenced 22/11/1944 - Judgment 11/05/1945.

223 The Trust Board reserved 728 acres for the 'College Farm' which was used to deliver the school's agricultural curriculum (as directed by the Department of Education) and to supply meat and milk for the school. See NA – W1 1124 40/114 Part 1, Lease Tender Plan advertised 31/01/1916. See also MAPS PLANS & PHOTOS, Plan No. 2. See TABLES, Table No. 13.

8.4. Under the terms of Te Aute's leases if a lessee elects not to accept a renewal of lease a new lease **must** be put up for public auction. [224] This further fettering of the opportunity to resume the leasehold is an additional detriment which does not apply under Atihau's leases.

9. Crown efforts to ameliorate the detriment caused by the leases

9.1. In contrast to Te Aute's Glasgow leases which have remained unchanged for 100 years, Atihau's leases have been altered several times by legislation to ameliorate the detriment caused by some of the clauses in the leases. [225]

9.2. It is very significant that the Royal Commission of Inquiry 1950 appointed to investigate and report on Atihau's leases looked at the detriment to the beneficiaries of the trusts who were not contracting parties to the leases. [226]

9.3. The Commission's recommendations to ameliorate the detriment caused by the leases were largely adopted by the Crown. [227]

9.4. While the Crown enacted legislation to ameliorate the detriment to those beneficially interested in Atihau leases [228] it has **not** done the same for those beneficially interested in Te Aute's Glasgow leases.

9.5. Although the Crown's attempt to put right an ill-conceived dual purpose leasing system failed by way of legislation under which the trusts and leases were

---

224 Refer clause 16 of Te Aute's Glasgow leases and renewals since 1916, and the Public Bodies Leases Act 1908 section 5(g) and Second Schedule.

225 Report of Heather Bassett & Richard Kay - '*Whanganui Leased VestedLands c. 1951 – 2000*' (May 2004) commissioned by the Crown Forestry Rental Trust ('***Bassett & Kay***'). See Part One: Whanganui Vested Lands 1900 – 1950; 1.2 Legislative Changes 1905 – 1909, 1.3 Pressure to Change the Terms of the Leases 1911 – 1948. See Part Three: Maori Trustee Administration 1954 – 1969; 3.1 Maori Vested Lands Administration Act 1954, particualrly pages 57-61. See Part Four: Amalgamation, Incorporation and Revesting 1962 – 1969; 4.1.2 Maori Pirposes Act 1966, 4.2 Maori Affairs Amendment Act 1967.

226 '*Report of Royal Commission appointed to Inquire into Report upon Matters and Questions relating to certain Leases of Maori Lands Vested in Maori Land Boards*' 1951 AJHR G-5. The Land Board was treated as an interested party but not an affected party. The Te Aute Trust Board should likewise be regarded as an interested party rather than an affected party.

227 Maori Vested Lands Administration Act 1954.

228 Maori Vested Lands Administration Act 1954. See *Bassett & Kay* - the ameliorating provisions in the Act are set out in Part Three of the report – sub-part 3.1.

administered by the Maori Trustee, nonetheless the Crown did enact legislation in an effort to rectify the detriment caused by the Atihau leases. [229]

9.6. The Crown legislated to ameliorate the detriment caused by Atihau's leases even although the granting of such leases was consistent with the aims of the legislation and the objects of the trusts, and even although such leases were granted voluntarily and with the express approval of the beneficial owners.

9.7. With the exception of the two perpetually renewable leases applied to Otiranui No. 2 and Otiranui No. 3, Atihau's leases did not in and of themselves pose an irreconcilable conflict between the interests of the beneficiaries of the trusts, or the dual aims of the legislation.

9.8. The same cannot be said about Te Aute's Glasgow leases, [230] which cannot be reconciled with the objects of Te Aute's trusts or the purpose of the endowment.

10. '**Similarities**', '**fairness and benefit**'

10.1. The settlement of Atihau's vested land leases issues was reached in recognition of the '**similarities**' with a settlement reached with the Organisation of Maori Authorities now known as the Federation of Maori Authorities ('FOMA'). Having regard to the 'similarities' and on the basis of 'fairness and benefit" the Crown settled the Atihau leases for $26.5 million. [231]

10.2. The Crown settled the **historical claims** of the Organisation of Maori Authorities for $47.5 million in 2002 under Schedule 5 of the Maori Reserved Lands Amendment Act 1997. [232]

---

229 *Memorandum of Understanding* dated 27th June 2008. Atihau received an ex gratia lump sum amount $23 million for historical losses, based on fairness and benefit; $3.0 million for acquiring certain leases; and $500,000 towards negotiation costs.

230 Church of England Trusts Act 1913 s9 & Schedule clause 6 & Public Bodies Leases Act 1908 s3.

231 **Memorandum of Understanding** (27th June 2008). Atihau received a total of $26.5 million. Out of this amount $23 million was for historical losses, based on fairness and benefit; $3.0 million of this amount was provided specifically to buy out the two perpetually renewable leases over the Otiranui Blocks; and $500,000 was for Atihau's negotiation costs.

232 "PAPER A: MAORI RESERVED LAND COMPENSATION" prepared by TPK for the Maori Affairs Committee 6 July 2011, para 16.

10.3. The Crown recognised the value of facilitating the resumption of the Atihau leases and the economic benefits that would flow from such resumption for those ultimately beneficially entitled to the revenue of such leased lands.

10.4. Because of the similarities between the detriment suffered under the Te Aute leases and the detriment suffered under the Atihau leases, and the financial and other benefits which accrue from the resumption of the leases, it is considered that the pathway forward for Te Aute is to secure a similarly negotiated settlement with the Crown outside of the Treaty claims settlement process.

P. The remedies for Maori Reserved Land leases

1. The historical background of Te Aute's leases is essentially no different to that of the Maori Reserved Land leases.

2. The following statement about the history of Maori Reserved Land leases, in a report prepared for the Maori Affairs Committee by Te Puni Kokiri highlights the 'similarities' between such leases and Te Aute's leases:

> " *In general, the lease terms and conditions were consistent with the objectives of the government of the day, whose focus was on rapid European settlement and the development of productive farmland. Those governments, and lessees, sought terms and conditions for the leases which would increase the incentive to develop the land. The wishes of owners were frequently not a factor in their deliberations and decisions made*." [233]

3. Te Aute's leases were similarly consistent with the Crown's settlement objectives, and were granted despite the sub-division of the endowment for settlement and the application of perpetually renewable settlement leases being contrary the wishes of the Hapū donors. As already noted, Wiremu Erueti informed the Royal Commission of Inquiry in 1906 that the Hapū donors did not want '*the purpose for which the land was handed over ... diverted in any way.*' [234]

4. Importantly, two of the three Crown Grants which constituted Te Aute's trusts [235] were issued under The New Zealand Native Reserves Act 1856. [236]

---

233 "RENT REVIEWS OF MAORI RESERVED LANDS" prepared by TPK for the Maori Affairs Committee 18 May 2011, para 4. See also "PAPER A: MAORI RESERVED LAND COMPENSATION" prepared by TPK for the Maori Affairs Committee 6 July 2011, para 3.

234 Refer above page 39, Section G para 1.3.

235 The Crown issued two Crown Grants in June 1857 for the 4,273 acres originally gifted by Hapū o Nga Puna a Tara. These crown Grants constituted trusts 'for the benefit of the aboriginal inhabitants of New Zealand'. Refer this Report, Section A para 1.

236 This was the first of successive Acts under which lands were reserved for the benefit of Maori. It is argued that **the Crown's Grant should have also been made under the NZ Native Reserves Act 1856**, and probably would have been, but for the involvement of Alfred Domett. Refer companion reports, '*Te Aute College – State School or Anglican Church School?*' and '*The Sale of Te Aute's Endowment Land*'. Refer also, report of GS Cooper (Resident Magistrate) – '*Report on the subject of Reserves, Native Lands etc, in the Province of Hawke's Bay*', AJHR 1867, A-15A.

5. The Maori Reserved Lands Amendment Act 1997 introduced seven yearly rent reviews, a new method of assessing rental, and provided compensation for lessors and lessees affected by such changes. [237] The Act also provided for ex gratia payments to be made for historical losses. [238]

6. Sinced the enactment of this legislation, the Crown has paid $142.5 million under this basket of remedies, to settle Maori Reserved Land Leases . [239]

7. The changes made to the method of assessing rentals and the frequency of rent reviews under the Maori Reserved Lands Amendment Act 1997 are consistent with recommendations made by the Minister of Affairs to address Te Aute's leases in 1981. [240] However, despite such recommendations, the petition seeking a review of Te Aute's Glasgow leases in 1979 has come to nothing. [241]

8. The focus of the Crown during the 1990s was on settling Maori Reserved Land leases, and the recommendation to legislate changes to Te Aute's leases appears to have been overlooked as a result.

9. Having settled the inherent iniquity of Maori Reserved Land leases and Atihau's Maori Vested Land leases, the Crown should also settle Te Aute's similarly iniquitous leases.

10. However, rather than prescribing how lessors and lessees interests will be 'rebalanced' as the Crown did for the Maori Reserved Land leases, [242] it is proposed that the Crown should make ex gratia payments to facilitate the purchase of the leases and to settle historical losses, as it did for Atihau. [243]

---

237 Refer Schedule 2, Maori Reserved Land Amendment Act 1997.

238 Refer Schedules 3 & 5, Maori Reserved Land Amendment Act 1997. $47.5 million was paid to settle historical losses in 2002. The losses settled were for the 21 year period ending 1997 only.

239 "PAPER A: MAORI RESERVED LAND COMPENSATION" prepared by TPK for the Maori Affairs Committee 6 July 2011. See para 17.

240 NA – AVVN 869 ACC W3599 115 Rec 21/4/100, Part 3 Te Aute College. Petition filed by Te Aute College Old Boys and descendants of donors of endowment lands on 07/12/1979, sought an urgent review of the leases. CONFIDENTIAL *Memorandum for Cabinet Committee on Legislation and Parliamentary Questions, 30 June 1981*, NA – ABWN 7609 W5021 843 55380 Part 2.

241 Refer above Section M.

242 Refer Schedule 2 of the Maori Reserved Lands Amendment Act 1997. The Schedule 2 formulae for determining compensation payable to lessors and lessees, is unecessarily cumbersome and has been criticised by lessors and lessees alike.

243 *Memorandum of Understanding* dated 27th June 2008.

Q. The additional detriment of 'salvage and privatisation'

1. As noted above [244] Cabinet was advised by the Minister of Maori Affairs in 1981 that unless steps were taken to '*restore the intent of the original endowment*' the State would inevitably be called upon again to provide financial assistance to Te Aute College in future. [245]

2. The Crown response to petitions concerning Te Aute's Glasgow leases resulted in the **demolition of historic buildings** owned by the Te Aute Trust Board which were replaced by buildings owned by the Crown. [246]

3. To protect the Crown's investment and assets an area of 25.191 hectares was partitioned (SO 6814). [247]

4. This area was to be leased by the Crown rent free under a 21 year perpetually renewable Glasgow lease. [248]

5. I have difficulty understanding this appallingly inappropriate arrangement. Glasgow leases had crippled Te Aute's trusts and had almost resulted in the closure of Te Aute College in 1960 and again in 1969. [249]

6. This arrangement to lease trust land at an undervalue was not off-set by the investment in school buildings and facilities because the Crown owns the school buildings and facilities it built between 1977 and 1982.

---

244 NA – ABWN 7609 W5021 Box 843 rec 55380 Part 2, CONFIDENTIAL Cabinet briefing paper L (81) 14 Copy No / 2 - 30 June 1981.

245 NA – ABWN 7609 W5021 Box 843 rec 55380 Part 2, CONFIDENTIAL Cabinet briefing paper L (81) 14 Copy No / 2 - 30 June 1981.

246 MAPS PLANS & PHOTOS, Plan No. 6, Photos circa 1975 Nos 7-14.

247 MAPS PLANS & PHOTOS, Plan No. 5

248 Deed of Arrangement 1 October 1975 between Te Aute Trust Board and HMQ, Clause 1(a)). A copy of the deed is appended to companion report '*Te Aute College: State School or Anglican Church School?*' - see also para 4.42 and para 4.42 at pages 35-36.

249 But for the financial assistance provided by the H&W Williams Memorial Trust in 1970 and 1971, Te Aute College would have inevitably have closed.

7. The Crown still retains the right to remove all buildings and facilities without compensation, and it continues to receive the rentals on the staff houses it erected on the land shown in Survey Office Plan 6814 more than 30 years ago, despite not paying ground rent during this time. [250]

8. Te Aute's Glasgow lease issues have not been resolved, and as predicted the Crown is being asked to up-grade, refurbish and replace the buildings and facilities at Te Aute College.

9. **The 'arrangements' made in 1975 and 1999 have put Te Aute College in a worse position than it was before the Crown 'salvaged' the College**. [251]

10. Prior to salvage the Trust Board owned the school buildings and fixtures it was liable to maintain, refurbish and replace.

11. As things stand now, the Trust Board does not own the school buildings and fixtures it is liable to maintain refurbish and replace.

12. Further to that, the capital and income value of the endowment has been eroded to the point where the 'lessees' interest' in the endowment is almost 3 times the 'lessors' interest'.

13. The Crown missed an opportunity in 1975 to fund the freeholding of Te Aute's Glasgow leases. Instead of funding the freeholding of the leases, the Crown spent $3.65 million between 1977 and 1982, on the demolition and replacement of the existing school & hostel buildings. [252]

14. In 2010 it was estimated that the deferred maintenance costs, to ensure that the school and hostel facilities meet the 'minimum state school standard' and also to ensure that the same comply with current building and earthquake codes, would be about $14.5 million. [253]

---

250 '*Te Aute College: State School or Anglican Church School?*' – see Part 4 pages 25-42.

251 '*Te Aute College: State School or Anglican Church School?*' – see Part 4 pages 25-42. TABLES, Table No. 68. The cost to replace MOE buildings & fixtures erected 1977 – 1982 based on current building costs ($/m2) will be around $17 million. However, that estimate could be significiantly higher - $58 million.

252 TABLES, Table No. 66.

253 According to the best estimates provided by Ministry of Education and consulting architects in 2008.

R. Should the Crown fund the cost to freehold Te Aute's leases?

1. The cost to freehold the Glasgow leases in 1975 was about $1.45 million.

2. If the leases had been resumed in 1975, based on the yearly returns produced by the College Farm as one indicator, and the yearly returns derived by sub-lessees as another, we can reasonably propose that the endowment would have been earning 4.5 times more per annum than it has since then.

3. The Table below summarises the financial gain that would have resulted if the Crown had facilitated the freeholding of Te Aute's leases in 1975, at a cost of $1.45 million, instead of spending $3.65 million on demolishing and replacing the existing school and hostel facilities.

Comparative Analysis of Returns (using 2010 $/ha returns) - 1975-2015			
Market Rental Rate ($/ha) - 2010	$522.00	Glasgow Rental Rate ($/ha) - 2010	$116.00
Area (ha)	2,720	Area (ha)	2,720
Av Yr Return (CPI adj)	$333.00	Av Yr Return (CPI adj)	$74.00
Return 1975 - 2015	$36,230,400	Return 1975 - 2015	$8,051,200

4. The investment of $3.65 million on school infra-structure, which now requires capex of $14.5 million does not make any financial sense.

5. If the provision of Crown capital to freehold the Glasgow leases is viewed as an investment, albeit in settlement of a grievance, the benefit cost will be positive.

6. If the Crown had dealt with the College issues and the Glasgow leases together, then as the above CBA shows, the Te Aute Trust Board would now be able to meet the cost of refurbishing and replacing school and hostel facilities, and importantly, repetitive requests for Crown 'assistance' since then could have been avoided.

7. The direct financial benefit cost is positive, and it is suggested that the educational benefit costs will also be positive. Without overstating the proposition, unlocking the potential of the endowment lands holds the key to the future of Te Aute College.